

### Attachment 3

#### **Further Corroboration of policies aimed at maximising sale price and creating certainty on tariffs**

- Media Statements from Colin Barnett, Minister for Energy, dated 22 May 1997, 24 July 1997, 7 September 1997, 3 March 1998
- Hansard, Debate on the Gas Pipelines Access (Western Australia) Act 1998, 16 September 1998
- Hansard, answer to question from Mr Ripper, 14 March 2000
- Hansard, 16 March 2000
- Hansard, second reading speech of the Dampier to Bunbury Pipeline Bill 1997, 11 November 1997, pages 7523 – 7524



Government of Western Australia

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Ministerial Media Statement

## MINISTER FOR ENERGY

22/5/97

The 1,540km Dampier-to-Bunbury Natural Gas Pipeline (DBNGP), one of Western Australia's most strategically important energy assets, will be fully privatised with a target to complete the sale by the end of the year.

Announcing details today, Energy Minister Colin Barnett said Cabinet had approved a 100 per cent sale of the pipeline with a right for expansion by the new owner.

Mr Barnett made details of the sale process public during an address to an Australian Institute of Petroleum luncheon in Perth.

He said the State Government would retain ownership of the easement as a gas corridor and expand it from the present 30m to 100m. The expanded easement would allow the new DBNPG owner the option to expand the pipeline's capacity within the existing 30m area, while the new easement would be available for construction of additional pipelines in the future.

"The pipeline sale is a further step in the progressive deregulation of the gas market which began on January 1, 1995 and which is being achieved in manageable steps," the Minister said.

"The sale has the potential to realise the highest sale price for a State-owned asset in WA's history. It has a current book value of more than \$1 billion.

"I am confident the sale will deliver a substantial return to WA taxpayers on their investment. The price at which the pipeline eventually sells will depend on its future earning potential as determined by prospective bidders."

Mr Barnett said AlintaGas and Western Power would both retain priority rights on access to capacity needed to service residential and smaller customers in order to ensure future security of gas supply for these groups.

As well, new regulations would enforce a set of reference tariffs for the first two years of operation under private ownership, declining over the period 1998 to 2000. This would see transport costs decline from around \$1.25 per gigajoule at present to around \$1 per gigajoule by the year 2000.

The decision to sell the natural gas pipeline was announced in August last year. Since then, the Gas Pipeline Sale Steering Committee, with representatives from AlintaGas, the Office of Energy, Treasury and the Department of Resources Development, had consulted industry on the sale and recently made recommendations to Government.

Mr Barnett said he was confident that the 100 per cent sale would be welcomed by industry.

"There has been a significant amount of public debate on issues to do with the sale of the pipeline. I have talked at length to industry groups to gauge their views and I am confident the sale terms and conditions will be supported," he said.

"The process will be aggressive in order to meet our target of completion by the end of this year. There will not be any shortage of parties interested in putting forward firm bids for the pipeline."

Mr Barnett said the Coalition Government had come to a fair and equitable decision on the sale procedure and conditions, having had to balance a number of competing issues.

"It is imperative the Government sells the pipeline to deliver the highest possible return to WA taxpayers who have owned this asset since it was built in 1984," he said.

"Issues such as ensuring gas transport costs are kept down, the desire to increase gas supply to encourage further downstream processing projects, the need to protect long-term supplies and maintain prices for households and small business were all key points of consideration the Government had to take into account.

"These are all valid, but not necessarily consistent issues that have been weighed up before the final decision was made. I believe the Government has balanced these competing issues and come up with an equitable solution."

Mr Barnett said that at the same time views were being sought on the sale process, bids were being called for gas supply to the proposed Mid West Iron and Steel project, and an overseas-owned corporation announced its intention to seek a licence to build a second pipeline to the South-West.

"These issues have created some challenges but I believe the Government has considered them in relation to the pipeline sale as much as is necessary," he said.

"The Government's policy on a second pipeline is that in early 1999 formal expressions of interest will be sought in a proper open and competitive process which may lead to a second pipeline being built to the South-West, if it is economically feasible.

"This will be a fair process for all companies which intend to consider the feasibility of a second gas pipeline in WA. They will all have an equal opportunity to formally present their expressions of interest to the Government.

"Given this timeframe, it is possible there will be construction of a pipeline mirroring the route of the DBNGP, supplying gas to the South-West, from the year 2000."

Mr Barnett said it was expected an information memorandum would be distributed on the pipeline sale in July.

The key points of the DBNGP sale are:

full 100 per cent privatisation with a target for completion of the sale by the end of 1997;

- sale includes expansion rights for new owner;

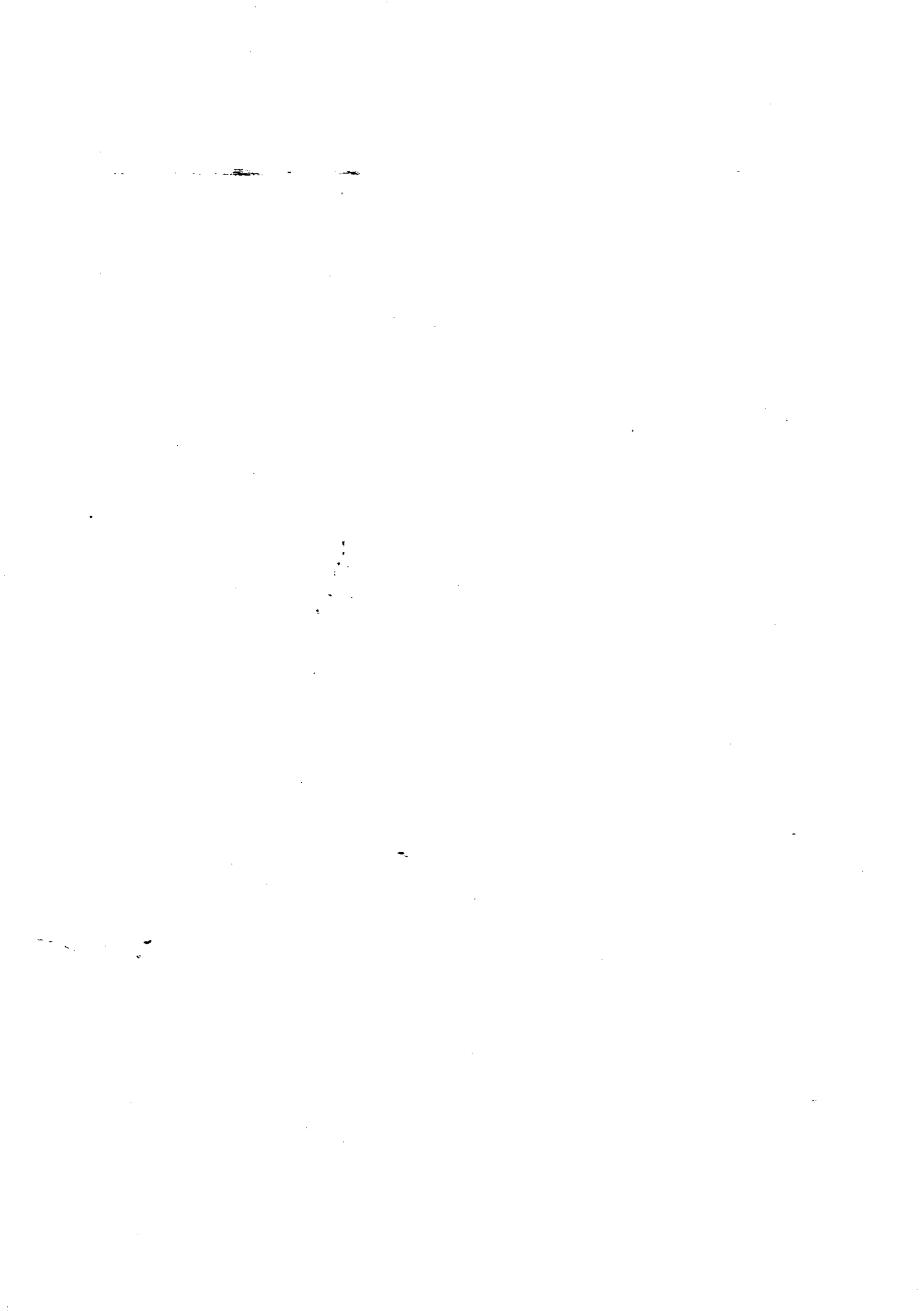
- the State Government will retain the easement as gas corridor;
- the easement will be expanded from its current 30m to 100m;
- AlintaGas and Western Power will retain priority rights on capacity to serve residential and small business customers;
- a cap on tariffs will be introduced declining over the period 1998 to 2000; and -
- expressions of interest will be invited in early 1999 for a new pipeline licence to the South-West from January 2000.

Media contact: Justine Whittome (08) 9222 9699

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### Media Statements Contact

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Ministerial Media Statement

## MINISTER FOR RESOURCES DEVELOPMENT

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24/7/97

The next major step towards the 100 per cent sale of the Dampier-to-Bunbury Natural Gas Pipeline (DBNGP) will be taken tomorrow when companies worldwide are asked to formally register their interest.

Energy Minister Colin Barnett said the sale of the pipeline had the potential to realise the highest price for a State-owned asset in Western Australia's history.

"I am confident the sale will deliver a substantial return to Western Australian taxpayers on their investment," Mr Barnett said.

"The pipeline and associated assets have a current book value of more than \$1 billion. The price at which it eventually sells will largely depend on its future earning potential, as determined by prospective bidders."

The 1530km pipeline transports gas from the North West Shelf to Perth and the South-West and is one of WA's most strategically important energy assets.

It is one of Australia's largest gas transmission systems, is in excellent condition and has significant potential for growth. It was built in 1984 and is currently owned by the State through AlintaGas.

The decision to sell the natural gas pipeline was announced in August last year.

Since then, the Gas Pipeline Sale Steering Committee, with representatives from AlintaGas, the Office of Energy, Treasury and the Department of Resources Development, has consulted industry on the sale and made recommendations to Government.

Under the terms of the sale, AlintaGas and Western Power would both retain priority rights on access to capacity needed to service residential and smaller customers in order to ensure future security of gas supply for these groups.

As well, new regulations would enforce a set of declining reference tariffs for the first two years of operation under private ownership.

This would see transport costs decline from about \$1.25 per gigagoule at present to about \$1 by the year 2000.

The State Government would also retain ownership of the easement as a gas corridor and expand it

from the present 30m to 100m.

The expanded easement would allow the new DBNPG owner the option to expand the pipeline's capacity. It would also be available for construction of additional pipelines in the future.

"The pipeline sale is a further step in the progressive deregulation of the gas market which began on January 1, 1995 and which is being achieved in manageable steps," Mr Barnett said.

"The sale process has been aggressive and will continue to be so in order to meet our target of completion by the end of this year.

"I am sure there will not be any shortage of parties interested in putting forward firm bids for the pipeline."

Key points of the DBNGP sale are:

- + full 100 per cent sale with a target for completion of the sale by the end of 1997;
- + expansion rights for the new owner;
- + AlintaGas and Western Power retaining priority rights on the capacity to serve residential and small business customers;
- + State Government retaining the easement as gas corridor;
- + the easement being expanded from its current 30m to 100m; and -
- + a cap on tariffs being introduced declining over the period 1998 to 2000.

Mr Barnett said registrations of interest for the sale of the pipeline would open tomorrow.

An information memorandum will be available for parties registering their interest in the sale.

It will be available by contacting the Gas Pipeline Sale Steering Group, GPO Box W2030, Perth WA 6001 or by telephoning Mr Graham Baker on 618 9486 3280.

Media contact: Peter Harris 222 9699

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### Media Statements Contact

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Ministerial Media Statement

## MINISTER FOR ENERGY

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7/9/97

The next major step towards the sale of one of Western Australia's key energy assets will take place this week when a detailed Information Memorandum is distributed to potential buyers of the Dampier-to-Bunbury Natural Gas Pipeline (DBNGP).

The Information Memorandum provides details of the 1,530km DBNGP's assets for sale, associated operational, contractual and financial information, and the proposed legislative and regulatory framework which will apply to the sale.

Energy Minister Colin Barnett said there had been significant interest from interstate and overseas investors in the 100 per cent sale of the pipeline.

"There have been more than 40 registrations of interest from companies and investors around the world seeking details on the sale which will now be available in the Information Memorandum," Mr Barnett said.

"There has been significant interest from foreign-controlled energy players and a good response from financial organisations, investment companies and Australian energy companies.

"The Government has always felt that the Dampier-to-Bunbury Natural Gas Pipeline would be an eagerly sought energy asset and the interest shown so far has proved that to be true."

Mr Barnett said the companies and investors which had registered interest in buying the pipeline had signed confidentiality agreements as a precursor to providing the Information Memorandum.

"The details in the memorandum will allow potential investors to submit non-binding bids to the Gas Pipeline Sale Steering Committee," he said.

"The committee is then expected to invite a number of bidders to participate in a detailed due diligence process prior to submitting their final bids.

"At this stage, the sale process and the target to complete the sale by the end of this year remain on track."

The key points of the DBNGP sale are:

- full 100 per cent sale with a target for completion of the sale by the end of 1997;

- expansion rights for the new owner;
- AlintaGas and Western Power retaining priority rights on the capacity to serve residential and small business customers;
- State Government retaining the easement as a gas corridor and issuing an access licence to operate and maintain the pipeline;
- an additional 70m easement being acquired by the State, where feasible, for gas infrastructure;
- a cap on tariffs being introduced, declining over the period 1998 to 2000; and -
- a State commitment to adopt an access code containing a negotiated-based access and pricing regime which will be consistent with the National Access Code beginning January 2000.

"The sale of the Dampier-to-Bunbury Natural Gas Pipeline has the potential to realise the highest sale price for a State-owned asset in WA's history," Mr Barnett said.

"It has a current book value of more than \$1 billion.


"I am confident the sale will deliver a substantial return to WA taxpayers on their investment. The price at which the pipeline eventually sells will depend on its future earning potential as determined by the prospective bidders which have registered their interest."

In determining their final bids, the State expects prospective bidders to focus on the following key aspects which place the DBNGP in a favourable position as a strategic asset servicing the requirements of gas users in the State:

- the current environment of strong growth in demand in the WA market and the potential for continuing growth in this area;
- ability to enhance capacity through access to the existing easement and to the additional easement, when obtained;
- anticipated decline in incremental enhancement costs;
- long-term customers contracts;
- experienced pipeline workforce;
- well-maintained pipeline;
- access to significant reserves of natural gas; and -
- the policy of deregulation and major reform in the energy sector of WA.

Media contact: Justine Whittome (08) 9222 9699

Key features of the sale of the Dampier-to-Bunbury Natural Gas Pipeline

- The Dampier-to-Bunbury Natural Gas Pipeline (DBNGP) was commissioned in 1984. Since that time, gas consumption in Western Australia has risen by more than 250 per cent and is expected to continue to grow strongly.
- In the year to June 30, 1997, the DBNGP transported a total of 178 petajoules (PJ) of gas with an average of 487 terajoules delivered per day (TJ/d), with a peak of 593 TJ/d during May 1997.
- Average annual capacity downstream of Compressor Station 9 is currently 476 TJ/d which will rise to 512 TJ/d after the expansion program, which is expected to be substantially complete by the end of December 1997. This additional capacity is fully committed.
- At June 30, 1997, the DBNGP assets totalled around A\$1,054 million and generated total revenues of approximately A\$213 million for the year ended June 30, 1997.
- The main line of the DBNGP runs parallel to the west coast of the State for approximately 1,530km starting from the Burrup Peninsula, near Dampier, and finishing at main line valve 157 (Clifton Road) in the South-West of Western Australia, near Bunbury.
- For most of its length, the DBNGP lies within a 30m range of easements, consisting primarily of Crown easements and easements in gross. The State intends to retain the easement rights and to issue a licence for access to the easement to enable operation and maintenance of the DBNGP.
- The State intends to obtain an additional 70m easement, where feasible, for gas infrastructure.
- The State will issue further licences to the acquirer of the DBNGP, as appropriate, for access to the existing easement and/or the expanded easement for access to enhance the pipeline.
- Based on preliminary work undertaken by AlintaGas and work independently commissioned by the Gas Pipeline Sale Steering Committee, it is currently anticipated that the cap on tariffs for a full haul firm service at 100 per cent load factor will be \$1.24/GJ for 1998 and \$1.12/GJ for 1999. From the year 2000, the State is planning to adopt the National Access Code and tariffs could fall to around \$1/GJ. 
- In addition to the main line, a range of pipeline-related facilities will be included in the DBNGP assets offered for sale. These include compressor stations, meter stations, nine laterals, main line and lateral isolation valves and maintenance depots.
- Presently, approximately 86 per cent of the DBNGP's annual throughput is delivered to industrial customers and users, while nine per cent is consumed by liquefied petroleum gas and feedstock users, and approximately five per cent is supplied to small commercial and residential customers.
- The Transmission Division of AlintaGas currently holds 13 contracts under which it transports natural gas for its customers. Existing contracts cover 398 TJ/d of firm and reserved full haul capacity, 59 TJ/d of part haul capacity, and 62 TJ/d of full haul interruptible capacity.
- Approximately 150 AlintaGas employees are currently involved in the operation and maintenance of the DBNGP. The acquirer will be required to offer employment to these employees, subject to arrangements which are currently being negotiated.

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# MEDIA STATEMENT

PREMIER OF WESTERN AUSTRALIA

P98/25

3/3/98

Premier Richard Court today announced the completion of the largest and most successful privatisation in the State's history - the sale of the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

The Premier confirmed that the 1530km pipeline would be sold to Epic Energy Australia for \$2,407 million, including \$104 million in State Government stamp duty. Epic Energy Australia is an Australian-based company, owned by four Australian-based shareholders (AMP Life Ltd, Axiom and Hastings [for the Utilities Trust of Australia and the Australian Infrastructure Fund]) and two US-based shareholders (El Paso Natural Gas Company and Consolidated Natural Gas Company).

"The Coalition Government has always strongly believed that the Dampier to Bunbury pipeline would be an eagerly sought energy asset by companies around the world," Mr Court said.

"The Government is very pleased to have realised such a significant price for the pipeline and that Epic Energy Australia is owned one third by Australian shareholders. The sale of this energy asset, which WA taxpayers have owned since it was built in 1984, has been extremely successful and is a credit to everyone who has worked throughout the complex process to its completion."

"The proceeds of the sale will be used to repay debt associated with the DBNGP and all costs of the sale process. The Government will consider the disbursement of the remaining surplus over the next few weeks."

2

Western Australian Energy Minister Collin Barnett announced the 100 per cent privatisation of the DBNGP in May last year. A Gas Pipeline Sale Steering Committee (GPSSC) was established to facilitate the sale process and recommend to the Government a preferred bidder. The committee has been headed since last November by Department of Resources Development CEO Dr. Des Kelly.

Mr Barnett said in determining the final bids, the State expected prospective bidders to focus on the following key aspects which placed the DBNGP in a favourable position as a strategic asset servicing the requirements of gas users in the State:

- + the current environment of strong growth in demand in the WA market and the potential for continuing growth in this area;
- + ability to enhance capacity through access to the existing easement and to the additional easement, when obtained;
- + anticipated decline in incremental enhancement costs;
- + long term customer contracts;
- + experienced pipeline workforce;
- + well maintained pipeline;
- + access to significant reserves of natural gas; and -
- + the policy of deregulation and major reform in the energy sector of WA.

At the close of the bidding process last Saturday, bids were received from three shortlisted bidders - Australian Gas Light Company/CMS Energy Corporation; Epic Energy Australia; and Nova Gas/UniSuper/Bankers Trust. This morning, State Cabinet approved the sale to Epic Energy Australia.

Epic Energy Australia has extensive pipeline operating expertise in Australia through its ownership of a total of around 2,080km of pipeline, including its recently-announced acquisition of the Pilbara Energy Pipeline and the Burrup Extension Pipeline construction, the Moomba to Adelaide pipeline system and the South West Queensland Pipeline. It also operates pipeline on behalf of other owners.

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Epic Energy Australia's US partners own more than 70,000km of pipeline systems and operate large onshore and offshore gathering systems, gas production wells, offshore platforms and gas processing plants.

"For the past several months, the Gas Pipeline Sale Steering Committee has met with the three bidders on a regular basis and discussions have been held on a wide range of issues in order to ensure that the bidders all understood the conditions governing the sale," Mr Barnett said.

"The GPSSC and the working group analysed, assessed and carefully examined the bids with a view to determining the bid that provided the greatest advantage to the State.

"This analysis established that Epic Energy Australia's complying bid was superior to any other bid. Significantly for Western Australian gas consumers, the new owner has committed to lower gas tariffs, a condition of sale set down by the State Government.

"Under the transitional access regime, tariffs will fall 20 per cent from \$1.19 (nominal) in 1998 to \$1 (nominal) in 2000. From the year 2000, the National Access Code will be adopted in Western Australia.

"Epic Energy Australia is prepared to spend \$874 million through to 2007 to double the capacity of the pipeline and has guaranteed priority rights, as set down by the State Government, for AlintaGas and Western Power on capacity to serve residential and small business customers."

Mr Barnett said a number of AlintaGas employees were involved in the operation and maintenance of the DBNGP and that the sale conditions also included that the new owner would employ these employees.

"Completion of the sale process is expected to occur in April. At that time, the 133 AlintaGas employees who have previously agreed to accept employment with the successful bidder for the DBNGP will formerly transfer to Epic Energy Australia with guaranteed employment for two years.

3/03/98

15:23

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"The Government has already ensured that these people will not lose part of their State Government superannuation entitlements when they transfer to Epic Energy Australia.

"This was a concern to them some months ago, but the Government believes it is only fair and proper to reimburse the 1.75 per cent discount applied by the Government Employees Superannuation Board for those employees who will withdraw their benefits when they begin work with Epic Energy Australia.

"As well, Epic Energy Australia has also committed that with the success of its bid, it would establish Perth headquarters for its Australian operations."

Mr Barnett said he was delighted that such a complex sale had been handled professionally and with the utmost of confidentiality and accountability by the GPSSC, advised by Graham Baker, head of the GPSSC working group, JP Morgan and Hartley Poynton.

He also thanked all of the Australian and international companies and investors who had initially registered their interest in the pipeline and the employees of AlintaGas who were professional and supportive.

"Today's announcement is the realisation of the State Government's 1993 election commitment and is a very significant highlight in the energy reform process in Western Australia," Mr Barnett said.

"I am delighted that the Government has been able to drive this sale process to be the largest ever privatisation in the history of the State. We look forward to the arrival of the strong presence by Epic Energy Australia in Western Australia and wish them every success as the new owners of the State's most strategic energy asset."

Media contact: Justine Whittome, (08) 9222 9699





property owned by the authority. In addition, that damage must have occurred by the intentional or negligent act or omission of the child. Therefore, we are not talking about the normal playing of children. Signage is erected in the park to inform people of their obligations and responsibilities.

**Clause put and passed.**

**Clause 49 put and passed.**

**Clause 50: Evidentiary provision - speed measuring equipment -**

Dr EDWARDS: Will we see Multanova radars in Kings Park or are they there already? When the speed measuring equipment is in place, where will the revenue from the infringement fines go?

Mrs EDWARDES: The police can put a Multanova radar into Kings Park but in that instance we do not receive the money. We operate with hand-held radar. The moneys which are then collected come to the authority but there is no loss of demerit points in that instance.

**Clause put and passed.**

**Clauses 51 to 56 put and passed.**

**Schedule 1 put and passed.**

**Schedule 2: Savings and transitional provisions -**

Mrs EDWARDES: I move -

Page 46, line 8 -To delete "actions" and substitute "action".

**Amendment put and passed.**

**Schedule, as amended, put and passed.**

**Schedule 3 put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

*Sitting suspended from 1.00 to 2.00 pm*

[Questions without notice taken.]

## **GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL**

*Second Reading*

Resumed from 15 September.

**MR KOBELKE (Nollamara) [2.44 pm]:** I support this Bill, which forms just one part of the Government's attempt to respond to the growing importance of the gas industry to Western Australia.

Western Australia is extremely fortunate in having such vast proven gas reserves, and hopefully many more will be found. That huge endowment stands this State in very good stead. We are well aware that gas is a preferred fuel because it is seen as environmentally clean, and it is a resource that benefits the entire nation. It is a major export commodity.

However, this Bill relates to the use of that gas in Western Australia and to its distribution through pipelines. This move will be of even more fundamental importance to Western Australia and our economy if it leads to the provision of cheap, clean energy for Western Australian industry. All members in this place look forward to a large increase in our processing and manufacturing industries as a result of their gaining access to a cheap, reliable power supply using gas. That could lead to value adding in a range of resource and primary industries that must now accept the world market because they are the providers of major commodities in that market. Involvement in the processing and manufacturing of those commodities will add enormous value to the products, to our economy and to the wealth of our State. It is incredibly important that we have the correct legislative and administrative structure for the distribution and sale of that gas to Western Australian industry.

For the price of gas to decrease it is essential that the distribution system be competitive. The supply of gas is another issue, but, with the abundance of gas and the range of potential and actual suppliers, it is most important that we have a network of pipelines that can bring those gas supplies to the market, and this Bill will facilitate that process.

I will not enter into a discussion about competition between suppliers, because that is not relevant to the Bill, although it is clearly another element in ensuring that we have cheap energy in Western Australia.

However, if pipelines are not provided as the gateway connecting the users - the industry - to the suppliers - the producers - of the gas, it will not be of value to this State or our industries. It is of paramount importance that we have a legal structure to underpin the development and expansion of our gas pipelines to provide that gas as a cheap and ready source of energy for Western Australian industry.

The development of our gas industry is relatively new, although the State has had natural gas supplied for over 20 years. The development of the pipeline in the early 1980s from the Pilbara to Perth and then to Bunbury opened up supplies of North West Shelf gas to the south west. However, the industry is now expanding as a result of not only growing numbers of suppliers but also increasing access through a system of pipelines. We hope that expansion will continue and, as a result, provide a cheaper source of energy.

While the Government has had a number of successes - I commend it for them - it has simply been moving with the times. Members might make very different judgments about whether the Government has gone with the times or been a leader in the sense of trying to do it better or in the best possible way. While a number of improvements have been achieved with the opening up and growth of this industry, that has not resulted in lower electricity tariffs in the south west of Western Australia. I use the word "lower" relative to the other States. While the minister might say that the real price of energy has fallen, and that would be true, the cost of energy in the south west has not compared with the rest of Australia. We are experiencing a growing differential that is very much to the detriment of Western Australia. In a relative sense, we have not been able to reduce the cost of energy in the south west. The Government does not have the runs on the board but, in moving with the times, it has done a number of things which have been beneficial to this State and which have helped to provide cheap energy resources.

If we are to open up that resource, we must have a regulatory system. The establishment of pipelines requires a range of government approvals and, in giving those approvals and facilitating the development of pipelines, the Government must establish the public interest. It must ensure that while the carriage of the gas and its ownership is in private hands, it is a competitive market which is efficient and which provides the product at the lowest possible price. The system must be open to some form of scrutiny so that deals are not done to the detriment of the users and this State.

