PORT AUTHORITIES BILL

Second Reading

MR OMODEI (Warren-Blackwood - Minister for Local Government) [12.02 pm]: I move -

That the Bill be now read a second time.

It is with great satisfaction that I bring this Bill before Parliament. The Port Authorities Bill will give effect to the Government's policies for port reform in this State as described in the Government's major policy statement on ports, *Principles to Guide Western Australia's Port Authority Development Through the Nineties* which was released in November 1995.

The November 1995 statement clearly identifies that the role of the State's port authorities is to facilitate trade and export opportunities for Western Australia's farmers, miners and manufacturers and that this be undertaken in a commercial and efficient manner.

Port authorities are provided with the power under the Bill to provide all the services and activities which are required by port users. The legislation provides port authorities with the flexibility to either provide a service themselves, enter into business arrangements which will allow the private sector to become involved, or stand back and let the private sector provide the service.

The overall objective of the legislation is to improve the efficiency and effectiveness of ports which will benefit port users and the Western Australian community.

The Port Authorities Bill is based on the successful and proven model adopted for the water, electricity and gas corporations. Adaptations have been made where appropriate to tailor the legislation to the ports' environment. The legislation is also in keeping with the principles recommended by the Commission on Government report and national competition policy and principles.

Placing the new legislation in some perspective requires a brief overview of the present position. Each of the State's seven statutory port authorities has its own piece of legislation detailing its duties, functions and powers. Some of these Acts date from the turn of the century and all are in need of updating.

Port authorities are also required to comply with a number of maritime Acts covering aspects associated with shipping, pilotage, navigation aids, dangerous goods, pollution and a host of central government and other Acts including the Financial Administration and Audit Act 1985 and the Public Sector Management Act 1994.

The existing port authority Acts, together with the regime of other legislation, make it difficult for port authority boards and management to facilitate trade in a commercial manner.

The Port Authorities Bill, together with the Port Authorities (Consequential Provisions) Bill and the Maritime Fees and Charges (Taxing) Bill will address these shortcomings. The Port Authorities Bill both reforms and modernises existing port authority legislation. It creates the opportunity for the State's ports to benefit from greater commercial freedoms more closely aligned with those of the private sector. Port authorities will be better placed to respond to changes in market conditions and meet users' needs in terms of price and service quality. In keeping with modern day commercial thinking, port authorities will no longer be agents of the Crown or have the status, immunities and privileges of the Crown. Moreover, like the water, electricity and gas utilities, port authorities will not be subject to the Public Sector Management Act or the majority of the provisions of the Financial Administration and Audit Act.

Provisions based on corporations law will apply in relation to the constitution and proceedings of boards, the duties

and responsibilities of directors, the chief executive officer and staff, and financial administration and audit. Boards will be responsible for the appointment of chief executive officers and staff, subject to minimum employment standards and conditions.

The Port Authorities Bill also redefines the relationship between the port authorities and the Government.

Port authorities will have a greater responsibility for day to day operations and management autonomy and authority will increase. Management will put into action decisions in response to changes in the market. It will encourage port management to become more competitive in the provision of services to existing and potential port users. However, there will still be government controls and an emphasis on accountability to Parliament.

The legislation requires port authorities to develop an annual strategic development plan and an annual statement of corporate intent for approval by the Minister and the Treasurer. This will enable the Minister and the Government to play an important role in setting the overall direction of the ports while ensuring minimal involvement in the daily operations of a port authority. The Treasurer's focus will be on the financial and economic aspects of the plans.

The statement of corporate intent will be the primary document against which the Government will annually evaluate the performance of port authorities.

The Port Authorities Bill requires port authorities to consult with the Minister before embarking on any major initiative or taking any action that is likely to have significant public interest. The Minister may give directions in writing to a port authority in respect of the performance of its functions and the port authority is to give effect to any such direction. Directions by the Minister must be laid before Parliament. Port authorities will continue to be audited by the Auditor General and annual reports will be tabled in Parliament.

Special provisions in schedule 6 of the legislation relate to the port authorities of Dampier and Port Hedland. These are necessary because both ports were initially developed and constructed by private sector interests. Schedule 6 picks up the relevant provisions from the existing Acts applying to both port authorities and confirms obligations arising from state agreements.

The remainder of the Port Authorities Bill unifies an approach to activities already existing in current legislation including navigation, port charges, proceedings for offences, miscellaneous provisions and regulations.

In summation, the legislation rationalises, unifies, reforms and modernises existing port authority legislation. It represents a new partnership between Government and the State's port authorities to take Western Australian port users into the next century. It meets Government's competitive neutrality principles. It provides for rigorous accountability and for mechanisms to monitor and assess performance.

Port authorities will be expected to achieve certain financial and operational targets. There will be clear authority for management to seek opportunities, within the scope of a port authority's functions and powers, to improve productivity, reduce costs, and provide the best possible service to customers either directly or indirectly. It will enable Government to set broad strategic policy directions. Most importantly, the Port Authorities Bill is a mechanism by which the State's port authorities can more effectively facilitate and foster growth in international trade and commerce. This legislation will improve the administration of the State's port authorities for the benefit of port users, the broader community and the State's economy. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

PORT AUTHORITIES BILL

Cognate Debate

On motion by Mr Omodei (Minister for Local Government), resolved -

> That the Port Authorities Bill, the Port Authorities (Consequential Provisions) Bill, and the Maritime Fees and Charges (Taxing) Bill be considered cognately, and that the Port Authorities Bill be the principal Bill.