This legislation appropriately contains a range of measures that seek to regulate what we hope will be a competitive and open market. This particular legislation aims to ensure that the whole regulatory regime will fit in with what has been established through the national access code. In the minister's second reading speech, he outlined the five primary objectives of that national access code. Two of the points are relevant only in minor ways to Western Australia at the moment. They relate more to networking and the transmission of gas across state boundaries. As all the pipelines in Western Australia are currently, and will be in the foreseeable future, totally within Western Australia, I will not comment on those.

I note the other three major objectives of the national access code. The first objective is -

To provide an open and transparent process to facilitate third party access to natural gas transmission and distribution pipelines.

The third objective on the list is -

To promote a competitive market for gas, in which customers are able to choose the producer, retailer or trader to supply their gas.

The fourth objective is -

To provide a right of access to transmission and distribution networks on fair and reasonable terms and conditions, with a right to a binding dispute-resolution mechanism.

This legislation is attempting to do those things. For any code to be effective, there must be enforcement mechanisms. It is proposed, on a national basis, that the enforcement mechanism be through the Australian Competition and Consumer Commission. That is the way it should be. However, this legislation is an opt out. Although it will establish the various criteria, the ACCC will not have the power to enforce the code and the other regulatory mechanisms. That will be done by special organisations set up by this legislation in Western Australia.

I am no great fan of the ACCC. Its whole functioning and charter is far too narrow. I do not take issue with the individuals.

Mr Barnett: Too narrow?

Mr KOBELKE: Too narrow in the sense that it is simply about economic competition. I am not talking about the complexity; that is another issue. The ACCC is narrow in the sense that its objective is purely economic competition. Sometimes decisions that go beyond that aspect need to be made at a government level for the public good. Therefore, in that sense, the objectives of the ACCC are too narrow. The other point the interjections raised was that the system is incredibly complex and pervasive, which I am not disputing, and that can lead to difficulties.

However, with respect to this legislation, I cannot support the establishment of state-based regulators to ensure the code is

complied with. The Western Australian gas industry encompasses too small a sphere of people. The relationships between the various players are too close, and the system is not open and accountable. Therefore, to leave the policing of the regulations in the hands of state authorities will be a total disaster. My preference is to go with the ACCC, and to work with the Commonwealth and the other States to try to ensure that WA has the best possible, workable system through the ACCC, and not leave that regulation in the hands of Western Australian authorities. It is incredibly important that the regulatory system work, because if it does not work, the State of Western Australia will be denied the real benefits of its very huge gas resources.

This Government has been in power now for nearly six years, and its record on reducing power charges in the south west has been abysmal. It has not been able to match the other States.

Mr Barnett: How do you reckon we compare to your time in government on power charges?

Mr KOBELKE: That is a debate for another time, and I will take on the Leader of the House.

Mr Barnett: It is a bit overwhelming.

Mr KOBELKE: I have limited time, and I have some matters I hope the minister will answer. I do not think the Government has done as well as the Opposition by any measure. However, that is another debate, and more detail can be presented then.

My real concern is about a state-based regulator being unable to enforce effectively the conditions required in the code. I raise an example, to which I hope the minister will respond, which relates to Western Power and gas, but not specifically to the Bill before the House. However, it is a very clear example of why national bodies must be involved in the regulation - national bodies which can take a quite objective stance and uphold standards with the force of their legislation. As this legislation stands, the ACCC would have no power.

The example relates to a complaint I received from a certain party who alleged impropriety, if not corruption, in a Western Power joint venture. I was very concerned. Those parties were not willing to go public, because they are players in Western Australia. If they dirtied their record with the Government by raising accusations of impropriety or corruption, they could find themselves locked out of the market. Therefore, these parties are very cautious about raising the issue. That leaves me in a difficult position. I cannot make accusations if no-one is willing to stand up and support them.

Therefore, I spoke to the Auditor General, and I made inquiries through various people. I was told that Corporations Law does not apply to Western Power, so I could not tell these people to take their complaint to the Australian Securities and Investments Commission which upholds Corporations Law. Where can these people go? They must come back to a state government instrumentality in which they have no faith. I told these people that the best thing I could do was to put some general questions on the record, to the minister, without being too specific, and with no accusations of corruption. I said that I would ask some simple questions to see whether I got some simple answers. Therefore, I asked the minister in May last year the following question on notice -

How many joint ventures or alliances have been entered into by Western Power with companies or other non-government entities?

Part 2 of the question states -

In the case of each such joint venture or alliance -

- (a) who are the private companies or interests involved;
- (b) what is the purpose of the joint venture or alliance;
- (c) what was the date at which the joint venture or alliance was entered into by Western Power;
- (d) why was the particular partner or partners chosen in each joint venture or alliance;
- (e) what was the method of advertising or calling for expressions of interest prior to selecting the particular company or organisation as the most appropriate with whom to set up a joint venture or alliance;
- (f) what was the date of any such advertising or call for expressions of interest; and
- (g) what is the structure of the joint venture or alliance arrangement including the number of Directors and the number appointed by Western Power?

I thought that was a reasonable way of getting information about joint ventures in Western Power.

Mr Bloffwitch: I would suggest they have hundreds of thousands of joint ventures.

Mr KOBELKE: I thank the member for his interjection. However, the answer was -

Western Power is involved in many joint ventures and alliances with private companies and non-government entities. Providing the details to answer this question would be a very lengthy and time consuming process.

As a Government Trading Enterprise, Western Power is required to act in a commercially prudent manner, as any commercial business would. Participating in joint venture arrangements forms part of commercial business dealings.

Does the minister know how many joint ventures there are?

Mr Barnett: No, I do not, and I have no interest.

Mr KOBELKE: I refer the House to the annual report that was tabled in this House a few weeks ago. Two joint ventures are listed in the annual report.

Mr Bloffwitch: That is absolute rot.

Mr KOBELKE: I refer to page 53 of the 1998 annual report of Western Power Corporation. Paragraph 1.8 states under the heading "Interests in Joint Ventures and Associates" -

A joint venture is an unincorporated contractual association between two or more parties to undertake a specific business project in which the "venturers" meet the costs of the project and receive a share of any resulting output. Joint venture arrangements have been consolidated on a line by line basis in Western Power's financial statements.

An associate is an entity over which the economic entity exercises significant influence and where the investment in that entity has not been acquired with a view to disposal in the near future. In Western Power's financial statements investments in associates are accounted for using equity accounting principles.

The last sentence of 1.8 reads -

Details of Western Power's interests in joint ventures and associates are shown in Note 22.

I repeat: Details - not some of the details, not the new details, but details - of Western Power's interests in joint ventures and associates are shown in note 22. I will read note 22 into the record. It is headed "Interests in Joint Ventures and Associates" and it states -

During the year Western Power entered into two new business arrangements, the details of which are shown below. At balance state Western Power's interest in the business arrangements was immaterial in the context of Western Power's operations.

Western Power and Fletcher Challenge South West Cogeneration Limited are jointly constructing, as equal tenants-in-common, a 120MW cogeneration facility on the site of the Worsley Alumina Refinery in the South West of Western Australia. The output of the facility, thermal energy and electricity, will be sold to the refinery and other energy customers. As at the 30 June 1998 Western Power's investment in the facility was \$2.5 million.

Western Power holds a 50% ownership interest in Integrated Power Service Pty Ltd (IPS). The company was formed in February 1998, and is a provider of energy services to the mining, process industry and utility service sector. As at 30 June 1998 Western Power has invested \$350 000.

One can play around with the term "alliance"; perhaps an alliance is different from an associate, but the intent of the question was clear. I was asking the minister about joint ventures. He could have said, "There are some definitional problems at the edge. We have two joint ventures but you need to come back and redefine alliances or associates if you want to get into minor details." However, Western Power's annual report states that the details are in note 22. Note 22 states that there are two joint ventures. The minister has since announced a third. At 1.8 it states -

Details of Western Power's interest in joint ventures and associates are shown in Note 22.

Not part of the details, not only the new details, but details of all joint ventures.

Mr Barnett: Do you want me to read the beginning of note 22 again?

Mr KOBELKE: Yes, because I emphasised "new" for the minister. I knew the minister would take that as an out instead of answering the question. We come to the reason that we must have a national regulatory body because this minister cannot be trusted to give a straight answer to a straight question.

The next question on notice I asked before 30 June was -

- (1) On what date did Western Power tenders close for the operation and maintenance contract for the Tiwest Cogeneration facility?

- (2) How many tenders were received for this contract?
- (3) How many conforming tenders were received for this contract?

Further questions were asked, but let me go through some of the answers, which were as follows -

- (1) Tenders for the operation and maintenance contract for the Tiwest Cogeneration facility closed at 10.00 am on Wednesday, 27 May 1998.
- (2) Three (3) tenders were received.

I need to put on the record that this answer was posted to me after Parliament finished and I received it at the beginning of August. The date is important. Unless the minister sat on it in his office and the answer was out of date, I am assuming that the answer was timely. At the end of July or early August, the minister was telling me that the tenders closed on 27 May. Two months later I got the answer. At that stage when I asked how many tenders were received, he said there were three. I asked how many were conforming tenders, and his answer was, "The tender assessment process was still in its early stages and consequently an answer to this question at this time was not possible." The minister had three tenders, and two months after the time for submitting tenders was closed, the minister tells me it is too early to tell how many of the three are conforming tenders. He goes on to say that the tenders will be let on 22 August, less than three weeks later. He has these three tenders and they sit in Western Power for two months or more. He does not even know whether the three are conforming tenders to the submissions called for, yet in three weeks time it will let the tender. That is nonsense. One does not spend two months assessing tenders without knowing at the outset whether they conform with the department's requirements.

Mr Barnett: I make two obvious points. Firstly, as the minister, I do not assess tenders and, secondly, I would never divulge details of a tender during a tender process in any respect whatsoever.

Mr KOBELKE: The minister would not even say how many conforming tenders had been received.

Mr Barnett: I would not even divulge that.

Mr KOBELKE: Have the tenders now been let?

Mr Barnett: During a competitive tendering process, I most certainly would not.

Mr KOBELKE: Why did the minister not say that in his answer instead of giving me a nonsense.

Mr Barnett: Because I am sick of trying to do work for dorks such as you who do not have their act together.

*Withdrawal of Remark*

Mr THOMAS: The minister has made an unparliamentary remark.

Mr BARNETT: I withdraw.

*Committee Resumed*

Mr KOBELKE: I am quite happy to have it on the record because it reflects that we have a minister who is totally unaccountable, and that we have corporations, particularly related to this matter, which are unaccountable to this Parliament and the people of this State. When we put on the record straightforward up-and-down questions which do not in any way infringe commercial confidentiality, the minister will not answer them and wants to claim some vague commercial confidentiality or say that during the tender process he cannot tell me how many tenders had been received. We have had plenty of examples of ministers who have had no problems at the close of a tendering period saying how many tenders had been received. In fact, at CAMS, what was the building management authority, it was standard practice to put the numbers up at the close of tenders. Homeswest used to post up all tenders at the close of tenders. Yet this minister is not willing to say whether the three tenders conformed to the requirements of the presentation of tenders.

We clearly have a major problem and this is not simply a matter of allowing corruption to run rampant. We do not know the extent of any corruption because the minister will not answer any questions. The minister is simply passing on, in *Yes Minister* fashion, what he is told. He is not willing to answer direct questions with a direct answer. The importance of this is not simply to ensure that this legislation works and upholds the required standards of business and government in this State; the issue is greater than that. In the view of many, the whole future of this State's economy is related to gas and cheap energy. We will have a golden future if we can harness that gas and feed it into our economy at a very cheap price. However, that will not happen by itself. This legislation is supposed to be about making it happen. However, we are dealing in an industry where the players do not talk in millions or even hundreds of millions of dollars; they talk in billions of dollars. When deals go into billions of dollars, it is necessary to have in place appropriate standards of openness and accountability that will ensure that this State does not get ripped off.

If this State was not getting ripped off, why is it that we cannot match the other States in reducing the cost of power in the south west? We have a far greater energy resource than any other State in Australia. We have go-ahead, growing industries which are equal to or better than those in any other State. We have had huge growth, but no benefit by way of cheaper power costs to people and industry in the south west. All one can judge from that is that someone else is copping the take. This may simply involve smart business deals. That is what business is about - getting a competitive edge. However, when a company goes from getting a competitive edge to doing things that harm this State, or is seen to be non-competitive, improper or corrupt, where does one draw the line?

This legislation is trying to draw the line, but when straight questions are asked of this minister, he cannot even answer them. He must simply resort to abuse. When this minister resorts to abuse, as he does regularly, we know we have caught him out. The minister has been found wanting. He cannot give a straight answer to a direct question which goes to the heart of whether deals are being done which could be seen as being anti-competitive or corrupt or whether it is proper process. We do not know and the minister will not answer our questions, so we are not in a position to ensure that things are working well in this State. It is an absolute travesty that this minister cannot give factual answers to sensible questions. When the minister is asked questions or is called to account his response is to lash out and abuse people. That is because the fundamental issues that are incredibly important to this State are not worth his attention or consideration. I am not suggesting in any way that the minister is trying to cover up corruption; the minister is an honest man. However, he will not allow direct and meaningful questions to be answered in a way that makes any sense, leaving open the potential for corruption and anti-competitive practices. That is why we must ensure in this legislation that an objective body outside Western Australia can play a role.

The example I have just given will not go anywhere, because I cannot get the parties to take this matter to the Australian Securities and Investments Commission which could enforce Corporations Law. The ACCC does not have jurisdiction over Western Power. If the evidence those parties have presented to me can be substantiated there could be a prosecution against Western Power. However, Western Power is not answerable under Corporations Law. It is supposed to comply with Corporations Law, but it is not answerable

Mr Prince: Is the member for Nollamara saying that Western Power would be prosecuted if it came under Corporations Law?

Mr KOBELKE: Yes. I have gone to the Auditor General, who has told me that Western Power is not answerable under Corporations Law.

Mr Barnett: You are wrong.

Mr KOBELKE: If what the minister says is correct I will speak to the parties and direct them to go straight to the Australian Securities and Investments Commission.

Mr Barnett: Corporations Law and the Australian Securities and Investments Commission are two different bodies.

Mr KOBELKE: Who enforces Corporations Law?

Mr Barnett: Your ignorance is showing.

Mr KOBELKE: The minister can stand and correct me.

**MR BLOFFWITCH** (Geraldton) [3.17 pm]: I never cease to be amazed at what people say about Corporations Law. They seem to think that the Corporations Law has an investigative arm with inspectors who will pursue offenders. The Corporations Law is a complex law that sets out the responsibilities of directors, including their financial responsibilities. One of the important points in Corporations Law is the responsibility of company directors in relation to trading when they know themselves to be insolvent. I might add that the definition of trading while insolvent is that if at any time during the month a company could not satisfy all of its creditors at once it is insolvent. Under that definition, the majority of businesses, technically, would be operating while insolvent.

Mr Kobelke: We are not dealing with insolvency.

Mr BLOFFWITCH: I am not either; I am providing the member for Nollamara with some examples of what the Corporations Law covers. A director of a company that trades while insolvent can no longer claim immunity for his or her assets. If I continue to trade and incur debts in the full knowledge that I owe a creditor \$100 000 and could not repay that money, I cannot step back as I could with the previous company structure and protect my personal assets. In many cases Corporations Law has resulted in directors losing their personal assets. One of the best examples of that was John Friedrich, the chief executive officer of Victoria's state emergency service, whose house and property was taken from him.

I have sued company directors and been awarded damages. Corporations Law resulted in many changes, but there is still no investigative body; one does not report an offence to an inspector. Most actions taken under Corporations Law are instigated by customers or shareholders. I cannot see how Western Power or AlintaGas would be covered by Corporations Law.

Mr Barnett: When we established the Gas Corporation and the Electricity Corporation the schedule attached to the legislation mirrored Corporations Law.

Mr BLOFFWITCH: One must be careful that the directors do not form proprietary limited companies as part of that structure, so they would not be responsible under Corporations Law.

Mr Prince: That is unlikely.

Mr BLOFFWITCH: No, it is not.

Mr Prince: The State is the shareholder in Western Power. We are not talking about a subsidiary, and I hardly think a director of a proprietary limited company would be on the board. I understand that the member for Geraldton is referring to holding companies. However, that is unlikely.

Mr BLOFFWITCH: One must be careful of the other structures that are formed within a company, because those restrictions could easily apply. I congratulate the minister on not using the Australian Competition and Consumer Commission to adjudicate. Although I want to operate under the guidelines of the national watchdog, as a Western Australian I would like someone to take our interests into consideration before the national interest.

Mr Kobelke: Every other State operates under the ACCC.

Mr BLOFFWITCH: Every other State is connected to the national power grid. Western Australia is one of the few States that does not have access to that grid or those gas lines. The eastern States have gas lines going from one end of the country to the other.

Mr Thomas: That is irrelevant.

Mr BLOFFWITCH: The member for Cockburn thinks that is irrelevant; I do not. I do not want someone from a national organisation taking those matters into consideration before the needs of this State. Provided our setup has the same powers and scope of the national group we will be much better served as a State. That is because Western Australia is an entirely different market from the eastern States. Members opposite ask why our gas is dearer. There are a number of reasons: The main difference is that we are servicing a market of approximately 1.8 million people, and in the eastern States the market for gas is probably 12 million to 14 million people. The capital cost of building a pipeline is offset much more quickly when one operates in a larger market. This State had to put itself into hock to get that project going right from the start, to underwrite - the member is right; it was underwritten at some fairly adventurous prices to make sure gas flowed out of those fields to Western Australia -

Mr Thomas: It is easy to be adventurous when you are using other people's money.

Mr BLOFFWITCH: It is not other people's money. An investment is being made for the future of this State. That is exactly the vision these people had; they made an investment for the future benefit of the people in this State. In doing so, a very courageous decision was made. As we bring more pipelines on stream, as we get more gas out and as more large industries are established, we will start to see gas prices come down. Surely in the future these people will not have a hard job. They will help us to reduce energy costs in this State. That is a very positive step and something all people in this State should all support.

**MR BARNETT** (Cottesloe - Minister for Energy) [3.20 pm]: I acknowledge that members opposite are essentially supportive of the implementation of the national access code for gas pipelines in this State; however, they propose a series of amendments which would make the regulator the Australian Competition and Consumer Commission at a national level, rather than, as this legislation proposes, that the regulator be at the state level. I shall return to that matter later.

The major thrust of comments by the members for Cockburn and Eyre and one or two others was essentially a broad ranging debate about energy policy which seems to be somewhat current at the moment. That is fine and I guess we can have that debate any time. We will probably have it again many times, as we have in the past. The member for Cockburn, in particular, portrayed the performance of the State Government in this area as one of total failure. I will not argue the point because, I guess, he will never change his view.

I again place on the record that when this Government came into power, it had a very clear set of principles for energy policy in this State: Firstly, to grow the energy sector, recognising that this State needed to expand its energy infrastructure of gas pipelines, gas producers, power stations and the like. Secondly, to ensure that the interests of the private sector was in developing the expanded infrastructure. We had a clear economic development strategy of combining our energy resources with our mineral resources, both in a physical and commercial sense. Many of the projects around the State are a testimony to that. Thirdly, to deregulate the industry and to introduce competition into an industry which in 1995 was totally monopolised, totally regulated, with one large gas producer selling to one large government-owned authority, the State Electricity Commissioner of Western Australia, in turn selling essentially to one large customer, Alcoa Australia Ltd. Members opposite had been in government for a long time and had not taken a step forward, other than, I concede, to appoint



the Energy Board of Review, which played a very significant role. Members opposite had been in government for a long time and had not achieved anything. Those opposite may shake his heads. I will not go through all the projects.

Mr Thomas: Who was in government when the pipeline was built?

Mr BARNETT: Who spent most of their time in government criticising it?

Mr Thomas: Who negotiated the contracts which made the pipeline possible? It wouldn't be there but for that.

Mr BARNETT: The Labor Party played a little role there. At that time those opposite continually criticised Sir Charles Court, as Premier, for that project. I will return to the 1990s. Among the main failures of the Government -

Mr Thomas interjected.

Mr BARNETT: The member should dry up; he is a most boring person. He should go back to the bar or something.

The things that this Government has done include, first, splitting SECWA into Western Power and AlintaGas, thereby immediately creating direct competition between electricity and gas - the most simple, most obvious, fundamental reform. We then renegotiated the North West Shelf gas contract in 1994 which I think was quite a significant achievement. The result was an immediate deregulation of gas in the Pilbara which saw gas prices fall by 50 per cent. It continues today to be by far the cheapest gas for industry in the Asia-Pacific region. Gas is cheaper in only two places in the world - the Middle East and Venezuela. That has given us an enormous competitive advantage. In the south west, gas prices to industry have fallen by about 30 per cent, and continue to fall, and will fall further when the next major change happens; that is, another major gas producer. There is no phoney competition, no Chinese Wall. Real competition is between real producers and real customers. That is what we are setting about doing.

We established the hydropower scheme. We played a role in getting Pacific Hydro to develop a hydropower scheme on the Ord River, which turned limited power supplies and significant losses in the East Kimberley area into an operation which is marginally profitable. More importantly, as the Ord River scheme expands we have available abundant, competitively priced energy, a key factor that is now allowing Wesfarmers Ltd and Marubeni Corporation to expand the Ord River scheme of 14 000 hectares by a further 65 000 hectares. Everything this Government does is part of an overall economic strategy - everything. It all fits together.

With Western Power, Mission Energy and BP Refinery (Kwinana) Pty Ltd we established the largest cogeneration project in Australia where waste gases from the BP refinery are combined with natural gas to produce electricity which supplies power for the BP refinery and sells it back into the grid. That power generation is 30 per cent more efficient than any other power station in Australia. The difference is that we do not have a loss of waste heat. It is gathered and used in the refinery process. The thermal efficiency of that process is an enormous achievement and leads Australia. I hope to see further examples.

I turn to the goldfields gas pipeline. Part of the strategy was physically to bring our gas resource to our mineral resource. Amid hosts of opposition, contradiction, abuse and ridicule from members opposite - they laughed and said that we would never get the pipeline built - we launched the 1993 election on a promise to see a pipeline to the goldfields, and 18 months later it was under construction. Those members still sit opposite and criticise it. I concede that tariffs on it are high, and I have always conceded that. However, we got the pipeline in place in the same way as a previous conservative Government saw the North West Shelf project and the pipeline built in the first place; it, too, was willing to take the risk, to provide leadership and to get it done.

Mr Thomas: You slipped a few years in your memory. You should be talking about the Labor Government.

Mr BARNETT: That is right; I should give the previous Labor Government all the credit for the North West Shelf! The greatest achievements of Sir Charles Court were the North West Shelf project and the gas pipeline. If the miserable, grotty little member for Cockburn thinks he can detract from the achievements of Sir Charles Court, he is a lesser person than I thought he was.

The goldfields gas pipeline is now operating. In recent weeks we have been able to announce the development of a 520-kilometre pipeline through the midwest of Western Australia that will bring gas and competitively priced electricity to Meekatharra, Mt Magnet, Cue and Yalgoo. That is the best thing that has happened in those places for about 100 years. We are very close to being able to announce further development of another gas pipeline in the Pilbara. We brought into place the Pilbara energy project. I concede that when in government those opposite had worked on it, but we put it in place. When we did, we did not throw away every processing obligation the Mt Newman organisation had. Those opposite had caved in totally and conceded during the election campaign that, in exchange for the Pilbara energy project, a pipeline from Karratha to Port Hedland and a couple of power stations, Mt Newman Mining Co Pty Ltd and Broken Hill Proprietary Co Ltd would be free from all processing obligations. They just threw it all out in very poor, improper conduct in the midst of an election campaign. I remember this well because, as the opposition spokesperson for resources, I immediately said that all bets were off. The present Premier backed me, and all bets were off. To the credit of BHP, it could see the inevitable

change happening, that we were to gain government, and it, too, conceded that all bets were off. We renegotiated the very ordinary agreement of the previous Government.

I will tell members what is happening now. For the first time in 30 years a \$2b project processing iron ore in the north of this State is about to be commissioned. That is the sort of thing that members opposite threw away because they had neither the intellect nor the moral fortitude - the guts - to stand up for the people of this State and to develop this State. Their conduct was absolutely disgraceful. I can see exactly why members opposite lost \$1.5b. They expect people in this Government - responsible, hard working people - to take financial advice from a bunch like them. That is absolutely appalling. The public of this State has not forgotten for one moment how members opposite performed when in government, and how they threw away opportunities for the future; yet members opposite still come in here and criticise.

I will agree with members opposite: I must be a lousy Energy minister; they keep saying so. However, I will be happy when I leave public life to sit back and look at all the projects that have come on stream. A room in my office has plaques on the walls for all of the major projects, and almost three of the four walls in that room are full, and we will fill the fourth wall before the next election. Things are happening in this State, and they did not happen when members opposite were in government. Members opposite got into a tailspin when in government because a helicopter was flown over a sacred site. Do they remember that? They called off the whole project; they went to water - although I concede not the member for Eyre, because he could see that it was a useless notion.

This is a difficult time for this State. We have an Asian economic problem, we have delays, and we have a lack of confidence. However, we are working hard to get development under way. We are working hard on the An Feng-Kingstream project. Members opposite keep knocking the fact that the State will build a port. The member for Eyre said at one stage that we would spend \$800m on a port. We could build three ports for that! This port will cost \$192m, plus or minus 20 per cent. Members opposite probably do not realise that in recent weeks, the Department of Resources Development has been drilling the seabed. Last night, I met with some of the Taiwanese investors. Any big project is difficult, but we are achieving projects. Sixty per cent of all the mining and petroleum investment in Australia is taking place in Western Australia. This State is achieving rates of investment, even during this difficult time, of around \$4b a year. That is over twice the rate of investment that was achieved in the early-1990s. The key to it has been energy, with deregulating, splitting AlintaGas, renegotiating the North West Shelf gas project, and encouraging the private sector to build pipelines. We will continue with that policy. We will not panic. We will not sell the people short. We will not flog off assets.

The final lack of achievement of members opposite was with regard to the sale of the Dampier to Bunbury natural gas pipeline. That was the grand daddy of the lot. That project was complicated. There is no doubt that it was the biggest game in town. The bidding and the competition were intense. Companies engaged in public relations and lobby programs to further their interests, they flew journalists across Australia to write favourable stories, and they tried to ambush meetings. All sorts of things took place. There was a lot of debate within the community about what should happen with that pipeline. The media in this State were totally sucked in. *The West Australian*, for example, ran stories about a second pipeline. The member for Cockburn was sucked in. He ran around saying we need to have a second pipeline. Even a few people on this side of the House started to question it, and there were briefings. However, I did not budge from my position.

Mr Grill: You were all over the place!

Mr BARNETT: I did not budge. At the end of the day, even as we went through the final tender process, members opposite said we should call off the deal. However, when the sale price was \$2.407b, compared with a construction and historical cost of \$1b, we did not hear a bo-peep from members opposite.

Mr Osborne: We did! They told us how we should spend the money!

Mr BARNETT: Yes; they wanted to spend it. The Government realised for this State an enormous capital gain on that asset, and it realised a commitment that the price of transporting gas would fall by 20 per cent by 2000. We also realised an agreement that \$870m would be spent on progressively doubling the capacity of that pipeline between now and 2007, and that process is already underway.

What would have happened if we had done what the Opposition wanted? The Opposition likes to accuse me of doing deals with mates. Who was in bed with whom in that deal? That would be interesting to know at the end of the day. The Opposition wanted to stop the process and have a second pipeline. I am not exaggerating. There is no doubt that that would have cost the people of Western Australia up to \$1b. The pipeline would have sold for \$1.3b or \$1.4b. The Opposition would have squandered, as it squandered \$1.5b in the 1980s, another \$1b through having neither the nous, the courage and the intellect to understand the opportunity, nor the moral fortitude to recognise that that asset belonged to the people of Western Australia. There was always a glittering prize to be had. My view and the view of this Government was that that glittering prize - the extra \$1b - belonged to the people of Western Australia to repay debt; and in the case of the Education portfolio, to put 32 000 computers into government and non-government schools over the next four years, plus the other things that might happen with those proceeds. Members opposite would have absolutely squandered that money.

Mr Grill: What is the bottom line?

Mr BARNETT: The bottom line is \$1b.

Mr Grill: The bottom line is that our gas prices continue to go up and the adverse differential between us and the eastern States continues to widen.

Mr BARNETT: Okay. The Opposition would have blown \$1b on that deal to add to the \$1.5b that it blew in the 1980s. I will never forget the way in which members opposite behaved, and nor will most people in this community.

This debate has been about the bottom line, to use the member for Eyre's phrase. Let us look at the bottom line. The price of electricity and gas is probably the most important determinant, but it is not the sole determinant. It also involves the issues of expanding the sector, of economic development, of equity to people and to business, of having a reasonably competitive system, and of returns and prosperity to the people of the State.

Price is important. Since this Government has been in power, electricity prices for business have not changed at all in nominal terms. Since 1993, there has not been a single increase in the price of electricity for business. If we allow for inflation, business has had a decrease in price between 15 per cent and 20 per cent. Householders had one increase of 2.75 per cent two years ago. I am willing to predict that it is unlikely that the price will increase for the next few years.

The price of gas has fallen by 50 per cent in the Pilbara. Real prices have come down. I recognise that there is still a margin, but, again, as the member for Geraldton said, we need to understand the geography of this State. Our coal is expensive, for historic reasons, and is of lower value. It is not the surface deposit that is easily mined elsewhere. Our gas is abundant, but it is 1 500 kilometres away and is 120-odd kilometres out to sea; therefore, it is expensive and needs to be transported a long way. WA has a narrow market, and it has one principal population centre - Perth. We have a responsibility to provide power into regional areas, not just the isolated regional areas, but also the south-west grid area. That is a non-economic service, but we have a social responsibility to do that.

A great deal of the debate was about the structure of Western Power. I will start first with AlintaGas. We have deregulated the gas industry, and we have announced a program to run through to 2002 for the total deregulation of gas down to the household level. In that circumstance, we have a fully deregulated regime. Competitive gas suppliers are coming into the industry. WA has a mature infrastructure, with Perth, Bunbury, Mandurah and now Busseton all serviced. The geographic area is mature; therefore, the question of ownership is less important. There is no overwhelming reason that AlintaGas should be in government ownership. Whether it remains in government ownership or is privatised is largely a commercial issue. If the price is right, the market exists and it makes sense, the Government may well privatise Alinta. That will be a commercial decision. There are no significant policy decisions; there are a couple but no show stoppers. Very significant policy decisions need to be made with Western Power, as they were with the Dampier-Bunbury pipeline. We resolved the pipeline issue by selling the pipe but holding the land and expanding the easement.

Mr Thomas: You did that by adopting our policies.

Mr BARNETT: The last thing I would do is adopt the Opposition's policies. It was going to sell the land.

Mr Thomas: We were not. We said to sell 100 per cent of the pipeline.

Mr BARNETT: The Opposition did not make a distinction, did it?

Mr Thomas: The land has always been leasehold. The ownership of the land had nothing to do with it.

Mr BARNETT: The initial approaches were about the land. The point is the Opposition did not do it; it could not have done it; we did it and succeeded.

Mr Thomas interjected.

The DEPUTY SPEAKER: Order!

Mr Thomas interjected.

The DEPUTY SPEAKER: Order! The member for Cockburn will come to order.

Mr BARNETT: The difference between the way the coalition handles a deal and the way those guys opposite would handle it is about \$1b.

There are some important issues with Western Power. One is the theoretical argument about splitting up Western Power. However, if one were to split Western Power into generation, transmission and distribution areas and retain all three in public ownership, which members opposite argued in favour of, what sort of mickey mouse outfit would there be? There would be three small utilities. On the south-west grid Western Power has 2 400 megawatts of capacity. The Victorian grid carries about 8 000 megawatts and the New South Wales grid carries about 13 000 megawatts. Members opposite want to split into

three parts an organisation that has 2 400 megawatts on the grid. They would have three boards, three chief executives, three administrations, three reception desks and three billing systems. Is that conducive to reducing the price of power? I remember when we split the State Energy Commission of Western Australia into AlintaGas and Western Power. Members opposite accused us of having a double billing system. They were worried about that but now they want to create three tiny utilities. They believe somehow that will generate competition. Do they really think that will work? Their naivety matches their stupidity if they think that will work.

Mr Grill: Who will run the new Collie power station?

Mr BARNETT: The group that I announced in question time about a year ago.

Mr Grill: Tell us who will run it.

Mr BARNETT: The subsidiary of Pacific Power.

Mr Grill: Which is that?

Mr BARNETT: The member can ask me a question at question time. He knows the answer.

Mr Grill: Pacific Power is the New South Wales government generator.

Mr BARNETT: We all know that.

Mr Grill: How many people has it got at its power station?

The DEPUTY SPEAKER: Order, member for Eyre!

Mr BARNETT: That is an entirely different issue.

Mr Grill: You do not want to debate the issue at all.

Mr BARNETT: I will debate the issue. I give the member a challenge: He can get up and ask me all these questions tomorrow. If I have time I will answer his questions.

Mr Grill interjected.

Mr BARNETT: I will save four minutes at the end of my speech. I promise, precious!

If we look at the restructuring and breaking up of Western Power in that way with its phony relationships, we are somehow meant to believe that one publicly owned utility will be competitive with another publicly owned utility that either transports or distributes power. If people want to split it up, it is only logical to privatise it. There is no logic in doing a partial split up and then not privatising; it is absolutely mickey mouse. Members opposite should talk to their colleagues in Queensland and see how well something, which was admittedly set up by the previous Government, is working. Queenslanders nearly had black-outs a week or two ago simply because one arm of the so-called independent public agency was not talking to the other arm. They were not competing and were not commercial, and the lights virtually went out.

Mr Grill: It was a bit of sabotage as well.

Mr BARNETT: There were a whole lot of problems. That sort of mickey mouse illusion and pretence of competition is not worth pursuing. I prefer that we introduce into the generation area more intense competition through the growth of independent power producers, which can be achieved either by ensuring that new generation capacity is by a private IPP or by looking at the privatisation of one or more of the power stations. A hard-nosed commercial imperative would then be introduced into the market, not some Chinese wall, mickey mouse illusion of competition. There would be real competition. People would put up real money to run power stations better to compete in the market place.

I realise there are questions of regulations and price relating to the access code which must be worked through and this will be done progressively; indeed, they must be worked through on the east coast. We could go on and on about that issue. The essence of what the Opposition has objected to in the access code relates to the regulator. The national access code is the result of several years of negotiation between the Commonwealth and the States. It contains a set of rules and a framework which will provide open access on a non-discriminatory basis to third parties. No matter who owns the pipe or transmission line in the future, they will not be able to gain some prior advantage. Anyone will be able to use it and pay for it based on agreed, open, explicit conditions. It is complicated. Indeed, my concern about the code is that it is overly complicated.

Our State had already started and made some progress on an access regime under agreement Acts with the Dampier-Bunbury pipeline, the goldfields pipeline and the Pilbara energy project. We took a very light-handed, pragmatic approach. The national framework is highly prescriptive and regulatory. The member for Eyre said that it promises to be a picnic for lawyers. I think he is right and that it will be. I regret that the code has become so prescriptive and has tried to deal with every possible situation that may arise. When people do that, they lose their focus on the principles and the policy of the scheme. We will wait and see because WA is in there and it has adopted the code. However, it has adopted it through state

legislation, as applies in other jurisdictions, but retained the role of the regulator being locally based and locally appointed. That is the only difference. That approach by Western Australia has been endorsed by the Commonwealth and all other state jurisdictions, and there is no difficulty.

The question remains as to why we should do it. Members opposite say we should have only the national regulator. Why would Western Australia go down the path of having a national regulator when all of our State's pipelines are internal and we do not have an across-border pipeline, although we may in the future? All of the other States are interconnected or soon will be. Clearly one regulator must cover an integrated system over state boundaries, but we are not part of that system. We will never be connected to other States' electricity grids, although we may be connected to a pipeline infrastructure. The premises are quite different to start with. The code is about the rules of the game; it is as simple as that. The regulator, whether it be the Australian Competition and Consumer Commission or anyone else, must administer the rules of the game to resolve disputes, help set tariffs, if that be the case, and make sure the system is open and fair. The role of the regulator is not to set policy. That is the difference.

What I fear will happen with the ACCC, and certainly given its prior conduct I have some justification for this, is that it will effectively become the energy policy maker of Australia. That perhaps does not matter so much for the other States because they have mature grids and pipeline systems; their systems are developed; and in fact they have 30 per cent excess capacity in power generation. WA is the only State that needs to do some innovative things to its own energy system. If the ACCC were made regulator, I might as well hand in the portfolio of Energy now and the member opposite might as well wipe it off his shadow portfolio list because we would never again have an effective Minister for Energy. We are not about to do that because we have too much to do in the Energy portfolio.

Mr Grill: Why is that the effect?

Mr BARNETT: I will tell the member if he stops interrupting. I shall give the member some examples of the sorts of things that might happen, and this is borne out by some of the events that have taken place in Victoria. The ACCC will be looking at things like price discrimination. That is a trade practices issue.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr BARNETT: Price discrimination should not occur. That is a fundamental premise of trade practices law, which is reflected in the ACCC. Electricity is electricity; if one turns on the lights one uses the same electricity. We have different prices for householders and businesses. It is foreseeable in the future that the ACCC will start ruling that the price must be normalised. That would mean that business would be on side because commercial prices would come down for business but the price of electricity for householders would rise by about 20 per cent. Similarly, the ACCC would apply the same sorts of rules to regional areas and look at the cost of supply. The wheatbelt towns that are on the grid in Western Australia are effectively cross-subsidised. The ACCC might well intervene and say that we cannot cross-subsidise across the grid.

If that position were adopted, one would probably see power costs in the wheatbelt towns and in the south west rise by 20 or 30 per cent. Those issues could arise. That is not a problem for Victoria with major centres like Ballarat, Bendigo and Geelong. It is also not a problem for Queensland with major population centres like Cairns and Townsville and power stations scattered around. That is not the situation in this State. The opposition policy will put at risk the price of electricity for householders if it is normalised to be the same as that for business. It will put at risk not only service delivery, but also price in the south-west grid. That would happen if it was said that under trade practices law, as interpreted by the ACCC, no price discrimination should occur in electricity. Believe me, we discriminate in electricity for social, regional development and equity reasons.

Mr Thomas: We are talking about gas.

Mr BARNETT: Yes, and the same would apply with gas. Members should not underestimate the potential at all. The member for Albany would like to see gas delivered to Albany, and that is probably subeconomic. Gas delivery into the mid-west is subeconomic, and that is why the Government is assisting Western Power in that provision. Does the member for Cockburn think that arrangement would pass through the Australian Competition and Consumer Commission and the National Competition Council? Could we have gained approval for the goldfields pipeline through the ACCC? No way. We gave rights and privileges to investors in the pipeline. That would not happen under the Australian Competition and Consumer Commission.

I accept the rules of the game for open, third party and non-discriminatory access. I am happy for that to be regulated in terms of fairness between players. However, I want that done in the context of energy policy in this State. As a Government, we will not cede energy policy to the ACCC.

Other issues are involved. We have uniformity of regulation requirements. We have agreement Acts and issues which need to be honoured and respected. A local regulator will need to take into account the circumstances of the State. We have a

small grid, great development potential and the need for new infrastructure. An ACCC regulator looking at a Sydney and Melbourne market will not be attuned to our circumstances.

Cost would be involved. This State's energy industry is the only one in Australia which is growing. The media talks a lot about the Collie power station and an extra 300 megawatts of electricity generated through coal. At the same time, 1 000 megawatts of gas power generation, all private, has been provided in this State. Nothing like that is happening in the other States. If anything, they are contracting. Many demands will be made of the regulator. Things are happening in our industry. To have the regulator located on the east coast will mean access will be limited. An element of cost must be considered for not only the big players, but also the small players, such as the manufacturing firms and service industries. They would effectively need to travel to the east coast to join the queue to get access to the regulator. We do not want that.

We want a counterpart regulator, operating under the same rules that apply at a national level, to be administered locally. The regulator will not take a policy role. He will apply the code as written. Working with the national institutions, he will communicate with other jurisdictions to improve the code. It will not be about setting policy regarding where development will occur. The State Government will maintain that policy role.

We have a distribution system. Even if we had the transmission system under the Australian Competition and Consumer Commission, we would still need a regulator in the State for transmission lines. Therefore, we will have a regulator anyway and he may as well do both areas.

Mr Thomas: So does every other State.

Mr BARNETT: They have interconnected transmission lines. The member is a fool - he needs to concentrate and work much harder as a member of Parliament.

*Withdrawal of Remark*

The DEPUTY SPEAKER: That was not very parliamentary.

Mr BARNETT: Probably not.

The DEPUTY SPEAKER: Order! I ask the minister to withdraw.

Mr BARNETT: Then I withdraw.

*Debate Resumed*

Mr BARNETT: Essentially, we make a clear distinction between policy in a growing energy system and the right of a State Government to set policy and achieve development for the State. The regulation and setting of the rules of the game is for an independent party. However, its role is not to set policy and take a proactive role, as the ACCC is inclined to do. This is the right decision. The Government opposes the amendments of the Opposition. We will have a regulator working in Western Australia close to WA industry and government. He will act consistently with the policy set by the State Government, which is achieving 60 per cent of overall industry investment and has an expanding energy industry. The Opposition would simply hand over responsibility to the feds and give up the right to control an independent and positive development policy in this State.

Question put and passed.

Bill read a second time.

*Committee*

The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Barnett (Minister for Energy) in charge of the Bill.

**Clause 1: Short title -**

Mr THOMAS: I take the opportunity to make a few general observations, particularly in response to some of the minister's comments. We should move now to discussion of the Bill rather than the broad-ranging debate which ensued in the second reading stage. Some of the minister's comments cannot be allowed to go unchecked. He referred to the role of the Labor Party, and said its calling into question the greatest achievement of Sir Charles Court was almost sacrilegious.

The CHAIRMAN: We are now in committee, not dealing with the second reading debate. Although comments can be reasonably general, please refer to clause 1.

Mr THOMAS: It will be brief. I refer to gas pipelines, so it is relevant. Briefly, the Dampier to Bunbury pipeline was actually built during the period of the Labor Government. The renegotiated contract, with which I was personally involved, for the North West Shelf gas sales agreements made possible the export phase of that project. If the agreement negotiated by Sir Charles and his ministers had been left to stand in 1984, the State would have faced overall debts of \$7b. That was at a time when the State budget was \$3b. Those matters should be placed on the record.

Mr Grill: I was of the understanding that the take-or-pay contract was signed by the Burke Government.

Mr THOMAS: It ~~might~~ have been 1983; it was 1984 when I became involved.

Mr Barnett: I am sure that if you search far and long enough you will find an achievement of your Government. There must be one somewhere. Keep searching. You had 12 years.

The CHAIRMAN: We are in committee. Let us get back to the committee stage.

Mr Barnett: You were a great Government, Julian. You did well - fantastic.

Mr Prince: The royal commission said so.

Mr THOMAS: Let us talk about the Royal Commission into Commercial Activities of Government and Other Matters, because that is one of my favourite subjects.

*Point of Order*

Mr BARNETT: This is a serious Bill and the member for Cockburn is not discussing it at all.

The CHAIRMAN: Let us get back to the Bill. We are dealing with the title of the Bill, but I want members to stay within the realms of the gas industry.

*Committee Resumed*

Mr THOMAS: I would like to take up the invitation by the Minister for Police to discuss the Royal Commission into Commercial Activities of Government and Other Matters, in particular the recommendations on commercial confidentiality.

The CHAIRMAN: I am sure that the member will be able to do so at another stage.

Mr THOMAS: Perhaps the minister will give us an opportunity on another occasion.

Specifically, we need now to examine the Bill, which is to provide a national access code to gas pipelines, to create what is known as the gas pipelines access law in Western Australia and to make it generally applicable. As the minister indicated in the second reading debate, the Opposition's amendments, which I shall move shortly, at law would remain precisely the same but they would simply allow for another body to undertake the role of regulator. We would retain the balance of the State's machinery, which the Bill would set up - specifically the appeals body, the review board and the arbitrator - and even the role of the minister. The minister was concerned that he might be out of a job if our amendments were carried and that there would be no role for a Minister for Energy in Western Australia.

Mr Barnett: The inevitable consequence would be that energy policy would be entirely centrally run.

Mr THOMAS: I want to debate that matter. It is a fantastic assertion. As with many of the minister's assertions, it is totally without basis. We will debate it as we work our way through the Bill. It needs to be understood that, with the exception of the regulator, every other provision that has been put forward by the Government will be left intact.

Mr GRILL: There has always been a misapprehension about when and how the North West Shelf gas agreements were entered into. Although they were negotiated by Hon Andrew Mensaros and Sir Charles Court, my understanding is that the decisions to enter into the North West Shelf gas agreements were made by the Burke Government after much thought and heartache. It is true that the initial contracts, which were negotiated by Sir Charles Court and Hon Andrew Mensaros, caused the State considerable financial trouble at a later date. Although it is true that the Burke Government committed to those contracts in good faith and on advice from Treasury, they were not well negotiated.

Mr Barnett: Who put the agreement Act through Parliament?

Mr GRILL: I suppose the Labor Government must have.

Mr Barnett: Really?

Mr GRILL: But I am not sure about that. It must have been us, because we finally committed to those agreements. I can remember that one of the first Cabinet briefings was a very intensive briefing in the then SECWA building, by a range of Treasury and officials from SECWA, as it then was, and other consultants. One of the big questions that we had to decide -

Mr Barnett: I can help here. The date of the North West Shelf agreement Act was 1979, so the agreement Act was through Parliament. It is possible that some contracts were signed when the member for Eyre was in government. The deal was negotiated and it received parliamentary approval at the time of Sir Charles Court's Government.

Mr Thomas: The deal was provided for in a legislative sense but it was not negotiated.

Mr GRILL: It was negotiated in time for an election, and several aspects were left very open-ended. Those open-ended

aspects were worrying. In fact, as I now recollect, it was signed before Alcoa had committed to its side of the agreement. Alcoa at that stage was taking up more than half the capacity of the pipeline and it was the major customer of the domestic gas agreement. It was a major mistake by Sir Charles Court and Hon Andrew Mensaros to commit to the agreement before Alcoa had committed. It was not until after the federal election - not a state election - that we actually had agreement from Alcoa in respect of its commitments. I now recollect clearly that the envelope of possible costs for the North West Shelf agreement, which Treasury officials said would never be breached, had potential to blow out and to send the State broke.

Mr Barnett: If your Government signed the take-or-pay contract, as you claim, why have you spent the past 15 years bagging it?

Mr GRILL: It was done in more than one stage, but it was actually committed to, unfortunately, in a hurry prior to a federal election by the then Premier and the then Minister for Fuel and Energy, Hon Andrew Mensaros. As I have said, the circumstances were most unfortunate. The actual commitment to most of the agreement - I cannot recollect all the details now - was by the Burke Government.

Mr THOMAS: I wish to discuss the Bill and the minister's proposition that, in essence, if the ACCC were to have a role in Western Australia it would diminish the role of the State and responsibility for the State, and in particular his capacity or that of State Governments or Parliaments to have a role in the development of the energy industry in Western Australia.

The CHAIRMAN: I suggest that the member speak on that subject when he moves the amendment. It seems to me that we will duplicate the debate.

Mr THOMAS: With respect, I do not want to be tied up in parliamentary tactics.

The CHAIRMAN: The member has an amendment on the Notice Paper.

Mr THOMAS: I have many amendments which have that effect. I guess that we will debate and vote on one of them. I thought it was possible to debate generally the two models that are before the committee while we are debating the short title.

The CHAIRMAN: No. If the member wanted to change the title or he wanted to do something with it, he could debate that matter. I do not believe that the purpose of debate on the short title is to deal with general amendments. I ask the member to return to the title of the Bill.

Mr THOMAS: I will leave it until we debate the first amendment.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Enactment for participation in national scheme -**

Mr THOMAS: Clause 4 is to satisfy obligations between the States that are referred to in one of the schedules. As the heading indicates, it is about enactment for participation in a national scheme. I thought that I might be able to talk about the role of the State in the national scheme, because that is what the clause is all about. This code contains very interesting law. It is setting up what are effectively guidelines - somewhat broad - and principles that will regulate access to gas pipelines, but the detail will be provided by the regulator.

It is interesting to consider the role of the regulator. Its role is to create rights rather than to interpret them, even though those rights must be created in accordance with the code. It is more a legislative body than a judicial body. Those rights are created for the operators of pipelines and the people who use the services and they must be in accordance with the code that appears as a schedule to the Bill.

The Opposition put forward the proposition that that regulatory role - that is, creating access arrangements and the like - involves the application of laws of which the code is a part. That same code exists in Queensland, New South Wales, Victoria, South Australia, the Northern Territory, Tasmania and the Australian Capital Territory.

The minister is saying that the Australian Competition and Consumer Council will make rules about who will have access to electricity and will do other things that will remove his discretion and dilute his role as Minister for Energy and, by implication, the sovereign power of this Parliament to undertake its task of administering the development of resources in this State, including energy resources. One has only to state that proposition to understand that it is palpable nonsense. The minister is gibbering, and it is obvious that he is doing so because he has this fetish about the ACCC. He was caught out once in a sleazy deal and he does not want the ACCC back in this State. However, it is a national body with national responsibility for trade practices law and related matters. It has been agreed by the Commonwealth Government - a Liberal Government, not a Labor Government - and other State Governments, which for the most part are conservative Governments, that the ACCC will undertake that role. All eastern States, with the exception of Tasmania, have the imperative of interstate pipelines. However, one does not need to have an interstate pipeline to have the ACCC undertake these services. It can as easily be done by the ACCC in Western Australia as it can in South Australia or any other jurisdiction that is a party to this agreement.



For the minister to say that we do not have an interstate grid and therefore do not need the ACCC is nonsense. We do not have an interstate grid yet, although the Bill does envisage that happening and makes provision for it when it does come about, as it must. However, that does not mean that we cannot have the ACCC here. Let us look at the merits of having an organisation such as the ACCC -

Mr GRILL: The member for Cockburn is correct: This clause brings Western Australia within the ambit of the national scheme. I found it amazing to hear the minister say that to appoint an interstate regulator or the ACCC would detract from his powers and responsibilities. I find that hard to believe. His powers and responsibilities are set out clearly in this legislation.

Mr Barnett: One recent example is the Victorian Government's decision to privatise its gas utility, which is now under threat because of an ACCC ruling. Imagine trying to get a goldfields gas pipeline under way; it would not happen.

Mr GRILL: The minister is confusing the ACCC's two roles. It has a role and powers under the Trade Practices Act, and the minister was very bruised by its use of those powers. Much of his thinking on this subject is coloured by that bruising.

Mr Barnett: Yes, it is.

Mr GRILL: In the case he referred to in Victoria, the ACCC was using its powers under the Trade Practices Act, as it was when it looked at the An Feng-Epic arrangement. We must set that aside. It is true that, in using its powers under the Trade Practices Act, the ACCC can go too far, and in the Victorian case it did go too far. However, that does not mean that it should not be the regulator in this instance. I know we will get on to that debate later, but both sides have addressed it already.

We should make it clear at the beginning that we are looking only at the specified powers as defined under this legislation. The minister stated that this legislation is very definitive and clearly sets out the powers involved, taking into account eventualities that may never come about. The minister's powers under this legislation and the access code are clear, as are the powers of a regulator. There are many checks and balances on that power, perhaps too many. Perhaps the days of the minister's freewheeling role with energy policy in Western Australia are in the past, and good riddance to them. We should be clear about the ACCC's respective roles.

Mr THOMAS: I thank the member for Eyre for making that point so clearly. We have a body - the ACCC - which has powers that it exercises normally and which it has exercised to the great cost of this minister under the trade practices legislation. The legislation in other jurisdictions and this legislation, if it is passed, will give it a different role. Whether it does or does not get this role is a separate question from whether it is zealous or behaves properly in exercising its jurisdiction in other areas.

We must look at the approach that this Government has taken - that is what causes the Opposition some alarm. This minister has said that his approach in Western Australia is to have light-handed regulation. As a consequence of that, we continue to have the most expensive electricity and gas transmission in Australia. Although we set out at the beginning of this process of deregulation or creating competition -

Mr Barnett: There is a big philosophical difference between the Liberal Party and the Labor Party: We do not want to dictate to businesses how they conduct their affairs; you want to regulate every aspect of their operations.

Mr THOMAS: What fundamental difference? This Bill involves an interstate agreement signed by the Howard Liberal Government, the Kennett Liberal Government and every other State Government in Australia, Liberal and Labor. On this issue there is no fundamental difference between the Liberal Party and the Labor Party or between the forces of light and -

Mr Barnett: When the leaders of this country signed the Council on Australian Governments agreement I do not think they believed that competition policy would result in bureaucrats running around Australia closing down newsagencies in country towns; but that has happened.

Mr THOMAS: We must be really privileged and grateful that we are here in Western Australia and that this minister is the Minister for Energy, because he is the only one in step in the whole of Australia. I guess he can feel very proud about that. Every other minister for energy in Australia seems to think that the Australian Competition and Consumer Commission can undertake the role of regulating gas transmission, but this minister finds these fundamental differences which in his opinion are so profound that if the ACCC were to have the role that the Opposition seeks to assign to it, there would not be any pipelines. It is just absurd.

If our amendments are carried, the ACCC will have precisely the powers that we as a Parliament want to give it. If that has some untoward effect of the sort of sky-falling-in type magnitude that the minister envisages might occur, we can take those powers back if we have a mind to do so. Although it might be a commonwealth body, if our amendments are carried, the ACCC will exercise jurisdiction conferred upon it by the Parliament of Western Australia. What the Lord giveth the Lord can taketh away. I suggest that the minister is being a bit xenophobic. As my colleague the member for Eyre pointed out, the minister has had an unhappy experience with the ACCC. If he sits back and considers the issue, he might find that the

ACCC is not the demon that it is made out to be, and that its members are experienced regulators and we in Western Australia could avail ourselves of that experience.

Mr Barnett: They are caring and sensitive bureaucrats from Canberra.

Mr THOMAS: This is the sort of Liberal claptrap we hear from the minister. They are the national regulators, they are all Australians, and we are all Australians. If we do not like what the ACCC is doing, the minister is closer to the Commonwealth Government than we are - or at least he was until recently - and he should get the legislation amended so it does what we want it to do. They are servants of the Parliament. The minister's party has been in government at a national level for some years. If he does not like what the ACCC is doing, he should get the legislation amended so the situation can be changed.

Mr CUNNINGHAM: I would like to hear more from the member for Cockburn.

Mr BARNETT: I do not want to hear more from the member for Cockburn and I suggest he get on to debate the content of the Bill. We are seeing an abuse of the reform of this Parliament to allow five minute speeches to get to the content of the clauses. Members on the other side are practising this dorothy dixer stuff of jumping up like Bill and Ben the Flower Pot Men instead of getting to the substance of the clause. They will have another hour on this Bill and they need to deal with it. If they do not deal with these clauses and their amendments, it will be on their necks, not mine.

Mr THOMAS: I am concerned about the approach of the minister who says that Western Australians in some sense are different and therefore we need to have regulators who will have regard for the special and unique circumstances in Western Australia. These circumstances have led to the type of decision-making which this minister has practised since 1994 and which has led to the fact that we continue to have the most expensive energy in Australia. We need somebody who will rigorously apply the code to promote competition and achieve cheaper energy in Western Australia. We are concerned that although Western Australia has a population of 1.8 million, in the overall scheme of things Perth is a small town, and Western Australia is a small State in terms of population. The pool of people from whom a regulator can be chosen is relatively small. One only has to be involved in the energy scene in some capacity or other for only a short time to know everybody who is involved in companies and government departments and most of the politicians who have an interest in the subject, because it is a relatively small field.

Mr Barnett: Let us give the job to Canberra and not have the confidence as Western Australians to manage our economy. That is your policy.

Mr THOMAS: The minister has the Charlie Court disease! I am a patriotic Australian and I do not mind saying that Canberra is the capital of Australia, and I have no objection to authorising under the legislation of this State a federal body to discharge functions under state legislation if it is experienced and practised at doing it. The anti-Canberra xenophobia that used to characterise the Liberal party and which seemed to be abating until the minister got going recently is nonsense.

Our concern is that the pool of people from whom the regulator might be able to be chosen is a limited one. That is a very good reason to look outside and to say, "Here is a body that is already set up and practised and has some experience in this sort of thing. Let it do it at least for a time." The fact that I am proposing that the ACCC be the regulator for a specified period is something to which I will allude later.

Consider the importance of the job of the regulator. It is a quasi-legislative role in the sense that it is creating rights - not interpreting them - for the people who are party to access arrangements. It can make or break companies. It can make decisions that impact upon the returns that people receive on their investments. Obviously that is an important matter to the proprietors of those assets.

Let us consider the situation of the Dampier-Bunbury natural gas pipeline. As the minister has been crowing backwards and forwards all over the State for the past 10 months or so, the people who bought that pipeline paid \$2.4b; everyone was astounded and pleased as I am sure was the minister, because it was about \$1b more than what was expected. Most people who are party to some sort of an arrangement in which they receive an extra billion dollars that they were not anticipating would be pleased. One would surmise they paid that premium, in part because they thought they would be able to transport gas to the Kingstream project. That project has fallen over.

Mr Barnett: Repeat that.

Mr THOMAS: The Kingstream project has fallen over.

Mr Barnett: Has it?

Mr THOMAS: Yes. I do not see a lot of action.

Mr Barnett: You are a gung-ho developer of the State! What a little hero you are. It is no wonder that nothing happened when you were in power. This is a major project in the State and the Labor Party says it has fallen over; that is totally irresponsible. Major international negotiations are taking place.

Mr CUNNINGHAM: I am enthralled by the debate and I want to hear some more.

The CHAIRMAN: ~~As~~ enthralled as we are, we are getting very close to half past the hour, when we will be taking grievances.

Mr BARNETT: I want to respond very quickly to that. It is very difficult to get major projects of an international scale under way. I think the member for Eyre at least might understand that. The An Feng-Kingstream project is passing through the most delicate and difficult stage of negotiation. Last night I had dinner with the chairman of a major investment house from Taiwan. Many difficult issues remain to be resolved. For a member of state Parliament to describe as dead a major project that this State and dedicated public servants and industry people are working to make a reality is totally irresponsible. I want to plant firmly on the record that the project is far from dead. It is still difficult and a big ask, but it will be the most important postwar regional development in this State. I totally reject the callous, inconsiderate, irresponsible actions of the member for Cockburn. This State and this Government is about encouraging and promoting development, not simply taking cheap shots at projects.

### Progress reported.

[Continued on page 1512.]

## FREMANTLE HOSPITAL

### Grievance

MR MCGINTY (Fremantle) [4.31 pm]: My grievance is to the Minister for Health and relates to the treatment - perhaps I should say mistreatment - of two patients at Fremantle Hospital. The first is Mrs Margaret Barrett who had the misfortune to be diagnosed with breast cancer and underwent a mastectomy. Following that, a breast reconstruction was undertaken by a doctor at the hospital. Many members may have seen the photograph in the *Sunday Times* which showed a mangled breast as a result of that operation. She is distressed by the condition in which she has been left and, particularly, the treatment she received from Fremantle Hospital.

I wrote to the previous Minister for Health, the member for Albany. In response he wrote a letter dated 10 July, received by me on 13 July, in which he said that Mrs Barrett's expected waiting time for surgery was from six to eight weeks. The Minister went on to address a number of other issues relating to Mrs Barrett's condition.

I then conveyed to her the good news that within six to eight weeks she would receive the operation to reconstruct her breast as a result of the unfortunate way in which the previous breast reconstruction surgery was performed. As members can tell from the dates involved, that was over two months ago. The six to eight weeks have well and truly passed and Mrs Barrett has now been told by the hospital, notwithstanding the written word from the Minister for Health, that her operation is regarded as a low priority and she can forget about surgery in the foreseeable future.

In my view, it is an unconscionable act for Fremantle Hospital simply to override the written advice given by the minister, and say that the treatment of this patient is not something the hospital will do. I pose to the Minister for Health this question: What does he intend to do to ensure Mrs Barrett has the surgery she was promised and is treated within the time the former Minister for Health said in his letter to me she would be treated in?

I know we have had this debate in this House before. The member for Collie distinguished herself when she said that a woman who has the misfortune to have breast cancer and then undergo a mastectomy should be grateful she is alive, and whether the breast is reconstructed is of secondary importance. That is a rather callous view, but one which has currency, given the way Mrs Barrett has been treated by this hospital.

The second issue involves a gentleman, aged 71 years, who has cataracts on both eyes and whose eyesight is deteriorating. He undertakes significant community work. His record in this area is that when the *Endeavour* replica was being built, he was a voluntary guide on the ship, showing people around, giving school children much enjoyment, and encouraging tourism in the City of Fremantle. Since then he has undertaken work as a senior guide at the Round House in Fremantle. He puts a seven-day-a-week effort into that job. He coordinates a whole range of volunteers to ensure that when interstate, international and even local visitors, school groups in particular, come to Fremantle they are given the best possible explanation of the history and the significance of the Round House to Fremantle.

The work he is doing in the community is invaluable. As a result of the cataracts on both eyes, he is fearful he will have to stop doing that work and confine himself far more to home and not be able to make the contribution to the community he has made. He has received a quote to have the work to remove the cataracts on his eyes done privately, but as an aged pensioner he simply cannot afford the thousands of dollars involved; nor can he afford private health insurance.

I noticed with considerable interest the press release issued yesterday in Kalgoorlie, but today in the rest of the State, about elective surgery, which said that the State Government would be undertaking 3 000 more operations during the coming year. I hope this gentleman can have his operation brought forward, so that he is able to continue the great work he is doing in

a university. The opportunities that that provides for a hospital are immediately obvious. It can get into medical research and that is what it intends to do.

Mr Barnett: That happens in many universities in the United States.

Mr OSBORNE: Yes.

The Val Lishman Health Research Foundation was established in Bunbury in 1997. As members from the south west know, Val Lishman is a very distinguished and well regarded surgeon. He was the first surgeon to practise in regional Western Australia, and he has practised in Bunbury for the past 30 years. The community has cooperated in establishing the foundation. Its purpose is to attract international quality research into health issues relevant to the south west. Because the hospital will be located on the university campus, and because of the establishment of this foundation, we will get a relevant approach to health issues for country Western Australians.

There are such matters as Ross River virus which is a problem in the south west of Western Australia. There are higher than national average incidences of asthma in the south west. There are local issues such as pesticide use, mine safety, and Aboriginal health which are all special interests for people in the south west which the Val Lishman foundation will be able to address. I think that is a direct outcome of the Government's decision to establish the new south west health campus on the Edith Cowan campus in Bunbury.

[Leave granted for speech to be continued.]

Debate thus adjourned.

#### BILLS - APPROPRIATIONS

Messages from the Governor received and read recommending appropriations for the purposes of the following Bills -

1. Taxi Amendment Bill.
2. Western Australian Meat Industry Authority Amendment Bill.

#### GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL

##### *Committee*

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Mr Barron-Sullivan) in the Chair; Mr Barnett (Minister for Energy) in charge of the Bill.

#### **Clause 4: Enactment for participation in national scheme -**

Progress was reported after the clause had been partly considered.

Mr THOMAS: When the committee adjourned, the minister was responding to a hypothetical scenario that I put to the Chamber in which I made some comments about the Kingstream project and the minister construed those comments as being negative about the project. I should explain what I meant by my comment.

The phrase that I used was "fell over". Some members may be aware of the fact that prior to entering Parliament, I was a union official in the building industry and that the phrase is used commonly in the building industry; when a project ceases, it has fallen over. I was referring to the cessation of work on that site and that is something that the building industry, a industry with which I am associated, regrets because we are looking forward very much to doing that work. I am very supportive of that project, as is this side of the Chamber. That is evidenced by the support that we gave the project when the agreement Act went through this Parliament. In fact, we have been more supportive of the project, in the corridors at least, than has the Government, but I am sure both sides of the Chamber support the project. I agree with the minister that the notion of this sort of development in the more settled areas of the State is a fantastic possibility and we wish the proponents well in overcoming the problems which have led to the cessation of work on the site. I hope that clarifies the Opposition's position on this matter.

What led to my comment is that a situation could come before a regulator in which, for example, a person may have purchased an asset such as the Dampier to Bunbury natural gas pipeline and have paid a very good price for it, and feels he needs a return which will service that capital investment. The person may well have paid that good price in the anticipation of obtaining particular markets which for some reason or other do not eventuate; perhaps the markets are secured by somebody else or the markets themselves do not arise as anticipated. As we know, these things happen all the time in the resource industry. Pressure will then be placed on the regulator to allow access regimes to enable that proprietor to obtain a return which is necessary to stave off bankruptcy, or at least to get what it would consider to be a fair return on that investment. That is something which I believe the regulator should strenuously resist. They should be in a position whereby they will be hit quite hard.

A number of the amendments that we are putting forward this evening seek to create a degree of detachment - a lack of sympathy in some sense - towards applicants who might come before the regulator, so that the code is applied without fear or favour, and the most competitive situation possible is achieved. It is probably better if I give an example of the sort of pressures that can be placed on government; presumably the same sort of pressures will be placed on regulators when these types of situations arise. I will give an example outside of Western Australia rather than one which is close to home which could give offence to some people. It is not related to the gas industry. When the proponents of the Crown Casino in Victoria wanted a licence to build a casino, they made all sorts of undertakings to the Government about what they would do in order to obtain that casino licence. Those undertakings included, as I understood, an obligation to build a further hotel, and if those obligations were not met, they had to pay a fine of some description or a levy to the Government.

[The member's time expired.]

Mr BARNETT: I will respond very briefly. Prior to the break, the member for Cockburn described the An Feng-Kingstream project as having fallen over. I regarded that to be a highly irresponsible statement to be made in a Parliament when we have passed legislation supportive of the development of that project. Nevertheless, I accept that the member has effectively withdrawn those comments and corrected it and I appreciate the fact that he has done so.

We discussed another couple of issues on which there was some debate, somewhat unrelated to this Bill, about when the North West Shelf agreement was put in place. Members will recall that the Labor Party was elected to power in February 1983. In November 1977 the then State Energy Commission, in support of the State Government, entered into the memorandum of understanding for the North West Shelf joint venture for the purchase of natural gas. The state agreement was signed by Sir Charles Court in the presence of Hon Andrew Mensaros on 27 November 1979 and the agreement was ratified by Parliament and assented to on 21 December 1979. A contract for the south west and Pilbara gas volumes was signed between the State Electricity Commission and the Woodside organisation on 13 September 1980. The agreement and the gas purchase contracts were signed during the term of the previous coalition Government. The contract was disputed by an incoming Labor Government, resulting in an agreed statement of principles being signed in 1985. That should clarify the situation.

Mr THOMAS: I was never in doubt about those matters. As to the final matters being signed in 1985, in fact, quite lengthy negotiations involved the then Federal Minister for resources and energy, Gareth Evans. The Commonwealth was involved.

I referred earlier to the pressures which can be placed on the Government in these circumstances. The proponents of the Crown Towers entertainment complex in Victoria, in anticipation of certain revenue from that project, made undertakings to the Government that they would build another hotel and, if they did not, they had to pay a fine or levy of \$50 000 a day or a week. I may be wrong about the amount, but effectively it was a fairly substantial amount of money, a fine for not undertaking all the work they said they would do.

The casino project has not been as lucrative as the proponents hoped it would be and they put considerable pressure on the Victorian Government to be relieved of the obligation between them which led to their being awarded the licence. It was common speculation, particularly in Victoria, that there was a close relationship between the proponents of that project and the Premier of Victoria, Mr Kennett. He was under quite strong pressure to relieve them of that obligation. To give him credit, he resisted that pressure and acknowledged the friendship between him and the people associated with the casino, and he gave the matter to another minister to determine. That minister was quite hard-headed and held the proponents to their obligations.

Similar sorts of analogous types of pressure are likely to be brought upon regulators in projects such as the one to be encompassed by this sort of legislation relating to gas pipelines. To gain licences we are likely to get people who will make investments based on projections of the profitability of a project. If it does not work out, they will be able to spin a very good story to the regulators that some form of relief be given because of the circumstances in which they find themselves. If these codes are to apply properly, we need hard-headed regulators who will be in a position to resist those overtures. It is great to have regulators because they will be detached from a minister who might be subject to political pressure. In a sense it is more objective. If the regulator comes from the small circle within the gas industry in Western Australia, he is more likely to be subject to that sort of pressure than if the regulator is the Australian Competition and Consumer Commission. There will be a state regulator because of distribution, but that person should not have recent experience in the industry in Western Australia. The minister must acknowledge that in the administration of this industry, it is very likely that those pressures will be brought to bear on Governments. Under the scheme for which we are legislating, those pressures will be placed on the regulators; therefore, they must be people who are hard-headed and detached.

In the second reading speech the minister talked about the need for local regulators because they will be aware of the unique circumstances of Western Australia. I read that as code, intentionally or otherwise, that a local regulator will not apply the code and enforce the principles of competition as rigorously as would the ACCC. That is most desirable. For us to join the national scheme, which we are seeking to do in passing the Bill, our amendments are essential. We need a national regulator.

Mr BARNETT: I find that to be the most extraordinary attitude. It is saying that people appointed by the Western

Australian Government are incapable of dispensing their duties, or of behaving in an honest and honourable way. I find that an absolute slight on the people who are appointed. It might equally be argued that the judicial system might be subject to pressure. Essentially these people will undertake a financial arbitration process. For the member to say that somehow people in Western Australia within industry or academia or from the legal profession who might have this role - they might be from an accounting or finance background - cannot do that in an impartial way is an appalling comment and shows a total lack of confidence in the professionalism of people within this community. The implication is that, therefore, if we give the regulator role to the ACCC, somehow because it is Canberra, it is federal and it will be perfect; that it is beyond reproach; that there will not be political influence or the like.

The member earlier referred to the pipeline episode in this State a year or so ago. We can argue that till the sun comes up. However, I make one comment: The ACCC - this body the member is holding up to be so high and mighty - behaved in an overt, lobbying, political manner over the AlintaGas-Epic arrangements, putting out press releases at 6.00 pm on a Thursday or Friday, feeding the media public comment, doing everything the member might suggest is inappropriate. I do have a beef with the ACCC.

Mr Thomas: Your beef is that it caught you out.

Mr BARNETT: The member should just dry up. The beef is not about what the ACCC is charged to do, but the modus of its conduct. The ACCC is seen by the business community throughout Australia as overstepping the mark. It was set up to administer essentially a competition policy, but it has spent much of its time running around closing down newsagents in country towns, pursuing all sort of strange little agendas and behaving in an intimidatory way to business; it has lost the confidence of the business sector in many areas and of government throughout much of Australia, at both federal and state levels. It must be rethought.

Mr Grill: The chamber of mines and the CCI favour the ACCC.

Mr BARNETT: Good luck to them, but we will not do it. We will administer this code, and through a state based regulator.

Mr Thomas: You won't; the regulator will.

Mr BARNETT: We, being the Government. This Parliament will enact it. That will happen and the Government has chosen to do that. If those opposite are returned to government at some stage in the future, they may change that if they wish to at that time. That will be their option. If we are in opposition at that time, we will not stand in their way if that is what they choose to do. We will go ahead with this policy and implement that code. The member for Cockburn drew a parallel to the Crown casino in Melbourne. That is a long bow in terms of political influence. If he wanted to talk about that, he need go no further than Western Australia in the 1980s - the Petrochemical Industries Co Ltd project, the Rothwells rescues, the city property deals. There were overt political interests, and payments were made to Labor Party organisations - and people went to gaol as a result of it. The member did not have to search out the Crown casino.

Beyond that, the Crown casino was a new project. It was not set up against a base of detailed regulatory framework or law. This is a system of regulation that I think is overly prescriptive but, nevertheless, it has been established and agreed. The regulator will operate under those rules. The interest from a government perspective is that the regulator will keep to that task and interpret and apply the code, and will not play an active role in promoting economic development policies, either for or against, or enter into the broader energy policy debate. That is why we will have a regulator based in Western Australia.

There is a sensitivity to the issue of providing access to Western Australian business. That may be all right for the large companies, or for some of the members of the Chamber of Minerals and Energy of Western Australia or the Chamber of Commerce and Industry of Western Australia who are at the top end of the scale, because they often have national affiliations, but what about the small to medium businesses in this State that want to buy, sell or trade gas? Given our separation from the national system for both gas and electricity, we will maintain a regulator in the system. If we had an interstate pipeline, clearly it would go into the ACCC - I have no argument about that; and if we ever had an interstate transmission line, which I doubt, again we would enter into the national grid system. We do not have that; therefore, we will apply an agreed national code within Western Australia, in full cooperation and consultation. I remind members that the Federal Government and all state Administrations have agreed with Western Australia having a state based regulator.

**Clause put and passed.**

**Clause 5 put and passed.**

**Clause 6: Application to coastal waters -**

Mr THOMAS: What does this clause mean? Will pipelines that are in commonwealth waters be subject to the local regulator, assuming the Bill is passed without our amendments, or will they come under the ACCC?

Mr BARNETT: This clause will allow the code to apply to pipelines that come from offshore to onshore in Western Australia, such as the pipeline from Varanus Island. Gas pipelines are effectively the customer side of a gas processing plant.

Mr THOMAS: I do not think that pipeline passes through commonwealth waters. Do any of the pipelines in Western Australia pass through commonwealth waters; and, if so, would they come under the jurisdiction of the ACCC rather than the local regulator? That question may seem a bit odd, but the pipeline that comes from the North West Shelf onto the processing plant on the Burrup Peninsula is not covered by this legislation because it is on the production side of the processing plant. There is a processing plant on Varanus Island, and the pipe that carries the product to shore there may be covered - although it is not in the schedule - because it is on the customer side of the processing plant. Some of the operators of that pipeline are concerned that they may be covered by the operation of the code, whereas their competitors a few hundred kilometres away are not. The decision rests purely on where they decide to put the processing plant. If it were possible, and they chose, to put the processing plant for the North West Shelf on a platform, the pipeline between the platform and the shore would be covered. The proponents of that pipeline have made representations to the minister on this matter. They believe that it is unfair and somewhat arbitrary that it is possible to put the production plant on an island nearby, and they make the point that a lot more capital per kilometre is invested in an underwater pipeline; therefore, the implications of having to comply with third party access obligations are much more profound for them than they are for the proprietors of a pipeline onshore.

They say that, in practice, the underwater pipeline between their plant on Varanus Island and their plant for the main Dampier to Bunbury natural gas pipeline both produce infrastructure. I understand that if we define it as being one side of the production plant rather than the other, in a technical sense it is not, but in practical terms it is, it does seem to place an obligation on them which is much greater than for the onshore pipelines, which is what the legislation really seems to envisage. These people have made representations to the minister, and I recall that the minister said in this place at one stage that he did not think the code should apply to offshore pipelines. I would be interested if the minister could explain his thoughts about this matter, seeing that potentially he has a significant role to play in extending the coverage of the code to such a pipeline.

Mr BARNETT: The member is correct. I have expressed concerns, and I continue to have concerns, about this code applying to offshore pipelines. The member has provided a perfect example of why we need a state-based regulator. This issue is unique to Western Australia. We can imagine the lack of sensitivity to the mixture of onshore, three-kilometre limit, territorial sea and offshore gas reserves. It is precisely because of those types of considerations that we want a locally based regulator who understands what is taking place in the industry. If we get arbitrary decisions and a lack of understanding of the realities of production, the access code regimes will be applied further and further upstream, with the inevitable consequence that upstream producers will build smaller infrastructure, so it physically will not be available for open access, and that will be subeconomic and suboptimal. That is not the result we want. We have managed to get it to the stage where the code will apply only up to the gas processing facility, but even that, as the member has indicated, will produce anomalies. That is why we want a local input and some local say over the way in which this code is applied.

The code has great potential to cause enormous disruption and cost to our developing offshore gas industry. This State produces 52 per cent of Australia's natural gas and has 80 per cent of Australia's natural gas reserves. The code has been developed to suit a developed, stable situation in New South Wales and Victoria, not the developing gas sector that we have in this State; hence we want a local input, for exactly that reason.

Mr GRILL: I am still a bit confused about clause 6. Subclause (1) states that "This Act, the Gas Pipelines Access (Western Australia) Law and the Gas Pipelines Access (Western Australia) Regulations apply in the coastal waters of this State". Subclause (2) states that "coastal waters" means any sea that is on the landward side of the adjacent area of this State but is not within the limits of this State. The member for Cockburn put to the minister the proposition that a pipeline may go through commonwealth waters in a particular set of circumstances.

Mr BARNETT: It may in the future. We do not have that situation at present.

Mr GRILL: In the event that it did go through commonwealth waters, would there be joint administration in terms of the regulator of that pipeline? Would the ACCC have jurisdiction for part of the pipeline?

Mr BARNETT: The state-based regulator will operate under this code and will have a close working relationship with the ACCC. These people would not work in divergent directions. If there were a case of shared jurisdiction, obviously they would work together, as we do with the Commonwealth in a lot of areas.

Mr GRILL: Is the minister concerned that we could have two regulators for the same pipeline?

Mr BARNETT: Yes. If we had a processing plant on an offshore platform in commonwealth waters, the member would be right.

Mr GRILL: That point is worth making.

Mr Barnett: Yes.

Mr THOMAS: Given the important role that the minister has to play in this matter, I hope he will continue to observe the interests of people.

Mr Barnett: A review of the upstream implications is currently taking place. The State Government, through the officers here, is strongly arguing that the code should not go upstream. That is a particularly strong Western Australian position which is not shared by other States, which do not really give a damn about it because it is not an issue for them.

Mr THOMAS: The minister is obviously having a hard time with some of his colleagues in other jurisdictions.

Mr Barnett: No I am not.

Mr THOMAS: That is obviously jaundicing his view. If he were to take a detached view and look at our amendments, he would notice that we would retain the right for the state minister to exercise the functions of the minister, and not the commonwealth minister, even for transmission. He would continue to exercise all of his roles, notwithstanding that the Australian Competition and Consumer Commission would be the regulator, and the same goes for the appeal body and the arbitrator. Having a commonwealth body exercise powers under our legislation would not prejudice the coverage of those important roles.

Mr Barnett: You would have a commonwealth body exercising powers responsible to a state minister. Do you think that the Commonwealth would agree to that?

Mr THOMAS: It does it in South Australia.

Mr Barnett: To achieve that, it would have to be accepted by the Commonwealth and all other state jurisdictions. The code would have to be changed. It has been enacted in other places. There is not a snowball's chance in hell that the Commonwealth would agree to do that. What you are proposing is a nonsense. You will talk about it for another two hours and then we will go home.

Mr THOMAS: I was trying to make a minor point that under our amendment, if the legislation were to be carried, there would be the protections of having a state minister, a state arbitrator and a state appeal body to exercise various functions under the code.

Mr Grill: Under our amendment there would not be the potential for two regulators of the same pipeline.

Mr Barnett: That is a long bow.

Mr THOMAS: We know that the minister has had an unhappy experience with the ACCC. Obviously he is having unhappy experiences in his meetings with his colleagues in other jurisdictions.

Mr Barnett: They are all happy; everyone has agreed.

Mr THOMAS: In the negotiations of extending the principles upstream, the minister seems to feel that people in other jurisdictions are not attuned to our circumstances.

Mr Barnett: They are not interested because they do not have an offshore gas industry. It is not an issue for them.

Mr THOMAS: We are not talking about the offshore gas industry.

Mr Barnett: Upstream in this State means offshore.

Mr THOMAS: The fact that the minister has had those unhappy experiences and is still having them should not jaundice his view against all bodies established by the Commonwealth.

Mr BARNETT: What the Opposition is proposing, even if anyone could imagine some sentiment for it, is simply not practical; it is not legally possible; and it will not politically happen. To require the Commonwealth to amend its legislation and all other States to amend their legislation to accommodate a proposal by the Opposition that the federally-based ACCC will on these issues report to a state minister is simply a nonsense. Members opposite know it is a nonsense and that it will not happen. The only way in which Western Australia will retain any sort of role will be to have a state-based regulator.

The example the member raised of offshore upstream petroleum is of major concern to us because that is where the future wealth of the industry lies in Western Australia. It is not a big issue for Queensland or Victoria because the Bass Strait fields are depleted or declining. It is not an issue for New South Wales because it does not have any offshore industry. It is not an issue for South Australia because although it hopes it has some offshore gas it has none. It is not an issue for Tasmania. Those States are talking about the Cooper Basin, where they measure the processing plant and the distribution pipelines through metropolitan areas. Those are all important issues there but they are not the main game here.

We are concerned about making sure that we are able to see things happen at a local level on the main game; that is, the development of this industry. We will apply that code. Our regulator will work closely with other jurisdictions. He or she will apply the code. That is the regulator's job. The regulator will not be out there setting policy and arguing points. No doubt points of difference will emerge but I expect at a professional level between the state-based regulator and the ACCC those points of difference will be resolved. They will be in constant dialogue and obviously work together. Most of the



issues will be dead straightforward and will be dealt with. There will be questions of access, pricing, contracting and whatever else. They will be fairly simple cases which will be handled locally here. Under the Opposition's scenario, a small to medium-sized business would be shooting all over the country every time it had a problem. That is great for the big companies and the Chamber of Minerals and Energy, which would much rather have their lawyers out of Melbourne deal with it, but for smaller and medium-sized resource and manufacturing companies and commercial enterprises, we will provide a service which will mean they will not be jumping on aircraft every five minutes to try and get decisions out of the ACCC.

**Clause put and passed.**

**Clause 7 put and passed.**

**Clause 8: Extension of the Law and the Regulations to certain pipelines reticulating gas other than natural gas -**

Mr THOMAS: The intent of the clause is fairly obvious but I want the minister to explain where he thinks this might be applied. The pipelines envisaged in this legislation are those that carry natural gas but this clause extends to gases other than natural gas. The definition of gas other than natural gas means hydrocarbons. The minister might like to seek advice from his advisers. Could it possibly include gas on the production side of a process plant; that is, gas which is not market ready but which would meet some, if not all, of those criteria?

Mr BARNETT: This again is an example of where there is a difference in Western Australia. We have liquid petroleum gas reticulation. Effectively treated liquid petroleum gas is reticulated in Mandurah and Albany. To the best of my adviser's knowledge there is no other place in Australia where LPG is distributed by reticulation. The situation is unique, representing the fact we have a State with huge dimensions, and that simply accommodates a local issue.

Mr THOMAS: The minister was talking to his adviser when I asked the question, so he might not have heard the whole of it. Could this clause conceivably be used to extend the law and regulations to gases on the well side of a processing plant?

Mr Barnett: Such as CO<sub>2</sub>?

Mr THOMAS: No. Would gas that has not been through the processing plant be covered under this clause?

Mr Barnett: No. It is natural gas whichever side of the processing plant it is on.

**Clause put and passed.**

**Clauses 9 to 14 put and passed.**

**Clause 15: Conferral of functions on NCC -**

Mr THOMAS: I placed an amendment on the Notice Paper. Subsequently I had it redrafted. I have had it reduced to writing and have circulated a copy to the minister and his advisers. I seek to move the amendment.

The DEPUTY CHAIRMAN (Mr Barron-Sullivan): The member must oppose the clause. If his opposition is successful, he may then move the amendment.

Mr THOMAS: I intend to oppose the clause with a view, if successful, of substituting another clause. The substitute clause is outlined on the paper circulating the Chamber. The principal difference between the amendment on the Notice Paper and the one being circulated is that here we will import into the scheme the Australian Competition and Consumer Commission and the National Competition Council. Previously, I proposed to import the commonwealth minister, the Australian Competition and Consumer Commission, the National Competition Council and the Australian Competition Tribunal. Under the Opposition's scheme, the commonwealth minister and the Australian Competition Tribunal will have no role. Therefore, it is unnecessary to import them into the scheme at this stage.

This is the first amendment to establish the comprehensive alternative scheme. It would be economical to now conduct debate on that scheme. Most of the other amendments flow and many would make little sense without the passage of my substitute clause. A number of amendments stand on their own which we will debate, but I propose to conduct the principal committee debate on this clause.

The Opposition's proposition is that we are part of Australia, which has decided to have a national code and a national regulator. In the sparring that has taken place between me, my Labor colleagues and the minister, it has been said that Western Australia is unique. In fact, it is claimed that people operating at a national level appointed by the national Government do not have a propensity to understand the unique features of Western Australia; therefore, decisions are likely to prejudice Western Australia's interest: At best, they will be overlooked; at worst, those people will be uncaring about the unique interests of Western Australia.

That is not a credible argument. The minister has had a couple of unhappy experiences with the feds, which has jaundiced his view, particularly in relation to the Australian Competition and Consumer Commission. The fact is that the ACCC would

be exercising jurisdiction conferred on it by this legislation. The minister's unhappy experience relates to the Australian Competition and Consumer Commission exercising jurisdiction conferred on it by the Trade Practices Act. The minister may or may not agree with the Trade Practices Act and the way the Australian Competition and Consumer Commission discharged its function under that Act. I am sure we would all agree with him in the notorious example he cited.

Mr GRILL: The member for Cockburn is developing a coherent argument which he should develop further.

Mr THOMAS: The fact that the minister does not like what is done in discharging the Trade Practices Act, or some other function, does not mean that the ACCC will necessarily display the same qualities in relation to jurisdictions under this Act. We should be a little imaginative. If the Labor Party wins the 3 October election, and the amendments are successful in this Chamber or another place, I will make representations to the newly elected Beazley Government. I will say that as Western Australia produces 52 per cent of Australia's gas and the ACCC has the role in regulating the gas industry, the ACCC gas division should be based in Perth.

Mr Barnett: The issue of volume will not be the point. The issue will be access to a larger market on the east coast. The issues which will arise here will be distinct from such matters. That is the point. Western Australian businesses will be flying backwards and forwards waiting for a decision, and be dropped to the bottom of the queue.

Mr THOMAS: We have heard this call from the conservative side of politics since Sir Charles Court in the 1960s. The conservatives rabbited on about the gnomes of Melbourne before the national capital was moved from Melbourne to Canberra. They said that people in the east did not understand the problems faced in this State. That is not so. The fact that the minister has had a couple of unhappy experiences is colouring his view. The unhappy experiences related to the Trades Practices Act in association with an illegal deal. If a state-based regulator had enforced that law, one would hope that the same result would have occurred.

Mr Barnett: If you are talking about Epic-AlintaGas, who said it was illegal?

Mr THOMAS: The Australian Competition and Consumer Commission.

Mr Barnett: Will you withdraw that tomorrow if you are shown to be wrong? Will you apologise?

Mr THOMAS: No. I certainly will not apologise.

Mr Barnett: It is just another careless slur.

Mr THOMAS: It is a deliberate slur.

Mr Barnett: We now understand: It was a deliberate slur. We had earlier a contrivance to embarrass the minister, and we now have a deliberate slur rather than an ad hoc slur!

Mr THOMAS: The minister used the word slur - I repeated him.

Mr Barnett: You said it was a deliberate slur - your choice, not mine.

Mr THOMAS: It was a deliberate choice of words directed at the minister.

Mr Barnett: The member says that the deal was illegal when it was never found to be illegal.

Mr THOMAS: Who will spare me from this troublesome minister? I do not want to labour the point. The Epic-AlintaGas deal, which the minister originally said was wrong and should go to tender, was in the end canned by the ACCC. The minister said that it was wrong and not illegal. It was not found to be illegal in the sense of anyone being convicted in court. However, the ACCC said that this would have happened, but the proponents decided to concede. The minister beat his chest and said the ACCC was wrong. It was not illegal, but he would not call its bluff by taking the matter to court. The minister backed off. In practice - the minister has chosen not to listen to what I say - that is precisely what happened. We said that the Epic-AlintaGas deal, the most recent of the Barnett shady deals, was wrong. We said it would be caught out and prohibited by the Australian Competition and Consumer Commission. The minister said we were wrong. However, ultimately we were vindicated.

Mr BARNETT: The AlintaGas-Epic deal was not illegal, and it was not prohibited by the Australian Competition and Consumer Commission. It is currently in place. The only difference is that instead of AlintaGas, it is Epic, and the arrangements with Kingstream are in place. They were ticked and approved by the ACCC. It is in place as a current commercial arrangement. End of story.

Mr THOMAS: It was found to be a restraint of trade.

Mr Barnett: You cannot make it up; it is a contract that is binding and is accepted. It is not under challenge; it applies today. Never mind, just make another deliberate slur.

Mr THOMAS: The minister is starting to lose it because he does not like to be reminded of the fact that he was caught out

by the Australian Competition and Consumer Commission as a party to an arrangement that was in breach of the Trade Practices Act. It is as simple as that. The parties had to act accordingly, prior to the sale of the pipeline.

Mr Barnett: If you were a person of any honour and integrity you would make these statements outside, but you will not.

Mr THOMAS: Now we see the minister's form. I mentioned during the second reading speech that - I did not want to go into these matters - the famous Ord hydro deal put to the minister by the treasurer of the Liberal Party as a great deal. He handed over the resource base of a substantial industry without engaging in any competitive process. The kindest description is to call it one of the most bizarre actions of a Resources Development minister in the history of this State. There was no pretence of a competitive process. The treasurer of the Liberal Party said he could generate electricity much cheaper than diesel in Kununurra. One would not have to be too much of an engineer to be able to generate electricity cheaper than diesel in Kununurra. The minister went along with it.

I said that if this were 1992 it would be a term of reference at the Royal Commission into Commercial Activities of Government and Other Matters. His mate, Mr McKinnon, the treasurer of the Liberal Party, said it was libel and tried to prevent me from undertaking my duties as a member of Parliament with portfolio responsibilities in the energy area by trying to sue me. He tried to intimidate me. Ultimately he had to withdraw his action.

Mr Barnett: He withdrew it; he did not have to withdraw it. Do you know why he withdrew it?

Mr THOMAS: No.

Mr Barnett: He discussed it with me and we concluded that it was not worth bothering with someone like you, so he gave it a miss.

Mr THOMAS: I am not a person of any great means, but I have a house. If he had a legal basis on which to proceed he could have got the value of my house. It is only humble, but it is better than nothing. The minister is saying that he had the legal basis on which to proceed, but I am of such low consequence it was not worth taking the \$100 000 or whatever that he could get from me.

Mr Barnett: He was not interested in your financial assets; he could not be bothered with you at the end of the day. He had other things to do.

Mr THOMAS: I am glad the minister tendered that advice, if that is what he did. My legal advice was that the case was something with which I could wipe a part of my anatomy if I had a mind to do so, it was so absurd. Perhaps at the same time the minister also gave advice and he took it. I think his legal advice was that it was without substance. That is not the point. The point is that those people like to use the courts and threats of suing people to silence criticism. The fact is that he defended the Alinta-Epic deal days before the pipeline sale went through. The ACCC came out with its finding, but the minister said it was wrong, although he was not prepared to challenge it, in the same way his mate Mr McKinnon was not prepared to challenge me. I was happy to go to court and argue that what I said was correct and that I was entitled to say it, but he was not game to go through with it.

Mr Cunningham: I would like to hear more from the member for Cockburn.

Mr THOMAS: We can put that behind us. I am happy to make comments outside this place; I do that all the time. The minister should ask the journalists in the press gallery what I say. He should subscribe to my press releases.

Mr Barnett: You know very well that privilege applies within the confines of the Parliament.

Mr THOMAS: Does it apply to the press releases that are sent through the fax machines of Parliament? If the minister subscribes to my press releases he will see that I say publicly what I am saying now. I could produce a litany of shonky deals.

Mr Barnett: I would not bother to sue you because I would not waste my time.

Mr THOMAS: Why did the minister ask me to say it outside?

Mr Barnett: You are the sort of person who will say anything in here. When I pointed out that you said something incorrect a while ago, you said that was a deliberate slur on that occasion. What an extraordinary statement. If you want to accuse me effectively of corrupt behaviour, you should have the courage to say that publicly. I will not sue you but you should have the courage to make those statements in the public arena and see what happens to your credibility.

The DEPUTY CHAIRMAN (Mr Barron-Sullivan): I remind members to address remarks through the Chair.

Mr THOMAS: I do make those comments about the minister outside the Chamber.

Mr Barnett: You should do it tomorrow.

Mr THOMAS: I refer to my credibility and the statements I make about the minister. I made a statement outside this Chamber when I made a submission to the Commission on Government using, I am sure, the same words, although some

time has passed since then. The transcript is probably available. I made very similar observations to those I am making now to Mr Gregor and the other members of the COG, Frank Harman and others. Two or three of them were not there. I cited some of the same examples and others have occurred since then. The COG said that I was right. When it gave its report on commercial confidentiality and government trading enterprises, who did it cite as an example of how a minister should not behave in terms of accountability? The Minister for Energy. That is an example of my making these remarks. The COG said I was right and the minister got it wrong. Many others have said that. As we have found regarding the other jurisdictions, the minister is the only person in step, for which I congratulate him!

The minister said that if the ACCC were to undertake the role of regulator people would be on planes to Canberra all the time. We could be a little bit imaginative and suggest that, as 52 per cent of Australian gas is produced in Western Australia, people within the ACCC who are responsible for regulating the gas industry should be based in Western Australia.

I am sure that if a Labor Government is elected on 3 October members on this side of the Chamber will make that representation to the Beazley Labor Government. If, perish the thought, the Howard Government is re-elected, I hope the minister will make similar representations about the people who are responsible for the regulation of the industry being placed where they should be; that is, in the capital city of the State that produces most of the product. It might seem rather fanciful that that might occur, but it is not at all fanciful.

Mr CUNNINGHAM: I am not quite the Opposition Whip at this stage but I would like to hear more from the member for Cockburn.

The CHAIRMAN: That is not the right response. If that is all that the member for Girrawheen has to contribute to the debate, I will call the next speaker. Members should not say that they would like another member to continue; they must add to the debate.

Mr Barnett: Let us hear the views of the member for Girrawheen about the regulator.

Mr CUNNINGHAM: My views are very similar to those of the member for Cockburn - in fact, they are nearly exactly the same. I believe that the member for Cockburn is about to blow up the debate. He will make sure that the Government pays for what it has done.

Mr THOMAS: It might be thought that it is rather fanciful that I should suggest that the Australian Competition and Consumer Commission should be responsible for regulating gas in Western Australia, given that Western Australia produces 52 per cent of the nation's gas. In fact, it is not fanciful. There was a time, perhaps 10 years ago, or much less in some cases, when it would have been thought fanciful that gas producers should be based in Western Australia. One by one they are all coming over. Westside, BHP Petroleum and the like are locating their operations in Western Australia. As the centre of gravity of Australia's petroleum industry has moved from Victoria to Western Australia, they are all locating their head offices in Perth. In time to come, the ACCC or other bodies that are responsible for administration of the industry should also be based here.

The minister should be a little more imaginative. It is not simply a matter of people catching planes. Many people who are involved in the industry are national operators in any event. They are national companies and their executives are national managers. They routinely move between States as they undertake their duties as executives in those companies. It is wrong to suggest that people catching planes will be inconvenienced. We have found that the majors - I agree with the minister that there is not the same unanimity among the minors, but that is understandable - who operate in more than one State, and that is a very substantial proportion of the industry, say, "This should happen if for no other reason than the fact that we have to deal with only one organisation." Under the minister's proposals, those who operate in more than one State must deal with more than one organisation. A marked preference has been expressed - they would prefer to deal with only one organisation. Such arguments about the convenience of the people involved in the industry have no substance.

Finally - almost finally, anyway, or the penultimate point - the minister has painted a scenario which suggests that insensitive bureaucrats from the east would consider the industry in Western Australia, and that they are not capable of understanding our so-called unique circumstances. The minister seemed to indicate that he did not understand the structure in his own legislation, because a substantial number of the functions that he talked about which he would not want to be exercised by the ACCC are exercisable either by the State's Minister for Energy - him, regrettably - and will continue to be the Minister for Energy in Western Australia, by the arbitrator when there are disputes between parties in terms of the access regime, or by the appeal body. Each of them would exercise those functions for distribution and transmission under the scheme that we have put forward.

It must be said that the minister's opposition to the project is jaundiced by his unhappy experience with the ACCC and his unhappiness, apparently, in persuading his ministerial colleagues in other jurisdictions to come to his point of view. It is very difficult, I know, when one is the only person in Australia who is in step, as the minister is, it would seem. That has coloured his perceptions of commonwealth public servants. It is such that he should reconsider his position and support an eminently reasonable, practical, well-thought-out proposition as is reflected in the amendment.

Mr BARNETT: I will restate what is happening. This measure implements a national access code for gas transmission pipelines - big pipes - and gas distribution pipes - little pipes. It is an agreed code to apply throughout Australia - a code developed cooperatively between federal and state jurisdictions. Other States have interstate pipelines, and the interstate pipelines are the big ones - the transmission pipes, not the local distribution pipes. They cross state borders. Clearly, one regulator is appropriate. The ACCC is the regulator on the east coast, in the other States, of the transmission pipeline.

When it comes to distribution pipelines, there are separate state regulators in every State. Indeed, the ACCC does not act anywhere as the regulator for distribution pipelines. On the east coast - New South Wales, Victoria or wherever else - if a gas transporter wants access to a pipeline, if it is a distribution pipeline he deals with a state regulator in Sydney or Melbourne. If it is a transmission line - one that crosses state borders, typically, or one of the larger volume pipelines - he deals with the ACCC. They are all around Sydney and Melbourne it is all pretty convenient. If he has a circumstance - for example, a gas transporter or a customer and the gas is going through both a transmission pipeline and a distribution pipeline - he will deal with the ACCC on an access regime for the transmission line, and he will deal with the state regulator for the distribution line, probably all within Sydney and Melbourne or wherever it might be. In Western Australia, though, we, like every other State, are required to have a state-based regulator for distribution. The only difference is that our state-based regulator will also deal with transmission, so the gas customer who wants to bring his gas molecules down a transmission line and through a distribution line can deal with the one state-based regulator who can deal with both issues in Western Australia.

That is the difference. Otherwise, the Western Australian producer or customer would have to deal with the state regulator here on distribution, and then jump into a plane and fly to Sydney or Melbourne to deal with the transmission issues. That is the difference - the same code, the same rules apply. A state-based administrator in Western Australia can deal with both transmission and distribution within Western Australia. That is a damn sight more sensible. It also allows that person to be close to the scene, to be conscious of the upstream issues that we have debated and all the other issues that apply, and to understand the history of resource development projects, of the agreement Acts, of the development of the Dampier to Bunbury natural gas pipeline and the goldfields gas pipeline - all unique, special circumstances here. That is what it is about. Opposition members oppose it and suggest that somehow we can turn it on its head and have the ACCC work here but respond to the state minister. Come on, that is loony-tune stuff!

Mr GRILL: I do not believe that there are clear-cut arguments on either side of the debate. Members of the Opposition thought about the matter for some time before we brought forward the amendment. We canvassed the industry, and it is divided on the matter as well. The minister indicated that smaller companies probably favour a locally-based regulator. But the great majority of the industry favours the ACCC as the regulator. Organisations such as the Chamber of Mines and Energy, the Chamber of Commerce and Industry and the Australian Pipeline Industry Association, although they have been somewhat muted in expressing their opinion, all favour the ACCC. They favour the ACCC because, first, they believe that it is in their best interests, and, secondly, because they think that it makes a much more coherent policy for Western Australia to be part of an Australia-wide system.

Unfortunately, there are a few unpalatable facts about Western Australia. One of them is that the Western Australian business community is very small in Australian terms and tiny in world terms. A great percentage of the business community is not in Western Australia. That also applies to the petroleum industry. The problems in selecting independents in this arena will be very important.

Mr Barnett: Why do you assume that the regulator will be someone from the petroleum industry?

Mr GRILL: I do not presume that.

Mr Barnett: That seems to be the argument.

Mr GRILL: The minister should listen to the argument.

Mr Barnett: There is no reason. It could be a lawyer, God forbid!

Mr GRILL: That would be unfortunate; however, it could be a lawyer. I do not think that would be welcomed by the industry.

Mr Barnett: It will need a lawyer to understand the code!

Mr GRILL: The larger part of the industry in this State - as represented by the Australian Petroleum Exploration Association, the Chamber of Mines and Energy and the Chamber of Commerce and Industry of Western Australia - would favour the Australian Competition and Consumer Commission. We thought about taking advice on the issue. There are no clear-cut arguments on either side. However, looking at the situation on balance, we favour the ACCC to carry out that function. Even the legislation proposed by the minister contemplates that situation under certain circumstances. His proposition for the regulator in this State to cover both transmission and distribution lines would change overnight, according to him, in the event that a pipeline went out of the State. It is possible in future that we will have a pipeline going out of the State.

Mr Barnett: For that one pipeline, yes, and it makes it very clear that it is an interstate pipeline regulated by the ACCC. We recognise that for any interstate pipeline.

Mr GRILL: The minister is just confirming the point that I am making.

Mr Barnett: We have deliberately agreed that; there is no question about that either.

Mr GRILL: That could change overnight.

Mr Barnett: For that one pipeline, yes.

Mr GRILL: The minister concedes that the situation he proposes may not work because he believes there should be a review of a Western Australian independent regulator within five years. The truth about Western Australia is that we have a tiny business community and it will be very hard to select an independent arbitrator from that community. There is a history all around the world, and in Western Australia, of these types of regulators - and they have a whole range of names - being captured by the industry that they serve. This capturing does not necessarily occur in the first few months or the first year or two. However, almost invariably a situation arises where these regulators are captured. The ACCC is not perfect and I have been prepared to criticise it previously in this debate. However, one thing we know about the ACCC is that it is fiercely independent. It will administer this law as regulator in all the other States. It will build up a body of expertise. It is unlikely that it will be captured by the industry. It is primarily on that basis that the Opposition favours the ACCC carrying out that role.

**Clause put and passed.**

**Clause 16: Conferral of power on NCC to do acts in this State -**

Mr THOMAS: I would like to continue the argument made by my colleague, the member for Eyre, in our opposition to clause 16.

Mr Barnett: Are you moving your amendments or not? You did not move them.

The CHAIRMAN: No, he cannot.

Mr THOMAS: Under the standing orders I must oppose the clause and if my opposition is successful, I move my amendment.

Mr Barnett: But you did not vote against the clause.

Mr THOMAS: I did, actually.

The CHAIRMAN: The clause must be defeated for the member to move his amendment.

Mr Barnett: I will give you a tip: If you want to defeat a clause you vote against it, you do not remain silent.

Mr THOMAS: My recollection is that I did vote against it. However, I thank the minister for his advice.

The CHAIRMAN: Members, we are now discussing clause 16.

Mr THOMAS: To add to the point that has been made by my colleague, the member for Eyre, there are books written about the incidence of regulators being captured by the industry which they regulate; and there is a need to give the regulator in this industry a breadth of vision such that it is able to be independent and detached from the industry that it is seeking to regulate. In this case the Government has rejected both options. It had two options of giving the regulator some breadth. One is to give it a jurisdiction which would extend beyond gas to electricity, rail, water and other areas where similar questions arise such as those under this access code. In that case, even though the regulator might be Western Australian based, it would have a breadth of vision such that it would be less likely to be captured by any one part of the jurisdiction for which it is responsible. However, the Government has not backed that option; and that is unfortunate. It also knocked back the other way of ensuring an independence and detachment from the industry which is being regulated; that is, to pick up one that is already there, which is able to be accessed and which does not require all of the steps necessary to set that up. Under either of the options, the Government is not taking the steps that we hoped it would in order to ensure that degree of independence; hence the amendments that we are moving.

Finally, on this point, the minister asked whether the ACCC would be prepared to undertake the work in these circumstances. We will have to ask the Parliament which passes the legislation. I do not think we could command it but it has shown a desire to extend its turf. I have been talking to some colleagues who have been involved in discussion in another place in one of the committees in relation to rail access. They have been assured that the ACCC is keen to play a role in Western Australia in relation to rail. I have no doubt that it would be prepared to do the work here under the excellent scheme proposed in this legislation as we would amend it. Therefore, there is no substantial reason for rejecting this excellent proposition put forward which would give Western Australia an independent regulator and a scheme that is regulated in

every State. Although the minister might say there is a convenience for people who are involved in transmission in more than one State, that is a much more common scenario.

Mr BARNETT: Very few Western Australian gas producers or gas customers must deal with transmission in more than one State; in fact, no-one does. Until a pipeline goes across a state border, no-one will.

While members opposite oppose a state-based regulator for transmission - they suggest that such a regulator would not be competent - they implicitly accept a state-based regulator for distribution. The issues can be exactly the same and just as complicated. According to members opposite, the State can have a regulator for distribution, but for transmission it must be the ACCC on the other side of Australia dealing with the same code and rules and the same companies, gas producers, gas transporters and buyers. It has me beaten.

Mr THOMAS: I am glad we have the minister beaten.

Mr Barnett: The strategic move was when you did not vote; that was stunningly brilliant.

Mr THOMAS: I suggest that the minister have his ears cleaned. I will shout louder next time so that he hears. In fact, I will ensure he hears by calling for a division.

The CHAIRMAN: I heard the member for Cockburn vote no.

Mr Barnett: It was gentle opposition.

Mr THOMAS: The minister should clean his ears.

The regulator's primary customers will be the operators of the pipeline, who will submit their access regimes and seek to have them approved. For the most part they operate in more than one jurisdiction. A substantial majority of those who have spoken to the Opposition have indicated a preference to deal with one regulator in Australia. Not many pipeline providers, as opposed to shippers, operate in both transmission and distribution. In this State, those involved in transmission are not involved in distribution. The argument of convenience that the minister put up is false.

He put an argument in his school project presentation about interstate pipelines. The reason for the ACCC's original involvement in gas transmission was the advent of interstate pipelines. However, one does not need an interstate pipeline to have ACCC involvement. We can avail ourselves of its independence and those services without having an interstate pipeline. Obviously, the Opposition believes that the State should avail itself of those services.

The agreement between the States provides that after five years, the position of the Western Australian regulator will be reviewed. If an interstate pipeline is built, it will be reviewed then. There is a review process. It is a sound proposition that the role of the ACCC in Western Australia be reviewed. The Opposition has gone one step further in seeking to have that included in the legislation.

If the problems that the minister envisages in his xenophobic fear of people on the other side of the continent were to be realised and were he or the other bodies involved - specifically the regulator and the appeal body - not able to legislate to prevent that, after five years it would be reviewed and the situation could be reversed. It is by no means irrevocable.

However, at this early stage when we are setting up the system, why not avail ourselves of the services of a body that has the experience required and the confidence of industry? People do not look fondly on regulators any more than they look fondly on football umpires. However, most people believe the ACCC does a reasonable job in its regulatory functions. They do not have the minister's jaundiced view, because they have not had his unhappy experiences. There is no reason that we should not avail ourselves of those services. If in five years or sooner we do not like what it is doing, we can reverse this arrangement.

Mr GRILL: The Opposition appreciates the parochial arguments put by the minister in favour of an independent, Western Australian regulator. My every instinct is to favour a local regulator. Anyone who has had any dealings with the bureaucrats in Canberra would want to deal with someone in Western Australia. It is a frustrating business. It is even more frustrating to find that at ministerial conferences the Commonwealth sticks with New South Wales and Victoria and excludes the other States in many debates. My every instinct and the instinct of my colleagues is to favour a locally-based regulator.

However, there are profound arguments against a locally-based regulator. Some of the biggest players in this field in Western Australia - Western Power and AlintaGas - are government owned. This regulator will be appointed by the Government; his appointment will be determined by the Government; the conditions under which he can be suspended will be determined by the minister; and his salary will be set by the minister, as will the overall funding for his staff. The minister will be able to issue directions to this regulator. It gets back to the old golden rule: Financially this regulator will be almost totally controlled by the State Government. The State Government is one of the major players in this arena. How can we be sure that a regulator whose position is controlled by the Government or the minister will be independent?

We can include rhetoric in the Act. It already provides that, despite all of this, the minister cannot interfere in the day-to-day

operations of the regulator. However, if the minister or the Government has control over these other features of the regulator's activities, can we be sure that that person will be independent, especially when at least two key players in the market are government-owned enterprises? It looks wrong to the Opposition, and it certainly looks wrong to a number of the players in the arena. From the beginning the regulator does not appear to be at arm's length.

All the points I have mentioned about control, direction, salary, remuneration and funding are set out clearly in the Bill. It is not an arm's length situation, although I know that the minister would like it to be. The advisers would say that they have included safeguards in the Bill, but they do not achieve their goal. It cannot be at arm's length, and the Government is a big player in this arena. For that reason a number of commercial operators are not happy about this situation.

Mr BARNETT: The member is suggesting that if there is improper conduct, there may be an undesirable outcome. That may be the case. The community must have some confidence in elected Governments and ministers to perform their duties and to appoint people who not only administer the code, but also have the professional expertise and integrity to maintain their independence. A number of so-called independent groups, individuals and bodies report to the Government, and to me in particular. I do not think I am any different from any other minister.

Mr Grill: There is already a rumour circulating that the regulator will be someone straight out of a government department.

Mr BARNETT: Who knows? There may be lots of rumours, but I will not speculate.

Mr Grill: It does not look wholesome.

Mr BARNETT: Immediately the member has cast a slur on it.

Mr Grill: No, I am talking about perceptions.

Mr BARNETT: The member can talk about perceptions as much as he likes; I will talk about the reality. One of my advisers has a range of responsibilities, quite independently administered of whatever I might think, and I assure the member that he administers his responsibilities totally independently. He would strongly resist interference from me or anyone else. There is a number of similar areas across government. Indeed, the boards of the two utilities are fiercely independent on commercial matters, and if the Government wants to achieve anything, it must explicitly set up arrangements to do so, such as the mid west gas pipeline. Clearly, that is an explicit, open arrangement because there is no way I can dictate to them.

Mr Grill: If it is all that open, why not answer my questions on the subject?

Mr BARNETT: I do not know which questions I have not answered. I answer 20 questions a day in my portfolio, and I cannot remember them all. The whole basis of the member's argument is that because this person is appointed by government, he is somehow dependent upon or influenced by government. It could be argued that the higher the level of Government, the bigger the jurisdiction and the more distant the relationship might be. However, who appoints the Australian Competition and Consumer Commission? It is the Federal Government. It might be argued that it is a larger jurisdiction and, therefore, there is greater separation. There is an element of truth in that. However, the member should not for a moment believe that the Federal Government and, implicitly, the ACCC does not have a number of agendas, one of which has been the national grid and national pipeline networks. These things have not necessarily been in the interests of various State jurisdictions, contracts and obligations. Hence, the push by the Commonwealth and various agencies to get interconnection with Queensland, which will probably eventually happen. Clearly, the Commonwealth has a series of agendas on energy, and the ACCC - its agent and its appointee - tends to pursue those agendas.

The member is talking about a matter of degree. There can be conflicts of interest at a commonwealth level and at a state level but, at the end of the day, what will the regulator do? He will approve or disapprove of access arrangements, set reference tariffs if they are not agreed or not acceptable, and so on. They are pretty limited roles, and any disputes can be referred to the arbitrator.

Mr Grill: We agree that the arbitrator should be Western Australian based; we agree that the court that decides matters of law should be the Supreme Court; we agree that the minister who decides questions of coverage should be the Western Australian minister; but, in this arena of the regulator, we feel it is open to abuse especially in the situation in Western Australia.

Mr BARNETT: It is not open to abuse. The member claims there might be a conflict of interest. I concede that in a relatively narrow jurisdiction there might be some conflicts but that presupposes the minister and the Government of the day will somehow influence the regulator. I do not believe that will happen. If a regulator were influenced inappropriately in that way he would be failing in his or her job and the matter would be raised in this Parliament, and industry would raise it.

Mr THOMAS: The minister said that there would be conflicts of interest and that people might act improperly. The minister does not understand the point. It is not that people would necessarily have a direct conflict of interest - in fact, the legislation provides for that - or that people would act improperly in the sense of corruption or an evil act for personal gain. What



would happen is that the culture of the milieu in which they operate is likely - to use the minister's second reading speech - perhaps to be a little too conscious of Western Australia's unique circumstances. We either do or do not support competition and the code. We want somebody who will rigorously enforce the code and perhaps not be too understanding. Ministers may be faced with companies in difficult economic circumstances and the net result will not be that the asset ceases to work and convey its benefits; it may be that it is devalued and someone ends up owning it, but its functions will be the same. If we believe in a rigorous competitive economy that is the sort of regulation that we want. The Opposition's concern is that the culture of light-handed regulation that has prevailed in this State up to now, which we have demonstrated in the second reading debate has failed the State in efforts to achieve lower prices, will be the milieu that will prevail in the State. For that reason it is not the most desirable structure. It is best to have something which is detached, and the Australian Competition and Consumer Commission is sitting on the shelf waiting to be picked up.

Clause put and a division taken with the following result -

Ayes (22)

Mr Ainsworth	Mr Day	Mr McNee	Mr Trenorden
Mr Baker	Mrs Edwardes	Mrs Parker	Mr Tubby
Mr Barnett	Mr House	Mr Prince	Dr Turnbull
Mr Barron-Sullivan	Mr Kierath	Mr Shave	Mr Wiese
Mr Board	Mr MacLean	Mr Sweetman	Mr Osborne ( <i>Teller</i> )
Mr Bradshaw	Mr Masters		

Noes (16)

Ms Anwyl	Mr Grill	Mr McGinty	Mrs Roberts
Mr Brown	Mr Kobelke	Mr McGowan	Mr Thomas
Dr Edwards	Ms MacTjerman	Ms McHale	Ms Warnock
Mr Graham	Mr Marlborough	Mr Riebeling	Mr Cunningham ( <i>Teller</i> )

Pairs

Mr Court	Dr Gallop
Mr Omodei	Mr Ripper
Mr Johnson	Mr Carpenter

Clause thus passed.

Clauses 17 to 21 put and passed.

**Clause 22: Application of Commonwealth AD(JR) Act in relation to other scheme participants -**

Mr THOMAS: Perhaps if members opposite keep an open mind and listen to the arguments for the amendments, they might change their minds. I do not intend to oppose this clause. It applies the commonwealth Administrative Decision (Judicial Review) Act in other jurisdictions. It is a rather strange provision. I assume it relates to pipelines that are envisaged in the Bill, but could not conceivably exist; for example, distribution systems that cross state boundaries or whatever. In any event the intent is quite clear.

When we were contemplating the way in which we would seek to amend this legislation, we were desirous of importing the commonwealth administrative law into the state tribunal. We seek to bring the Australian Competition and Consumer Commission to regulate this legislation in Western Australia, although the state regulator will obviously oversee transmission and distribution if our amendments fail. Even if they were to succeed, the regulator would have responsibility for distribution. The state regulator will exist. However, he is not directed to any body of law about the way in which he will act. For that reason, we have an amendment on the Notice Paper.

The state regulator would have a body of administrative law provided to him in terms of appeals - law which has arisen under the commonwealth Administrative Decisions (Judicial Review) Act. Most people who have considered the law covering the judicial review of administrative decisions believe the body of law and precedents that have been built up under this commonwealth Act is very desirable. When the Commission on Government contemplated the notion of judicial review of administrative decisions in Western Australia, it said that that sort of system should apply in the state jurisdiction.

No systematic administrative law in this State is equivalent to the commonwealth Administrative Decisions (Judicial Review) Act. I have raised that matter in clause 22 because while it has no direct application to this clause, it is incidentally relevant because this clause cites that commonwealth administrative law with regard to other jurisdictions. Could we not import that law into the regulatory system in Western Australia by directing the appeals body to have regard to that body of law and hence set up a systematic set of principles against which decisions that go to that appeals body will be able to be measured? I commend that to the minister as a separate variable. The minister does not need to accept our principle that the ACCC

should come into Western Australia in order to accept that variable. It is quite separate, because it applies to the state regulator.

Mr BARNETT: As I understand the judicial system and the way in which decisions are made, as a matter of course the state-based regulator will take into account decisions made at the commonwealth level and by other state regulators. That is the way the system operates judicially, and it is the way it will operate in practice.

Mr THOMAS: That is not necessarily the case, because the jurisdiction is being created, and there is no direction. I hope that it will take that into account, but nothing will prevent it from not doing so. It is appropriate to have a direction from this Parliament that it should do that. The best established body of administrative law in Australia is able to be cited, and the appeals body should be directed to follow that body of law. I again ask the minister to be a bit more considerate of suggestions from outside his immediate circle.

**Clause put and passed.**

**Clause 23: Exemption from taxes-**

Mr THOMAS: This variable is separate from the main thrust of our argument this evening, which is that the ACCC should undertake the regulatory role. When the interstate agreement was reached and the code was devised, there was an understanding between the parties - that is, the States and the Commonwealth - that neither state stamp duty nor commonwealth capital gains tax should apply to transactions which were necessitated by the ring-fencing provisions. We might ask how stamp duty or commonwealth capital gains tax could apply to the provision of third-party access to natural gas pipelines. The reason it applies is that because of the need to break up vertical integration monopolies, there is a provision that the operators of the pipelines need to be ring-fenced from any other activities that they may be undertaking, particularly the production of gas, if they are a gas producer, or if they are a major consumer of gas, so that the old AlintaGas-type model where the person is a purchaser of gas, a seller of gas and an owner of the pipeline, cannot exist.

The provisions of the Bill go further than the provisions of the Gas Corporation Act under which AlintaGas had to keep separate accounts. In this case there must be a separate legal entity. If the same people are engaged in different phases of the same industry, they must be separated out and incorporated into a separate entity to be proprietors of the pipeline. In some cases that can involve the transfer of assets from one party to another, which in the normal course of events could be expected to attract stamp duty. If a capital gain were made as a result of that transaction, it could attract capital gains tax. It was agreed between the States and the Commonwealth when the legislation was introduced to give effect to the gas access law that they would ensure that those liabilities did not arise. This Bill is faithful to that idea and exempted transactions, as defined in the Bill, do not attract capital gains tax or stamp duty. That is as it should be. We support that proposition. However, sadly, when the matter went through the Senate on the last day before the Commonwealth Parliament rose for the federal election, having sat in the Senate for quite some time, no amendment was made to the commonwealth legislation to exempt those transactions from capital gains tax.

The Labor members in the Senate raised that matter. A document was produced, which I believe is described as an additional memorandum. Perhaps one of the officers with the minister might know something about it. That additional memorandum was read into *Hansard*. I understand that an additional memorandum has a similar effect to a second reading speech. Under the principles of judicial construction and the construing of statutes that have applied for the past 10 to 15 years, what is said in a second reading speech can be used as an aid to construing legislation if the plain meaning of the words is not all that clear. It is then of some assistance to determine what the Act means. The additional memorandum read into *Hansard* indicated quite clearly the intent of the parties.

Mr GRILL: The argument outlined so far by the member for Cockburn has great merit.

Mr Barnett: In which particular respect?

Mr GRILL: The minister has the opportunity tonight to do something quite constructive to help one of those smaller companies that he indicated earlier he was motivated to help. We would both agree that the major petroleum companies in Western Australia would probably prefer to have the Australian Competition and Consumer Commission as a regulator. The minister has argued otherwise on behalf of the smaller operator. Here one smaller operator is directly affected and may well be liable for capital gains tax in the event that the right sort of safeguards are not put in place. The request being put to the minister is very simple; that is, we want him to make sure that the Federal Government remains honest on this point. This amendment will give the minister the mechanism to ensure that the Federal Government remains honest. It does not in any way interfere with the structure of the Bill. It merely gives the mechanism to the minister to ensure that one of those small companies to which he has referred gets its just deserts. It is a very good amendment and worth taking on board.

Mr THOMAS: As I understand it, the action of the Commonwealth was to read in Parliament a document which has the status - I do not think there is an equivalent document in our Parliament - of an aid in construing the Income Tax Assessment Act. People have told us that their advice is that it may, or probably will, exempt them from capital gains tax; the stronger word is "probably". I am not a lawyer. My colleague the member for Eyre could probably speak with more authority on

this matter. However, I find it difficult to understand that a document, the equivalent of a second reading speech, associated with the passing of the Commonwealth Gas Pipelines Access (Commonwealth) Act can be used to construe the meaning of the Income Tax Assessment Act. It is a separate Act of the Commonwealth from which the liability arises. I can understand why people are a little concerned.

The requirement is that they should divest themselves of the asset and revest it in another entity because Parliament requires them to do so. The national third party access code outlined in schedule 2 of the Bill relates to ring fencing. The Opposition states that section 4 of the code should not come into effect until the minister is satisfied that the capital gains tax will not apply. He may make a statement or undertake some action to demonstrate his satisfaction, in which case that part of the code can then come into effect. If we do not do that, consider what we might be doing: We might be requiring people who own pipelines to divest, revest and transfer the ownership of the pipelines into a different legal entity to satisfy the ring fencing requirements. That may render people liable for a taxation liability which no party - certainly neither the Commonwealth nor the States in drawing up the proposal - intended to be the case. The clearest way of clearing the ambiguity would be to amend the taxation legislation in a two or three-line Bill.

For some reason, that was not done. The matter went through the Senate on the last sitting day before the Commonwealth Parliament rose for the federal election. It seems that the Commonwealth Government had other matters on its mind. Maybe the matter was overlooked in the overall scheme of things. It may not be regarded as a big deal in the Federal Parliament. However, it is a big matter if one is to pay substantial capital gains tax. The Opposition strongly supports this part of the code. However, before the matter is clarified, the code should come into effect. If Crown Law can clarify the situation and indicate that people will not pay capital gains tax, the minister can make a declaration to that effect. We will require people to dispose of assets in these circumstances. Therefore, we should make absolutely certain that the person undertaking the action will not be subjected to unanticipated tax.

Mr BARNETT: I agree with the importance of ensuring that a company such as Tap Oil N.L. is not caught by capital gains. There is an important circumstance here in which it may be required by the regulator to divest itself of certain assets or rearrange them or ring-fence them which could bring them into a capital gains net. That issue was raised by me, the Federal Government and the Opposition. The federal minister, Senator Warwick Parer, tabled an addendum to his explanatory memorandum. It refers to "After paragraph 43" and reads -

The purpose of clause 20 of the Bill is to mirror the *Gas Pipeline Access (South Australia) Act 1997* and relieve a party from those transaction taxes (such as stamp duty) which would otherwise be payable as a result of the 'ring fencing' obligations in the Code. In respect of clause 20 of the Bill, a prescribed tax is any tax or levy which the Commonwealth may prescribe from time to time but it is not intended to include any tax within the definition of either the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*. Income tax may be payable in circumstances where a party is required to divest an asset for the purposes of complying with the 'ring fencing' obligations in the Code where it derives a profit or a gain in the transfer of the asset. Where a transfer of assets for the purposes of complying with the 'ring fencing' obligations in the Code is undertaken between wholly owned group companies, those entities can avail themselves of the roll-over relief under the income tax law. Clause 20 therefore has no application in relation to income tax.

That has been addressed by the Federal Government. As a state minister I will undertake to ensure that is complied with and that companies are not inadvertently caught with an income tax-cum-capital gains tax net. The mechanism proposed by the Opposition is entirely inappropriate. We cannot use legislation to hold a gun at the head of another jurisdiction. We do not behave in that way.

It is ironic that the argument we heard for several hours tonight was that we cannot trust a state-based regulator; we must rely on the Australian Competition and Consumer Commission because it is at arm's length and independent. However, here the Opposition is suggesting that the application of an essential part of the code is left not even to the ACCC or indeed to the state-based regulator, but to the state-based minister. How arbitrary can we get? I agree with the sentiment, but the mechanism is inappropriate at law, for relations between Commonwealth and State Governments and for an independent objective process.

Mr THOMAS: I move -

Page 17, after line 18 - To insert the following -

(3) Section 4 of the Code shall not apply until the local Minister is satisfied that any Commonwealth capital gains tax does not affect an exempt matter.

If the system messes up it will be on the minister's head. I resent his comments that it is inappropriate and arbitrary. There is nothing arbitrary about this. Arbitrariness applies when a person capriciously -

Mr Blofwitch: A state law cannot override a federal law. It will always have supremacy over the state law.

Mr THOMAS: Precisely. The member for Geraldton is familiar with section 109, I think it is, of the Constitution. However, that is not what we are suggesting; this is a state law.

Mr Bloffwitch: You cannot exempt something under our law.

Mr THOMAS: We are passing a state law which provides that people must ring-fence their assets and transfer them from one legal entity to another. That may give rise to capital gains tax, although everyone has agreed it should not. I am not suggesting that we should seek to override in any sense the Income Tax Assessment Act. Although I should seek to do so, I cannot. We can withhold the effect of that requirement that companies should ring-fence until we are satisfied that they should not have to pay that tax. I think that they should.

As I have said, I am not a lawyer, but I am a member of Parliament. The action that the Commonwealth has taken to ensure that people will not have to pay tax under the Income Tax Assessment Act is to read in something that will be an aid in construing the Income Tax Assessment Act. If it were my liability, I would like something better than that. It is well within the capability of the Commonwealth to amend the Income Tax Assessment Act to make it absolutely certain, but it has not done so. Perhaps what it is doing is effective, I do not know. As a member of the Western Australian Parliament, I do not want to put that imposition on industry in Western Australia until I am 100 per cent certain. I hope that the minister, who is responsible for the legislation, who introduces it into the Parliament and who says that it should be carried, will be similarly eager to protect participants in the industry which he is responsible for administering. He has got it totally wrong, as is often the case; however, he says that it is arbitrary. There is nothing arbitrary about it.

If the amendment were carried there would be no scope whatever to exercise discretion arbitrarily one way or the other. The minister must satisfy himself that the capital gains tax is not payable for exempt transactions; that is, exemptions that are not liable to stamp duty. If he is satisfied, he can make a declaration and then, under section 4 of the code -

Mr Barnett: A declaration in an individual case or a generic declaration for all cases?

Mr THOMAS: A generic declaration for all cases.

Mr Barnett: So the minister must satisfy himself as to what cases have arisen and what cases he anticipates might arise, and the member for Cockburn says that that is not arbitrary. What nonsense.

Mr THOMAS: I will call for the dictionary so that the minister can look up the word "arbitrary". He does not want to do so. I will tell him what the word means. It means that he is able to exercise discretion capriciously or in a way that is up to his discretion. All that we are saying is that the minister must satisfy himself that the mechanism that the Commonwealth has undertaken purporting to exempt transactions from the capital gains tax is effective. If it works for one, it works for all - as I have indicated several times, I am not a lawyer, I am a member of Parliament - but I wonder whether it is effective. We all know that in many cases what was sought to happen did not happen when the taxation commissioner construed the legislation and it was tested in the courts. If I were an operator in the industry, I would expect the minister to pass this simple amendment so that he can satisfy the industry in Western Australia that we are not inadvertently making operators liable for taxes for which they should not be liable.

Amendment put and a division taken with the following result -

Ayes (15)

Ms Anwyll  
Mr Brown  
Dr Edwards  
Mr Graham

Mr Grill  
Mr Kobelke  
Ms MacTiernan  
Mr Marlborough

Mr McGinty  
Mr McGowan  
Ms McHale  
Mr Riebeling

Mrs Roberts  
Mr Thomas  
Mr Cunningham (*Teller*)

Noes (22)

Mr Ainsworth  
Mr Baker  
Mr Barnett  
Mr Barron-Sullivan  
Mr Bloffwitch  
Mr Board

Mr Bradshaw  
Mr Day  
Mrs Edwardes  
Mr House  
Mr Kierath  
Mr MacLean

Mr Masters  
Mr McNee  
Mrs Parker  
Mr Prince  
Mr Shave

Mr Trenorden  
Mr Tubby  
Dr Turnbull  
Mr Wiese  
Mr Osborne (*Teller*)

Pairs

Dr Gallop  
Mr Ripper  
Mr Carpenter

Mr Court  
Mr Omodei  
Mr Johnson

Amendment thus negatived.

Clauses 23 to 27 put and passed.

New clause 28 -

Mr THOMAS: I move -

Page 20, after line 22 - To insert the following -

**Restriction on who can be appointed Regulator**

28. Notwithstanding any other provision of this Act, the Regulator appointed under section 27, or a person appointed to act in the office of Regulator under section 34, shall not be -

- (a) an employee of or a consultant to a business engaged in production, transmission, distribution, sale or substantial purchase of gas in this State in the 12 months prior to such appointment; or
- (b) an employee of or consultant to a government department involved in the regulation, administration or assistance to the gas industry in this State in the 12 months prior to such appointment.

This is one of the more important amendments that we seek to move tonight. Again, this is a clause that stands separately from our proposition that the ACCC should be the regulator for the gas transmission industry in Western Australia. Even if that proposition of ours were to be carried - and it appears it will not - there would still be a state regulator. Our arguments on the type of person to be appointed regulator in the gas transmission industry apply also, although it is of lesser importance in the gas distribution industry.

Why do we move the way that we do? We are moving to ensure that the person appointed to the position of regulator is a person who is not only detached from any influence of major participants in the industry in Western Australia but also is seen to be so. The Opposition is concerned that the Government has been going through the motions of selecting a regulator before the legislation creating such a position has been passed.

Members on this side are concerned that the person occupying this position, which is of critical importance to the future of this very important industry in Western Australia, should be independent of all facets of the industry. For that reason, the Opposition has proposed a new clause providing that that person should not be an employee of or a consultant to a business engaged in the production, transmission, distribution, sale or substantial purchase of gas in the 12 months prior to such an appointment. The phrase "substantial purchase" is used because otherwise it might exclude a restaurateur who buys gas for his stoves. We are talking about people whose primary business was the purchase of gas in the 12 months prior to their appointment. Nor should they be employees of or a consultant to a government department involved in regulating, administering or assisting the gas industry in the State in the 12 months prior to such an appointment.

When we refer to businesses engaged in that activity, we envisage that it will include the energy utilities, both Western Power and AlintaGas. The reference to government departments relates to CRF-type departments that are involved in regulating, administering or assisting the industry. Some departments have responsibility for regulating those industries and others have responsibility for administering the agreement Acts. Other departments provide assistance in one form or another to industry. The Opposition does not want anyone appointed who has been involved in the industry, because they will have connections.

The point has been made by me and the member for Eyre on many occasions that Perth is still a small town and this industry looms large; one does not have to be here for very long to know everyone. There are connections and networks. It could be difficult to find a person with that background who would not be subject to pressure or be perceived to be subject to pressure or influence. To have a completely clean slate, it is best to have a person who does not fall into any of those categories. Plenty of people in Western Australia or elsewhere would be eligible, but they would not come with recent background in the industry.

Mr BARNETT: Not surprisingly, the Government does not agree to this additional clause. Obviously the appointment is critical and it is important not to appoint someone who has a conflict of interest. However, to include a clause that simply narrows the field of applicants is silly. One looks at the calibre of the person and ensures that he does not have a conflict of interest.

The clause refers to this person not being an employee of or consultant to a government department involved in regulating, administering or providing assistance to the gas industry in this State in the 12 months prior to such an appointment. Who is that? That encompasses all sorts of people, including those in the ACCC. This amendment would rule out the ACCC as the regulator because it has been heavily involved in the regulation of this industry, including the Alinta-Epic deal. It wipes out the other part of the amendments to impose the ACCC as regulator. It is totally inconsistent. It is a nonsense.

Mr THOMAS: Sadly, once again, the minister has shown he does not understand his own legislation and, more to the point, he does not understand my amendments.

Mr Barnett: I concede that I do not understand your amendments at all.

Mr THOMAS: If the minister will shut up for a moment and listen, he might learn something. When the minister considers the merit of the argument, he might be disposed to vote for the amendment. This seeks to amend the qualifications of the person who would be appointed as the local arbitrator. The fact that we are proposing the ACCC as -

Mr Barnett: Sorry, but your amendment relates to the regulator. It reads "Notwithstanding any other provision of the Act, the Regulator". That begins with the letter "R". It is a minor detail; sorry to draw it to your attention!

Mr THOMAS: Perhaps we can ask the lawyers where it sits. It falls within part 6 of the Bill.

Mr Barnett: Get your act together.

Mr THOMAS: Sadly, this troublesome minister is unnecessarily delaying the proceedings of the committee because he is determined not to accept any arguments from the Opposition, whatever their merit.

Mr Barnett: You said the amendment is to do with the arbitrator; it is not. The words in the amendment refer to the regulator.

Mr THOMAS: The minister is right, but it is not the ACCC and it cannot be.

Mr Barnett: You have advocated that the ACCC be the regulator. This would rule out the ACCC.

Mr THOMAS: How about the minister keeping quiet and listening? If the minister closes his mouth and opens his ears, he might learn something.

Mr Barnett: You carry on and I will go for a walk.

Mr THOMAS: Sadly, the minister is spitting the dummy and it appears he is not prepared to consider a reasonable argument. This provision, which applies quite correctly to the question of who can be appointed regulator, would be a new clause 28. It would sit in part 6 of the Bill under the heading "Local Administration and Enforcement, Division 1 - Local Regulator, Subdivision 1 - Preliminary". In clause 26 "regulator" is defined as the regulator appointed under section 27 and, except in sections 27(2), 28 and 32, includes a person acting under section 34. Clause 27 states that -

An office of the Western Australian Independent Gas Pipeline Access Regulator is established.

Therefore, it is the independent regulator, who is the state regulator. If the amendments were carried, this provision would apply to the independent state gas pipeline access regulator, who would still have the jurisdiction of regulating distribution. If the amendments are not carried, and it seems that that will be the case, it will apply to the regulator whose jurisdiction is both distribution and transmission. The absurdity of the minister about who can be appointed regulator clearly indicates that either he has not read the Bill or, if he has, he does not understand the basic principles of judicial construction. If he wants to know the meaning of a word in the legislation, he should look first at the definition clause. The definition indicates that it applies to the local regulator. I understand that the Opposition's regulator would be the ACCC.

New clause put and a division taken with the following result -

Ayes (16)

Ms Anwyl	Mr Grill	Mr McGinty	Mrs Roberts
Mr Brown	Mr Kobelke	Mr McGowan	Mr Thomas
Dr Edwards	Ms MacTiernan	Ms McHale	Ms Warnock
Mr Graftam	Mr Marlborough	Mr Riebeling	Mr Cunningham ( <i>Teller</i> )

Noes (22)

Mr Ainsworth	Mr Bradshaw	Mr Masters	Mr Trenorden
Mr Baker	Mr Day	Mr McNee	Mr Tubby
Mr Barnett	Mrs Edwardes	Mrs Parker	Dr Turnbull
Mr Barron-Sullivan	Mr House	Mr Prince	Mr Wiese
Mr Bloffwitch	Mr Kierath	Mr Shave	Mr Osborne ( <i>Teller</i> )
Mr Board	Mr MacLean		

Pairs

Dr Gallop	Mr Court
Mr Ripper	Mr Omodei
Mr Carpenter	Mr Johnson

New clause thus negatived.

**Clauses 28 to 36 put and passed.**

**Clause 37: Provision supplementary to the Code -**

Mr BARNETT: I move -

Page 26, line 3 - To delete "domestic" and substitute "residential".

Page 26, line 7 - To delete "domestic" and substitute "residential".

**Amendments put and passed.**

Mr THOMAS: In view of the fact that the issues seem to have been canvassed and most of amendments I have on the Notice Paper arise consequentially from the key amendments relating to the role of the Australian Competition and Consumer Commission as the regulator, rather than the local regulator for transmission - that debate occurred on an incidental clause - there is little point in rehashing that argument a dozen times between now and dawn and dividing on each occasion. It is not my intention to proceed with the amendments. The next matter I wish to raise is by way of query, rather than amendment and relates to schedule 1.

Mr Grill: Did I hear the Minister indicate that if this matter winds up fairly shortly, we will have the opportunity to proceed with the third reading of the Bill tomorrow?

Mr BARNETT: Yes. There is a government amendment to the Bill, so consideration of the Bill in committee would be an order of the day for tomorrow. There is an amendment to the Bill, so we will not be able to do the third reading tonight in any case. That will come on tomorrow.

**Clause, as amended, put and passed.**

**Clauses 38 to 94 put and passed.**

**Schedule 1 -**

Mr THOMAS: I refer to clause 10(2) which states -

If a distribution pipeline is, or is to be, extended so that it becomes, or will become, a cross-boundary pipeline, an authorised applicant may apply under this section for a determination of the scheme participant with which the pipeline is most closely connected.

When I read that clause in conjunction with clause 10(1)(b), I wondered what clause 10(2) does that clause 10(1)(b) does not do and whether it is possible that there is a typographical error and clause 10(1)(b) is meant to refer to transmission, rather than distribution.

Mr BARNETT: That is a very specific point. I will see whether the advisers can comment on that. I will clarify that tomorrow if I am unable to do it now.

Mr Thomas: If it is as I think it is, it could be a matter of some moment.

Mr BARNETT: If the member is right and there is a typographical error, we can either recommit to the committee or deal with it in the House tomorrow. I am not sure whether the point raised is the case. Perhaps I will take that on board and if the member's point is right and it is necessary to recommit to the committee stage to correct it because it is a typographical error, we will either do it in this Chamber or the upper House.

**Schedule put and passed.**

**Schedules 2 and 3 put and passed.**

**Preamble put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

*House adjourned at 12.36 am (Thursday)*





Mr BARNETT replied:

(1)-(3) I thank the Deputy Leader of the Opposition for the question. I do not have all the details in my head and he did not give me prior notice of the question. However, I can explain the broad background to the sale and what occurred. The bidders, including Epic Energy, were asked to bid on a number of features. One obvious one and the most important component was price; a second related to service standards and the like; a third related to the price, not only what they would pay for it but the cost of the transport of gas; a fourth related to commitments to expanding pipeline capacity. Therefore the price paid for the pipeline was by far the most important criteria. However, there were three other components: The first was the bid of \$2 407m; the second was a commitment to spend some \$875m on effectively expanding and duplicating the pipeline capacity over an eight-year period; and the third related to the transport tariff. At the time of the sale, the cost of transporting gas was \$1.19 per gigajoule to the south west. Under the bid put in by Epic, the price would fall from \$1.19 to \$1.10 to \$1, and that has happened; in other words, the bid was composed of price, top dollar, an expansion commitment on investment and a 20 per cent reduction in tariff. I put in place regulations prior to Christmas to bring in the regulated tariff of \$1. Yes, it is true that we could have traded off. We could have gone back to Epic and said that we would take a lower price for the State in exchange for giving transporters of gas a lower tariff.

Mr Ripper: Will you table those documents?

Mr BARNETT: No. We made the judgment that a high price for taxpayers and the community of Western Australia was the first and most important component. If at the same time we doubled the pipeline capacity and delivered a 20 per cent cut in transport tariffs, it was a very good deal.

#### DAMPIER TO BUNBURY NATURAL GAS PIPELINE, COMPENSATION

544. Mr RIPPER to the Minister for Energy:

I have a supplementary question. Does the Government now face a huge compensation bill or the threat of legal action over the sale of the pipeline?

Mr BARNETT replied:

The Government does not face a huge compensation bill. The possibility will always exist of legal action resulting from the sale of a government asset.

Dr Gallop: Why? You have entered into an agreement with them haven't you?

Mr BARNETT: An amount of the sale proceeds has been retained for incomplete disputes.

Dr Gallop: What are you talking about?

Mr BARNETT: The Leader of the Opposition should not become excited.

Mr Ripper: Is the amount \$500m?

Mr BARNETT: No, because disputes can arise with any of the hundreds of contracts for gas supply or gas transport. There is always a possibility of legal action; therefore, prudently, an amount of the sale proceeds was kept in reserve should any disputes arise. Members opposite are jumping in excitement because they believe some sort of deal was made. The Government has made a submission to the gas regulator, which I have read and endorse totally. The clear understanding was that the purchasers would pay the price and the gas transport tariff would fall to a dollar. That is why I put in place regulations to achieve the 20 per cent cut prior to Christmas.

The second component of that was that, thereafter, the national access code would apply as administered by the state-based regulator. That is exactly what is occurring. Epic Energy Pty Ltd understands that, as does everyone else.

No written agreement exists; an offer to buy was made which we accepted.

#### GOODS AND SERVICES TAX, MARKET RENT OF RESIDENTIAL PROPERTIES

545. Mrs HODSON-THOMAS to the Minister for Housing:

Given concern expressed by those on low incomes in my electorate I ask -

- (1) What impact will the goods and services tax have on the market rent of residential properties?
- (2) What has been done to help those on low incomes to pay an increase in rent?

Leader of the Opposition do to Western Australia if he rolls back the GST? He will reduce state revenue. I would like to hear from the state Leader of the Opposition about where the money will come from to replace lost state revenue. The Leader of the Opposition was part of that infamous group. From where will the money come?

#### GOODS AND SERVICES TAX, COMPENSATION

541. **Dr GALLOP to the minister assisting the Treasurer:**

Is the compensation being offered by the Commonwealth for just three years adequate to meet the shortfall that Western Australia will face?

**Mr KIERATH replied:**

Yes.

#### MANDATORY SENTENCING

542. **Mr BAKER to the Premier:**

Is the Premier aware of comments by Western Australian Labor Senator Jim McKiernan that the Federal Government should use the external affairs power to overturn Western Australia's "three strikes and you're in" legislation?

**Mr COURT replied:**

I am concerned that a Western Australian senator is leading the campaign for the Federal Parliament to use its external affairs powers to override state legislation. Today on radio Senator McKiernan referred to growing community pressure on all Governments against the laws in the Northern Territory and Western Australia and said he expected the community will rise up against those laws. The report that was tabled yesterday stated that the Western Australian legislation contravenes the United Nations Convention on the Rights of the Child. Members might recall the extensive debate on whether this country should sign that convention, and the concern that parents would not be able, for example, to properly discipline their children. I am not criticising the then State Labor Government which agreed to the Federal Government's entering into that convention, because it put in place a proviso. To the credit of the then Attorney General, Hon Joe Berinson, when writing to the then Federal Attorney General, Hon Michael Duffy, he stated -

The West Australian Government is prepared to agree to early ratification of the Convention by Australia subject to . . .

He set out two provisions, the second of which reads -

- (ii) the State Government's understanding that there is no intention by the Commonwealth to use the external affairs power (on the basis of the Convention) to enact Commonwealth legislation to override state laws in this area.

Now a Western Australian Labor senator is basically saying that this is bad law and a national disgrace. The federal ALP leader, also a Western Australian, is supporting the moves to use federal legislation to override Western Australian legislation. That really does concern me. This is a state responsibility. We are the people who put the laws in place. If this Parliament wants to change those laws it will. I do not believe there is any support for changes to the legislation. I believe that the sentencing policy is not only misunderstood by some but has sent a clear message to the community that we will not accept the behaviour of the repeat offender. It is not helpful having a Western Australian Labor senator campaigning to use the external affairs powers to override our state legislation.

#### DAMPIER TO BUNBURY NATURAL GAS PIPELINE

543. **Mr RIPPER to the Minister for Energy:**

- (1) Is it the case that the Government, when considering the sale to Epic Energy of the Dampier to Bunbury natural gas pipeline, had three options before it: A high gas transmission tariff and high sale price; a medium gas transmission tariff and medium sale price; and a low gas transmission tariff and low sale price?
- (2) If not, what options did the Government have before it on the issues of gas transmission tariffs and pipeline sale prices?
- (3) Why did the Government choose the high tariff-high sale price scenario for the sale of the DBNGP?

- (2) Does the Leader of the House have serious concerns about the privatisation model adopted by the Government with Westrail?

**Mr BARNETT replied:**

I thank the member for some notice of this question.

- (1)-(2) After Christmas I commented on Westrail's privatisation in specific terms that I thought it should be reviewed. There has been some discussion within Cabinet and within the coalition party rooms about that. I have had the opportunity of expressing my views on the politics and also some of the factors or components of the proposed privatisation. The legislation is proceeding and I accept that position.

Ms MacTiernan: Can you explain some of the concerns you have with the model?

Mr BARNETT: Is the member for Armadale suggesting I give her an economics lesson? Perhaps I will do that privately.

#### DRUG ABUSE STRATEGY, LABOR PARTY POLICY

**574. Mr BAKER to the Minister for Police:**

I refer to the fourth change in as many years by the Labor Party concerning its drug abuse strategy policy. Is the minister aware of any recent criticisms by community workers helping illicit drug users concerning the Labor Party's policy in this area?

**Mr PRINCE replied:**

I thank the member for the question and the opportunity to address this subject, albeit briefly. Since I was appointed minister responsible for the strategy, I have taken the time to visit a number of the community agencies, particularly the drug service teams but also the local drug action groups, and talked to them as well as to the people in the WA Drug Abuse Office and elsewhere. Most recently I attended the Western Australian Network and Alcohol and Other Drug Agencies sector forum. Unfortunately, I was not able to stay for the whole of the exercise but that forum was set up to discuss a general meeting, the Council of Australian Governments' initiatives, and an update on WANADA strategic planning which I thought was very impressive. Some of the work that was then being done was illuminating.

The only other member of Parliament who attended was a member of the Australian Democrats from the other Chamber. There was nobody there from the Opposition. I have not found anybody to discuss with me Labor Party policies on drug abuse. There has been interest in government policy because that has been well established and has evolved from the task force in 1995-96 through to the Together on Drugs pamphlets, strategies and policies that have been issued and the significant amount of work that has been done. All we seem to get from the Labor Party is that its members do not know whether they are into or not into the decriminalisation of cannabis and if so, how much and for whom or when or where! They backflip left, right and centre.

The Government is consistent and has always been. Not only is the Government consistent; it also has a coherent policy on the most casual of drug use, on trying to prevent people from getting into drug use and on those who are the most seriously affected by it. I am sure that some time or other, the members of the Labor Party will try to have a sensible debate on this without their getting caught in their ideology. Perhaps it will be in three or four years when they have another conference, as they do not seem to have them any more often than that.

#### DAMPIER TO BUNBURY NATURAL GAS PIPELINE

**575. Mr RIPPER to the Minister for Energy:**

I refer to his statement to the House to the effect that no agreement exists which links future gas transmission tariffs to the sale of the Dampier to Bunbury natural gas pipeline:

- (1) Does the reported statement of Epic Energy's managing director in *The Australian Financial Review* with regard to these tariffs that the Government "should support the sales process which they had set up for the Dampier to Bunbury pipeline" contradict the minister's assurance?
- (2) Could the matter not be cleared up if the minister tabled in this House all documents and correspondence relating to the sale of the pipeline?
- (3) Will the minister urgently seek the agreement of Epic Energy and AlintaGas to the tabling of these documents and if not, why not?

**Mr BARNETT replied:**

I thank the member for some notice of this question.

- (1)-(3) As I explained yesterday, when the bids were received for the Bunbury to Dampier natural gas pipeline, people presented their bids on a number of criteria. That included the price, commitments to expanding capacity and a tariff schedule; in other words, what they would see as the price of transporting gas. The tariff schedule put in by Epic included a proposal that the price of gas would fall from \$1.20 to \$1.10 to \$1. That was a schedule that was generally put forward by government to all bidders as an expectation. That was the broad understanding. It

bought the pipeline, and, as I said yesterday, I placed in order regulations prior to Christmas that actually put in place the dollar.

Equally it was understood by all parties - Epic and all other bidders - that once the state-based gas regulator was established and a National Access Code enacted in this State, all future transport charges, access rights and the like would be administered and set by the independent gas regulator. That is what is happening. There is no mystery about it. That is what is happening. With regard to the points the Deputy Leader of the Opposition raised about confidentiality, as I again said yesterday, I am perfectly happy for that schedule of tariffs to be made public. The Government supports that. The problem that we have is that the confidentiality provisions relate to AlintaGas as a corporate entity and Epic and the other unsuccessful bidders for the pipeline.

Mr Ripper: Are you going to ask them if they will table those documents?

Mr BARNETT: I have made it clear to Epic, Alinta and the regulator that I have no objection to that information being provided, so long as people do not breach the confidentiality requirements. Some of the other information attached to the schedule may not be related but may be confidential. I understand that the regulator will most likely release that information publicly once he has a broad understanding agreement between all the parties, and I am supportive of that. It is not my information to release. It is information that is confidential between Alinta and Epic, and the other bidders, and that was provided on that basis through the formal tender process. The key issue is simply that schedule.

I know there is great interest in this debate. I find that rather odd, because the position, as I have explained, is the public position, and it is acknowledged by the Government in our submission to the regulator. Unlike what others may suggest, the Government has not asked or argued for a price above a dollar or below a dollar. We have said that a price of a dollar seems a just result and is a fair price, but it is now up to the regulator to set the actual price from here on.

#### GAS CHARGES, INVESTOR CONFIDENCE

576. **Mr RIPPER to the Minister for Energy:**

I ask a supplementary question. Do we not have a fundamental disagreement here which has the potential to undermine investor confidence in this State?

Mr BARNETT replied:

We do not. We have a situation where Epic is, no doubt, feeling some stress in that the expansion of business has not matched its forecasts.

Mr Ripper: Oh!

Mr BARNETT: It probably paid too much, but that was a commercial transaction. In time, I think its business will prove to be very successful. Right now, it is in a tight situation and has a high debt burden, but that is its commercial issue, not the Government's. With regard to investor confidence, for a long time I and many other people probably on both sides of this House have argued that rather than have Governments make decisions about charges, particularly gas and transport charges, it is better to have that determined independently; and that is what is happening under the National Access Code and the regulator. I believe that will give investors confidence, because we will not see the sort of manipulation of utilities that certainly happened under the Labor Government during the 1980s.

#### HEALTH DIRECT, EXTENSION OF ACCESS

577. **Mr BLOFFWITCH to the Minister for Health:**

The provision of quality health care can be a problem for people living in my electorate.

Dr Gallop: That is true!

Mr BLOFFWITCH: Not since I got them the extra \$1.5m. I ask: What is the Government doing to improve access to better health care in the rural and remote areas of our State?

Mr DAY replied:

As the member for Geraldton to some extent has indicated, this Government has done a great deal to improve access to health services in rural parts of Western Australia in a variety of ways. I am pleased to advise the House that the latest development is that the Health Department's health call centre known as Health Direct will have its access extended to residents of the Kimberley and Pilbara regions as from this week. Health Direct is a 24-hour-a-day operation which is based on telephone advice being provided by registered nurses. It is particularly established to provide assistance to people after hours and also to people who are in isolated parts of Western Australia, whether that be outer parts of the metropolitan area or rural areas. It was established in May last year with \$6m that was made available jointly by the State and Commonwealth Governments. It currently receives about 3 000 calls per week. It is therefore a very successful operation, and we expect that with the extension of the service to the Kimberley and Pilbara region an additional 5 000 calls per year will come in from those areas. I am pleased to also advise that access to Health Direct will be made available to all rural parts of Western Australia by the middle of this year.

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[Questions without notice taken.]

**JURIES AMENDMENT BILL***Assent*

Message from the Governor received and read notifying assent to the Bill.

**BILLS (2) - MESSAGES***Appropriations*

Messages from the Governor received and read recommending appropriations for the purposes of the following Bills -

1. Environmental Protection Amendment Bill.
2. Industry and Technology Development Bill.

**DAMPIER TO BUNBURY PIPELINE BILL***Standing Orders Suspension*

MR BARNETT (Cottesloe - Minister for Energy) [3.46 pm]: I move, without notice -

That so much of standing orders be suspended as is necessary to allow the Dampier to Bunbury Pipeline Bill to be introduced without notice and to proceed up to and including the motion for the second reading at this sitting.

The sale of the Dampier to Bunbury natural gas pipeline is a major privatisation by the Government with the prospect of sales and revenue in excess of \$1b. The decision to privatise was made some time ago and the steering committee has been working on the process for most of this year. It is a very complicated process, given the scale of the privatisation and the inherent complexity of the contracts, the easement, the rights of expansion, and transmission charges.

This is largely a machinery Bill to facilitate the sale, and it is necessary for the Bill to pass through both Houses of Parliament for the sale process to be concluded. The gas sales steering committee has recommended a short list, which I intend to announce later this week, of the bidding proponents for the purchase of the pipeline.

The Bill, which I hope to second read in a little while, authorises AlintaGas to sell the pipeline; lays down rules for the use of the easement, sets up criteria under the auspices of the Minister for Lands for the easement to be expanded and a regime to allow progressive reduction in transport charges to gas users. It facilitates many other mechanical matters necessary to conclude the sale process.

The Bill has massive implications for energy deregulation and lower transport charges for gas consumers, but most of all it will provide a return to Western Australian taxpayers of perhaps several hundred million dollars and the retirement of at least \$1b in debt. The financial implications for all areas of government are immense.

For that reason, I seek the indulgence of the House to move forthwith to the second reading. The Bill will be available for members, and briefings will be conducted during the coming week. That will allow the Bill to be brought on for debate next Tuesday onwards.

MR THOMAS (Cockburn) [3.48 pm]: The Opposition does not oppose this motion to allow the Minister to deliver his second reading speech on this Bill later today. I understand the intention is for the second reading debate to be undertaken next week, and we have no problems with that. However, I am very concerned about the wider process which is about to take place. The Government should abandon the process of selling the Dampier to Bunbury natural gas pipeline until such time as the Australian Competition and Consumer Commission investigation into the AlintaGas-Epic deal is complete, and we in this Parliament and the people of Western Australia can be satisfied that the Government, AlintaGas, the Minister, Epic Energy and any other persons involved have acted with prudence and probity. Currently, we do not know that that is the case. Indeed, we have very good reasons for suspecting that that may not be the case.

About six months ago in this House I debated with the Minister a matter that arose relating to the AlintaGas-Epic deal. The Minister became quite intemperate. Mr Speaker, you had to call the Minister to order at one stage because he lost it altogether when it was suggested that AlintaGas might, in some sense, have acted in an improper way. We did not say that that was the case, but that a very strange arrangement was entered into between AlintaGas and Epic, particularly at a time when other people were trying to secure the Kingstream contract. The Opposition said it was

a very strange arrangement which should be investigated and fleshed out thoroughly publicly. What was the Minister's response? He said that the matter was commercially confidential and that members were not allowed to know the precise terms so they could be satisfied about the prudence or probity of the deal.

Mr Barnett: I do not either.

Mr THOMAS: The Minister does not know either. The Minister has approved a \$370m deal by AlintaGas. He is required under the Gas Corporation Act to give his approval when AlintaGas enters into such contracts. However, the Minister blandly tells the House that he does not know the detail! What if it turns out to be not a good deal?

Mr Barnett: I make one point only: The arrangement is a letter of indication subject to approval by the ACCC. There is no contract and no deal, as you put it.

Mr THOMAS: It is now subject to approval by the Australian Competition and Consumer Commission, that is for sure! The Minister says that he approved the deal between AlintaGas and Epic, yet he has not actually read it. He has committed a public utility of this State to a contract to receive funds from Epic in order to fund the expansion of the Dampier-Bunbury natural gas pipeline, and in return the utility is to make available to Epic Energy a prescribed capacity in the pipeline. A \$370m arrangement is a big deal and a big project by anyone's standard. In terms of accountability under the Gas Corporation Act, the Minister is required to personally approve all arrangements beyond a prescribed amount, which is about \$15m from memory. Therefore, we have exceeded the prescribed amount.

The SPEAKER: Order! I draw the member's attention to the fact that with these difficult motions to suspend standing orders, we allow members some time to work up to the relevant point of the suspension. The member has indicated that he will support the motion; nevertheless, he is now getting into details which are not pertinent to the motion before the House.

Mr THOMAS: I return more directly to the point; namely, the deal between Alinta and Epic is currently under investigation by the ACCC.

Mr Barnett: Correction - it is not.

Mr THOMAS: The ACCC must have been lying when I was told on the telephone yesterday that it was investigating Alinta-Epic.

Mr Barnett: No; let me tell you -

Mr THOMAS: I will tell the Minister what I was told.

Mr Barnett: I will tell you the truth.

Mr THOMAS: Then I am lying - okay, tell me, Minister.

Mr Barnett: Maybe you are. The ACCC requested some information and documentation from Alinta, which it has provided. There is no investigation. Whether it chooses to conduct an investigation is up to that body, but there is no investigation at this stage.

Mr THOMAS: I was speaking to the Regional Director of the Australian Competition and Consumer Commission on the telephone yesterday, and I was told that it was investigating Alinta and Epic. The Minister was probably not told for security reasons.

Mr Barnett: If it has launched a formal investigation, it is incumbent on the ACCC to formally announce that. Are you announcing it on its behalf? Its due process is far more thorough than that, and you should be careful in your choice of words. It has requested documentation, which has been supplied.

Mr THOMAS: All right. Let us say that the ACCC makes an inquiry - I am not sure of the terminology in the legislation - into the Alinta-Epic deal; in that case, it would be highly improper to complete the sale of the State's major asset to Epic. This legislation - for which the Minister seeks the suspension of standing orders to expedite its passage - will facilitate the sale of the asset worth \$1b. That is the relevance of my comments to the motion before us: In the dying weeks of this Parliament, the Minister will rush through some legislation which will allow the sale of that asset. The results of the inquiry, investigation or whatever the Minister wants to call it, by the Australian Competition and Consumer Commission may -

The SPEAKER: Order! The member for Cockburn is failing to convince me that he is dealing with the motion before the House, which is to suspend standing orders. The member has indicated his intention to support the motion. It is my intention to bring the member's speech to a close, but I give him one final chance to conclude his comments.

Mr THOMAS: Thank you, Mr Speaker. I will speak closely to the proposition to suspend standing orders. The



Opposition supports the suspension of standing orders which will allow the Minister to deliver today the Bill's second reading speech. That will give at least one more day's consideration of the Bill than would be the case if the motion were not passed. That is most important because this legislation involves a very significant step in the sale of the State's major asset at a time when the arrangement - one personally approved by the Minister even though he has not read it - is under investigation by the Australian Competition and Consumer Commission. Also, one of the parties to that deal is a would-be purchaser of the pipeline. Through the actions of the deal, this party may well have gained access to information to which other parties do not have access.

The ACCC inquiry was precipitated by the fact that letters were leaked from AlintaGas which indicate that its motives have been most impure and improper in this matter. The fact that the Minister, Alinta and Epic are all involved is very serious. We should await the results of the ACCC investigation before we proceed with this sale.

MR GRILL (Eyre) [3.58 pm]: Normally, the Opposition would consent to the suspension of standing orders without a qualm to allow such an important piece of legislation to be debated. However, it has qualms and misgivings about this matter. The Opposition is concerned about the way this matter has been handled and the way the gas transmission problem has been handled for some time. The Government has made a number of errors in its handling of this very important matter.

In considering whether to suspend standing orders, it is worthwhile looking at the situation we face today. I believe strongly that the Government has made errors in relation to this matter: First, it allowed AlintaGas to campaign strongly against a second pipeline. The implementation of a second gas pipeline from Dampier to Bunbury was not a matter to be left to AlintaGas - it was a matter of government policy. The Government has not discharged its responsibility in that regard.

The Government's second mistake was to allow a joint venture between AlintaGas and Epic to be established for the looping of the Dampier-Bunbury pipeline without going to tender. If this is not a breach of propriety, it is very close to one.

What has that led to? The perception exists in industry in Western Australia and overseas that in the tender with Kingstream, Epic Energy received privileged information from its joint venture partner - that is, AlintaGas - about tenders from rival bidders.

Mr Barnett: That is absolutely disgraceful. You are accusing senior employees of corrupt behaviour. You, of all people, have learnt nothing.

The SPEAKER: Order! The experienced member for Eyre started off very well in addressing this motion. The motion is to suspend standing orders, which ultimately may allow members to have a full and wide debate on this matter. The member is now straying from the point. Although he is raising many issues that are to do with the issue itself, they are not to do with the suspension of standing orders, which is the motion before members. I ask him to consider that in his remarks.

Mr Barnett: Whose bidding are you doing this time, member for Eyre? For whom are you working?

*Withdrawal of Remark*

Mr THOMAS: The Minister for Energy asked the member for Eyre for whom he was working. That is a direct implication that the member is acting as an agent for somebody outside the House. That is a serious imputation, considering rulings and standards that have been applied in other jurisdictions. Mr Speaker, I ask that you ask the Minister to withdraw.

Mr BARNETT: I withdraw.

*Debate Resumed*

Mr GRILL: When considering this question of suspending standing orders, we must consider whether we are compounding the errors that have already been made in this arena. I repeat: There is a strong perception in industry in Western Australia and further afield that there was impropriety in the way the Kingstream tender was handled and in the way Epic obtained information about rival bidders. That is not necessarily my impression but it is the impression of industry.

Mr Barnett: Are you asserting that people in AlintaGas provided information to Epic on rival bidders for the pipeline?

Mr GRILL: I am not saying that that necessarily occurred. I am saying there is a widespread perception in the industry that that occurred. I cannot say whether that is true, but I am sure about this fact: That is the perception, and it is widely held. I do not want to see these mistakes compounded by members rushing into this action now. In

considering whether we should suspend standing orders, we must consider whether the Australian Competition and Consumer Commission has decided to inquire into this matter. The Minister might have a point: It may not be a formal inquiry at this time. However, the commission is heading towards a formal inquiry. It is taking the necessary steps to put in place a formal inquiry. That is because a perception exists beyond industry and into the bureaucracy that there is something very much wrong with these deals. The Australian Competition and Consumer Commission has the view that anticompetitive activity may have occurred in this matter. It has the view also that a breach of the Trade Practices Act may have occurred.

Mr Barnett: As I said to the member for Cockburn, the letter of intent between Epic and AlintaGas - the formal documentation - makes it clear that any arrangement must be subject to the approval of the ACCC. Where is your objection? That is the arrangement. Approval must be given.

The SPEAKER: Order! The difficulty members are creating for the Chair is that they are straying into the details of a future motion or debate on the Bill and they have gone beyond this motion. I acknowledge the member for Eyre has vehemently returned to the motion on occasions; however, the debate and the interjections flowing from the debate are not dealing with the suspension of standing orders. I will be forced to bring the debate to a close unless members can deal with the motion before the Chair.

Mr GRILL: I suggest to the Minister and to the Government that we should not deal with this matter in haste. Members might remember that when it was first suggested that Epic and AlintaGas enter into a joint venture arrangement to supply gas by looping the Dampier to Bunbury pipeline as far as Geraldton, the Minister said publicly that that could not happen; that it would be anticompetitive. The Opposition is giving this Minister the opportunity to reflect on that situation. Does he want to push this legislation through the Chamber in the way he suggested, or does he want to think about it again? Perhaps his first impression was the correct impression; that is, the arrangement between Epic and AlintaGas was anticompetitive, would not pass the test of the ACCC and was not the sort of deal that should be done. There was certainly a perception a few months ago that the stance he was adopting in this matter was very much at loggerheads with the position adopted by Phil Harvey. Perhaps there should be a cooling off on this legislation. Perhaps the Minister's first instinct was right and Phil Harvey was wrong. Perhaps AlintaGas should never have campaigned against the second gas pipeline and perhaps the Minister should not have backed off on this matter, because the Minister has the responsibility to put the interests of the State before the interests of AlintaGas. It seems to many people that the interests of the State are very much secondary to the interests of AlintaGas.

If the Government rushes into this legislation, big chips will be at stake. First, the legislation will put at stake the biggest divestment of public assets in this State. It will put at risk the sale of the Dampier to Bunbury natural gas pipeline. The Opposition has not opposed this proposal and has not wanted to delay that process until now. We supported the complete divestment of this asset long before the Government did. However, significant doubts have been expressed about this project and significant shadows have been cast over it.

Second, in the event that the ACCC finds that the arrangement between Epic and AlintaGas was anticompetitive, that arrangement must dissolve. If that dissolves, what will happen to Kingstream, which already has done a deal? Kingstream already has a contract, which may not be formalised, with Epic-AlintaGas for the supply of gas at a set price. What will happen to that arrangement? That arrangement is crucial to its fundraising. How can it go overseas and raise funds for this important project -

Mr Barnett: What will happen if you hold up the sale process and nothing happens for a year? There will be no way the Kingstream project can proceed. There will be no way gas prices can come down and there will be no way investment can take place.

Mr GRILL: The Opposition would be most unhappy if that were the case.

The SPEAKER: Order! Members are not dealing with the motion before the Chair, which is to suspend standing orders. The member for Eyre has returned to the motion on some occasions. However, members are raising matters that are the substance of some other debate. If the member for Eyre does not speak to the question before the Chair, I will require him to bring his remarks to a close.

Mr GRILL: The crucial matter here is the speed with which we deal with this legislation, and that is what we are dealing with today. We have always been prepared to see this legislation go through this House and the other Chamber as soon as possible, because we have always supported the divestment process of this asset. However, because of the doubts cast over it, it may now be worthwhile spending a few more weeks ensuring that the transactions go through. The Minister made a good point a moment ago; that is, if we delay this project for any significant time, it might be the death knell for it. That is the last thing we want to see.

Mr Barnett: That's what you are doing.

Mr GRILL: We want to see some certainty with this project. It does not have certainty at present because the Government has mishandled the matter. There is significant uncertainty about the Kingstream project, not just because of the site but also because of the gas contract. I have outlined why this divestment at this stage and the possible collusion between Epic and AlintaGas are now impinging upon the Kingstream project. We have been dealing with the speed with which we handle this legislation. The Minister says that there is no formal inquiry into this matter by the ACCC at the present time. I hope he is right and that there is never a formal inquiry because I want to see these projects get off the ground. How long will it take to find out whether a formal inquiry will go ahead? I will put this question to the Minister: In the event a formal inquiry goes ahead, what will happen to this divestment?

Mr Barnett: In a worst case scenario, if a formal inquiry goes ahead and it decides that the arrangements between AlintaGas, Epic and Kingstream are void, any arrangement will simply lapse and sale of the pipeline can go ahead independently, and the new owners can negotiate whatever they want with Kingstream or anyone else. If those opposite have a genuine concern, the best resolution is to sell the pipeline quickly.

Mr GRILL: The answer from the Minister adequately underlines the uncertainty surrounding this project at this time. I do not know whether he is right or wrong about the consequences of delay. I do not want to be dogmatic about it. We will accede to this motion because the Minister might be right. However, this is a very important project. The way in which it has been handled to date leaves open some very big questions indeed. There is a lot of uncertainty about these two major projects - the divestment and the Kingstream project. We want to see both go ahead with the same amount of certainty that other projects in Western Australia in the past have gone ahead. That does not appear to be their fate at present. Nothing we say today should be taken as adding to that uncertainty. I am warning the Minister and the Government that if they cannot bring back some certainty to this project in the near future, there will be dire consequences.

Mr Barnett: If you oppose the pipeline sale, you may well sink Kingstream.

Mr GRILL: That is what I am saying.

Mr Barnett: It will be on your head.

Mr GRILL: That is the situation this Minister and this Government have brought us to. Out of his mouth, this Minister is prepared to say that the project is in jeopardy. That is why we should be careful about this piece of legislation. We must be certain about it. As I said, we will accede to this motion and we will allow the debate to go ahead. We will not hold it up. I want this Minister and this Government to be under no illusions that these two projects are now on a knife edge because of the way they have been mishandled. We wish them luck. We have always supported them.

Mr Barnett: You wish us luck, but you will oppose it when the Bill comes in. What heroes you are!

Mr GRILL: No; we are not. We are supporting this motion. I reiterate: We support this motion and we are prepared to debate this matter in speedy time; however, this Government has jeopardised these two projects in the way this Minister has outlined already.

Question put and passed with an absolute majority.

#### *Introduction and First Reading*

Bill introduced, on motion by Mr Barnett (Minister for Energy), and read a first time.

#### *Second Reading*

MR BARNETT (Cottesloe - Minister for Energy) [4.15 pm]: I move -

That the Bill be now read a second time.

As part of the ongoing reform of the Western Australian energy sector, the Government has decided to sell 100 per cent of the Dampier to Bunbury natural gas pipeline or, as it is known in the gas business, the DBNGP.

There will be a number of major benefits to the State arising from such a sale. Firstly, the sale proceeds are expected to be substantial and will allow the retirement of a significant amount of state debt. This will have major benefits for the State, helping to hold down interest costs on borrowings and freeing up scarce capital for other much needed social and industrial infrastructure.

Secondly, separating the ownership and operation of the Dampier to Bunbury natural gas pipeline from the other business units of AlintaGas will foster a more competitive environment. The separation of ownership of the pipeline from interests in trading in gas is consistent with the national access code for gas transmission systems which this Government will adopt for this pipeline on 1 January 2000.

Thirdly, the provision of a wider gas corridor will help to facilitate future gas transmission pipeline developments and lead to the greater availability of low cost and environmentally friendly natural gas. The sale of the pipeline will also keep Western Australia at the forefront of energy reform in Australia.

I have pleasure in introducing this Bill which is to provide the legislative authority for -

- AlintaGas to sell the Dampier to Bunbury natural gas pipeline;
- the State to retain the existing Dampier to Bunbury gas corridor and for the corridor to be expanded;
- the establishment of a "land access Minister", who shall be the Minister for Lands, to retain the existing corridor, to acquire additional corridor rights and to be responsible for ongoing administration of the strategic corridor;
- access rights to allow the existing pipeline to be expanded and for additional pipelines to be built if required;
- compensation for "injuriously affected" land holders;
- rate equivalent payments to local government;
- a transitional third party access regime for the Dampier to Bunbury natural gas pipeline until the national access code is adopted for the pipeline;
- setting a maximum price structure for gas transportation in the pipeline and allowing for negotiability below that maximum; and
- protecting the interests of residential and small business gas and electricity consumers in the south and midwest of the State.

This Bill is another step in the Government's ongoing reform of the energy sector in Western Australia which to date has had a tremendous impact on the State's economic development. This is evidenced by strong growth in minerals and minerals processing projects making use of low cost natural gas.

The process of reform commenced on 1 January 1995 with the splitting of the State Energy Commission of Western Australia and the formation of AlintaGas and Western Power. This provided direct head to head competition between gas and electricity and clear commercial objectives for both corporatised businesses.

Access by third parties to the gas transmission and distribution capacity of AlintaGas has since been provided in a staged process on a manageable schedule. As of 1 January 1998 any consumer in the south or midwest who uses more than 250 terajoules per annum at a single site will be able to choose a supplier, confident that access for transport is provided for in the transmission and distribution systems. This level will reduce by 1 January 2000 to consumers taking more than 100 TJ per annum.

Similarly, third party access to the electricity transmission and distribution networks of Western Power has been provided in a staged process. From 1 January 1997 any consumer has had the right to access the high voltage electricity transmission network. As at 1 July 1999 any consumer who uses an average of 5 megawatts at a single site will have access to the distribution network. The current distribution access level is 10 MW and the Government intends to accelerate the deregulation process to provide distribution access to 1 MW consumers in the near future. One of the major outcomes of these changes has been the enhancement of competition in the energy sector. This has led to the construction of privately owned and operated gas transmission pipelines within the Pilbara, and from the Pilbara to Kalgoorlie.

The reform of the energy sector has also led to a surge in private investment in electricity generation in the Pilbara and in the goldfields. Across the State since January 1995, some 1 400 megawatts of new power generation capacity either has been completed, is under construction or is committed to, an increase of 34 per cent, with 63 per cent of this increase achieved through private sector investment. The provision of cheaper energy has also encouraged projects such as the Kingstream project, the \$900m expansion at Worsley Alumina Pty Ltd, nickel mines at Murrin Murrin and Cawse, the nickel smelter at Kalgoorlie, and co-generation plants at BP Oil, Worsley and Tiwest Pty Ltd.

An integral part of the reform of the energy sector was the disaggregation of the North West Shelf gas contract and the total deregulation of gas sales in the Pilbara.

As a result, gas prices in the Pilbara fell by around one half. This has contributed to the Broken Hill Proprietary Co Ltd developing its direct reduced iron project and others considering a range of downstream processing projects. Gas prices in the Pilbara are now recognised as among the lowest in the Asia-Pacific region.

Gas prices have also reduced in the south west and passage of this Bill will contribute to further economies. On

1 January 1995 it cost \$1.27 per gigajoule to transport gas at 100 per cent load factor to Perth. This will be reduced to less than \$1.24 per GJ on 1 January 1998 and will fall to less than \$1.12 per GJ on 1 January 1999 and to about \$1 per GJ on 1 January 2000. This is a reduction of 27 per cent in transmission costs, a major component of delivered gas prices. Those charges over the next two years are maximums only, and will be legislated in the access regulations flowing out of this Bill.

Prior to the construction of the Dampier to Bunbury natural gas pipeline, gas was supplied to Perth from the Dongara area gas fields and through the Wang pipeline. In the late 1970s, the Dongara field was producing to capacity and it was expected this field would be depleted in 1986. Restrictions were being imposed on industrial sales and expanding industries were required to use imported oil or coal.

The discoveries of large quantities of gas off the North West Shelf opened up the opportunity for new supplies of gas to the domestic market. The Government of the day played a major role in underwriting the development of the gas fields by entering into the North West Gas Development (Woodside) Agreement 1979. This agreement involved the then State Energy Commission of Western Australia contracting for around 414 terajoules of gas per day over a 20 year period with 95 per cent of this quantity being on a take or pay basis and SECWA's having the exclusive market for this gas in Western Australia. This agreement was negotiated during a period of high oil prices and risks to oil supplies from the Middle East. The demand for gas was expected to grow as Western Australia developed its resources.

This agreement had a number of benefits for Western Australia. It provided a long term secure supply of an environmentally friendly source of energy. It also contributed in a fundamental way to the development of Western Australia's vast gas reserves in the Carnarvon Basin. Today we are benefiting from this project through exports, jobs and royalties.

To transport the gas from Dampier to Perth the State, through its agency, SECWA, constructed a 1 500 kilometre pipeline. This involved borrowing approximately \$1b when interest rates were historically high and when the Australian dollar had a high value on the world money market. The borrowings and the take or pay gas commitments involved considerable risk and represented a substantial investment by the State.

The construction of the pipeline commenced in 1983 and in August 1984 gas from the North West Shelf was transported for the first time. In 1985 the installation of five compressor stations marked the completion of the initial construction of the pipeline. Subsequently, a further four compressor stations have been built.

As I indicated earlier, the Government has decided to sell the pipeline as part of its ongoing process to reform the energy sector. It was appropriate 14 years ago for the State to construct and own the pipeline, in order to underwrite a major development and guarantee gas supplies to the community. However, it is no longer necessary for the State to retain ownership.

The separation of the gas transportation function from AlintaGas and its sale to a private owner and operator will enhance competition in downstream and upstream markets. Provisions are contained in the Bill to ensure the new owner is not involved in any conflicting manner in the upstream or downstream gas business and thus the new owner will have straightforward goals to maximise use of the pipeline. It is expected the new owner will focus on optimising and expanding the capacity utilisation of the pipeline.

I am confident that the sale will deliver a substantial return to the Western Australian community. It has the potential to realise the highest sale price for a state-owned asset in Western Australia's history.

On the basis of the level of interest shown by potential buyers, I expect the sale price to be substantially above the book value of the pipeline. This will allow the State to pay back debt in addition to the debt associated with the pipeline. Not only existing state debt is impacted by the sale. **The transportation of gas is not a core function of government and with the private sector providing this service, it reduces the need for the State, through its corporation, to borrow large sums of money to maintain and expand this service.**

When the pipeline was first built, the private sector was not prepared to raise the risk capital and secure debt funding for such a massive infrastructure project. It required foresight and leadership by the Government of the day. We are at a stage now where the State's best interest is clearly served by selling the pipeline to the private sector and by moving towards an open access regime for all users of the pipeline.

I turn to the provisions of the Bill. Part 1 deals with some preliminary issues and defines necessary terms. Part 2 deals with the sale process. It provides legislative power for AlintaGas to sell the Dampier to Bunbury pipeline and for the Minister to issue directions in this regard. A direction may also include the setting up of a committee to conduct the sale, and for the disposition of the proceeds from the sale. All directions issued are required to be tabled in both Houses of Parliament.

Part 2 relieves the Auditor General of his obligation not to disclose information so that he may provide information to facilitate the sale process. Part 2 also provides for a penalty for any person who unlawfully discloses information obtained through the sale process. It also provides protection from liability for the directors of AlintaGas when complying with any ministerial direction in relation to the sale.

Part 3 deals with the assignment of the pipeline system to the new owner. It allows the Minister to make orders to effect the transfer of the assets and liabilities of the system. Part 3 also validates pre-existing contracts and allows them to be transferred to the new owner. It also converts internal arrangements between AlintaGas' transmission business and its trading business into formal contracts between the new owner and AlintaGas.

[Quorum formed.]

Mr BARNETT: Part 3 requires the new owner to offer to vary the price for access contained within the pre-existing contracts, that are not exempt contracts. Such a price offer is not to be more than the statutory price, which is the maximum price structure to be set out in the regulations, beginning at less than \$1.24 per gigajoule on 1 January 1998. Thus, following the sale of the pipeline, existing shippers such as AlintaGas and Western Power will immediately benefit from the expected lower prices.

Part 3 contains a provision for the Treasurer to issue an indemnity or guarantee should there be, for example, an obligation on the State that cannot be transferred to the new owner or which AlintaGas is unable to fulfil due to selling its transmission system.

Part 3 also allows for rectification of transfer orders, making of regulations for the transfer and allowing the assets to be further assigned, subject to the approval of the Minister.

Part 4 of the Bill deals with the pipeline corridor, the issuing of access rights and compensation. This part provides for access to land to allow the construction and operation of multiple pipelines. It is probably the most complex part of the Bill, but is essential to the future energy policy of the State.

A land access Minister is created to take AlintaGas' rights over the Dampier to Bunbury natural gas pipeline corridor, to expand that corridor from about 30 metres, as it is currently, to approximately 100 metres wide and to administer that corridor. The Government will recommend to the Governor that the land access Minister should be the Minister for Lands. The Act Minister, intended to be the Minister for Energy, retains ultimate authority over the corridor so that he or she is instrumental in this aspect of energy policy for the State.

Part 4 creates state corridor rights which are the rights that allow a pipeline operator access to the land to construct, operate, or enhance a gas pipeline in the corridor. The land access Minister will be able to designate additional land to be in the corridor provided the land is intended in the future to be available to confer rights on a pipeline operator to build and operate a gas pipeline.

The land access Minister, when requested by the Act Minister, will confer rights for access to the land in the DBNGP corridor for constructing, operating and enhancing a pipeline for transporting gas.

The Governor can make regulations detailing any default of conditions of that conferral of rights as being an offence and subject to a maximum fine of \$500 000 or \$50 000 per day. These are substantial penalties to ensure that a holder of access rights does not prevent or obstruct another holder of access rights from building or operating a gas pipeline in competition to him.

The land access Minister may charge the holder of access rights a periodic fee to recover the administration costs and a reasonable return on the current value of the State's investment in that corridor.

When land becomes part of the DBNGP corridor, it cannot be used in a way that is inconsistent with a gas pipeline being placed on it. Injurious affected landowners and native title holders will be able to seek compensation. A portion of the proceeds from the sale of the pipeline will be used for these compensation payments.

A "DBNGP corridor trust account" will be created to hold moneys from the sale proceeds, fees for access rights and any moneys appropriated by Parliament. This account will be used to pay compensation to injuriously affected landholders and administration costs. There is also provision for the Treasurer to transfer money to the consolidated fund.

Part 5 and schedule 1 of the Bill deal with access and pricing provisions for the pipeline. These provisions are transitional and will be repealed when the State moves to the national access code for this pipeline from 1 January 2000.

Part 5 and schedule 1 are similar to the existing access provisions of the Gas Corporation Act, except they provide for a more negotiable and less prescriptive regime.

Provisions have been specifically incorporated to protect the interests of residential and small business gas and electricity consumers. AlintaGas will have a mandatory right to access below the prescribed minimum threshold level because it is already an aggregator and needs this access to service residential and small business consumers. If the Minister thinks it is in the public interest he can also exempt Western Power from this minimum threshold level when it, for example, requires gas supplies to generate electricity for new residential developments.

The owner of the pipeline must provide access to spare capacity, unutilised capacity and developable capacity on a non-discriminatory basis. For spare and developable capacity this is to be on a first come, first served basis, as is currently the case. This maintains access provisions which are arguably still the fairest in Australia.

If the Coordinator of Energy considers it is in the public interest the coordinator can direct the owner to make capacity available outside these principles; for example, in order to protect gas supplies to residential consumers.

The access regulations made under this Bill will be transitional until 1 January 2000 and will provide for setting maximum prices for the various transmission services such as full haul, part haul and back haul. From 1 January 1998 the maximum price for full haul at 100 per cent load factor will be less than \$1.24 per gigajoule and will decline to about \$1 per GJ on 1 January 2000. After that date an independent gas pipeline access regulator will set reference tariffs. The owner and shippers will be able to negotiate prices below these maximum prices.

For the transitional regime an access manual will contain most of the prescriptive procedural and technical requirements of the existing Gas Transmission Regulations 1994 and the owner will be able to amend these with the approval of the Coordinator of Energy. Disputes concerning access will be heard by the gas referee, as is currently the case.

Part 6 enables the Governor to make regulations preventing the new owner from engaging in upstream or downstream gas businesses and regulations dealing with related party transactions. These provisions will require the owner to ring fence the pipeline operations from its other businesses, if any, and to provide financial statements to the Coordinator of Energy. This is generally consistent with the ring fencing to be required under the national access code.

Schedule 2 deals with the procedures for paying compensation if land has been injuriously affected by the designation of it being in the gas corridor or the subsequent issue of access rights for a new pipeline. Compensation may be monetary compensation or other valuable consideration.

Schedule 3 deals with supply system emergencies, essentially conferring those powers on the Coordinator of Energy which currently reside with AlintaGas under the Energy Corporations (Powers) Act 1979 in respect of the management of supply via this pipeline.

Schedule 4 deals with consequential amendments to various Acts, such as the Energy Corporations (Powers) Act 1979, the Gas Corporation Act 1994, the Land Acquisition and Public Works Act 1902, the Land Administration Act 1997, the Local Government Act 1995 and the Petroleum Pipelines Act 1969.

The amendments to those Acts are not substantial, but are designed to give legal recognition to the transfer of ownership of the pipeline and to accommodate the creation of a gas corridor from the Pilbara to the south west. They also enable the payment to local government of amounts equivalent to rates payable on land in the corridor based on the land's unimproved value.

The Bill is very comprehensive and this is essential in order for the sale to be effected in a proper manner and for the State's long term interests in securing gas supplies to be protected.

In conclusion, I reiterate that the sale of the Dampier to Bunbury natural gas pipeline is a further step in the progressive liberalisation of the State's gas market, which began on 1 January 1995 and which is being continued in manageable steps.

This Government is committed to ongoing energy reform which has the aims of reducing energy costs to consumers, promoting the development of a vibrant and competitive energy sector and enhancing further economic development, particularly by adding value to the State's vast mineral resources.

The State will benefit considerably from the sale of the pipeline through -

- the retirement of debt;

- the retention and reallocation of capital which would have been needed to expand the pipeline;

- lower gas transport costs to be prescribed for the transitional period to 1 January 2000 and available thereafter under the national access code; and

the creation of an expanded gas corridor from the Pilbara to the south west, allowing construction of enhancements and of further gas pipelines.

This Government is committed to calling for expressions of interest for additional pipeline capacity to the south west by 1 July 1998, so there will assuredly be competitive pressures on a private owner and operator of the existing pipeline to service the gas transport needs of this State.

The process of energy reform since 1995 has delivered considerable benefits to this State and the package of reform measures associated with this sale will continue to deliver those benefits. I commend the Bill to the House.

Debate adjourned, on motion by Mr Thomas.

## INTERPRETATION AMENDMENT BILL

### *Second Reading*

Resumed from 16 October.

MR MCGINTY (Fremantle) [4.36 pm]: This Bill amends the Interpretation Act by inserting a new section 45A and has its genesis in the August report of the Joint Standing Committee on Delegated Legislation. The legislation does nothing more than continue the practice of setting fees and charges in subordinate or delegated legislation.

To illustrate the purpose of the legislation, the twenty-fifth report of the Joint Standing Committee on Delegated Legislation spells out the factual circumstances that give rise to the need for this amendment. Members will recall that the report recommended that two regulations relating to drivers and their vehicles be disallowed. Those were the Road Traffic (Drivers' Licences) Amendment Regulations (No 2) of 1997 and the Road Traffic (Licensing) Amendment Regulations (No 2) of 1997.

I will deal with some of the detail of what those regulations sought to do and the findings of the Joint Standing Committee on Delegated Legislation to show why the Opposition supports this legislation. Firstly, the driver's licence regulations increased the fee payable for a driver's licence from \$26 to \$29 for a driver's licence renewed annually, and from \$90 to \$92 for a five year driver's licence; in other words, an increase of \$3 for an annual licence and \$2 for a five year licence. The cause of that increase, as reported by the committee, was to meet the costs of new digital imaging technology which is used in the production of the plastic licence card.

The new technology was designed to allow for photographs on licence cards to be digitally recorded and for related security features, such as holograms and security patterns on the licence. The cost of the card currently is \$2.64 and that is produced by a contractor to the department. The department has estimated that the cost of the new licence with the digitally recorded information will be approximately \$4.50; in other words, an increase of \$1.86. In order to cover that increase of \$1.86 the department increased the licence by \$3 for an annual licence and \$2 for a five year licence; in other words, \$1.14 and 14¢ respectively to reflect the administrative costs associated with the issue of the new card.

The effect of all of that is something which was then dealt with later in the report. Before I move to that I will deal with the second regulation; that is, the licensing regulations. The Road Traffic (Licensing) Amendment Regulations increased the recording fee payable for vehicle licences from \$12.50 to \$14; in other words, an increase of \$1.50.

These increases came into effect in April this year and were proposed to fund Western Australia's commitment to participate in the national exchange of vehicle and driver information system. They were designed to provide a better exchange of information between the States and to enable what is currently done manually to be done online electronically. The purpose of this initiative is to provide significant benefits for the community in the form of improved collection of fees, better collection of fines, and a reduction in the number of unregistered vehicles on the road, transaction times, car fraud, accidents with problem vehicles, accidents with problem drivers and licence fraud.

The costing of the initiative is also interesting. This is a five year program with an estimated total cost of \$12.5m. The increase of \$1.50 in the recording fee is based on the premise that it will bring into the consolidated fund the \$12.5m it will cost.

The Joint Standing Committee on Delegated Legislation then made the point that, with effect from 1 April 1997, vehicle drivers have been paying higher fees but no improved benefit or service has been provided. Given that, the committee is concerned that the increase in each impost might be a tax that the department has no legislative authority to levy. Therefore, we have two different circumstances or problems. The first, which relates to the driver's licence regulations, is that an additional amount was tacked on to the driver's licence fee to reflect administrative costs, which were supposedly higher. However, there was no real evidence of that. The increased cost of a card was \$1.86, but the fee increase was more than the cost of providing the card. The second problem, relating to the licensing