Second Reading

Resumed from 18 June.

MS MacTIERNAN (Armadale) [11.14 am]: The Opposition supports the major thrust and the underlying principle of this legislation, which is to enact legislation which reflects the realities in Western Australian ports, and to replace antiquated legislation with legislation which is designed to stimulate the commercial activities of the ports, to facilitate those commercial activities and to provide a sounder base for accountability in an environment in which we are encouraging greater flexibility. The Opposition also supports the decision by the Government to commercialise rather than corporatise the ports. With commercialisation the minister retains power to direct a port authority. That is an important control for government to retain, because from time to time larger considerations need to be taken into account in the ports' activities. A port authority that views its port facility at a local level might not find it desirable to take a course of action to make way for a particular business development, although if it were viewed more broadly from a regional or even statewide perspective it might be important that the port take on a particular role.

The Opposition supports the underlying principle that there be ministerial direction. However, the legislation contains some limitations. It is ironic that legislation which is designed to improve the accountability of port authorities, in many respects, will do the opposite. For example, it removes from any real parliamentary scrutiny the performance and conduct of those port authorities. The Opposition will move amendments that seek to deal with that.

The Opposition will make some general points and move some amendments that would preclude port authorities embarking on what is basically an industrial relations campaign that has nothing to do with the efficient management of the ports. I will use this debate to make some general reflections on the direction of port administration in this State over the past couple of years and express the Opposition's grave concern that the efficient management of ports has played second fiddle to the prosecution of industrial relations agendas of successive governments and National Party ministers. The degree to which the coalition Government has been seeking to take on the Maritime Union of Australia and to embark on what it calls waterfront reform has been extraordinary. That is surprising when one considers what has been achieved since the late 1980s

when the federal Labor Government put in place waterfront reform around this country. The work force has come down from about 10 000 to 3 500. Every port in Western Australia has reduced its costs and improved its productivity dramatically. The biggest success story has been the performance in the regional ports. The introduction of the integrated labour force program has been a magnificent success. That program has resulted in multiskilling within the ports, so there is no separation between the stevedoring and maintenance staff. For example, in Bunbury the woman who works on reception is also able to moor a ship or use an oxyacetylene welder. The finance director is also able to engage in a range of maintenance tasks when there is a demand for that activity.

Mr Osborne: You have been reading my maiden speech.

Ms MacTIERNAN: The member probably read the speech I made in the upper House prior to that. I am pleased that Lord Osborne has recognised the performance of his constituents. Being a reasonable man, I presume that he also appreciates that that has been a direct result of the reforms put in place by the Labor Government in the late 1980s.

We have an extraordinary situation. We have had major reform on the waterfront and as a result of that we have seen innovative work practices implemented around Western Australia, particularly in regional ports, costs to port users rapidly declining and productivity increases. However, this Government has embarked consistently on a process to cause disruption and dislocation at ports in Western Australia. It does not make sense. Each of these ports is now operating in the black - they were in the red previously. They are introducing waterfront reform and consumers are benefiting. In many instances port authorities have been able to squirrel away substantial sums of money that they hope to use to undertake extensive redevelopment programs. However, we have an absolutely pathological desire on the part of this Government to cause mayhem and grief on the waterfront.

We saw that process with the BAAC dispute and the attempt to improperly install a Buckeridge company as the supplier of stevedoring services to Stateships. Of course, the big attraction in having Buckeridge on the wharf was that he was not only a major donor to the Liberal and National Parties but he was also prepared to engage all his staff as contractors, not employees. As such, they would not be subject to the collective bargaining process that has been in place on the wharves for over 50 years. That ended in a debacle and the State was sued for $1m. Buckeridge left the wharf with $1m, which he received from the taxpayers courtesy of then Minister Charlton. We lost Stateships and we are now heavily subsidising a private operator to sail to the north west of the State and provide a service that is nowhere near as comprehensive as the service previously provided.

We then saw this Government's very eager participation in the disgraceful dispute orchestrated by Peter Reith and his friends in Patricks The Australian Stevedore. Again, that resulted in a very negative outcome for the State. Millions of dollars of the Police budget were diverted to cover overtime costs involved in overseeing this manufactured mayhem on the waterfront.

Mr Thomas: Thuggery!

Ms MacTIERNAN: Yes. Of course, it resulted in huge losses for the port users tied up with Patricks. Again, at the end of the day, the company had to back off. The action by Patricks in conspiracy with the Government was deemed to be illegal by the Federal Court and the workers were reinstated.

Not content with those forays at Fremantle, we saw the minister involved in another bizarre situation: He decided we would have a new port. He invited expressions of interest for an entirely new port in the Kwinana naval base area. That was particularly puzzling because six months prior to that a major review of port needs was undertaken by the Government. The resulting report concluded that we did not need another port for about 20 years - the existing capacity of Fremantle would suffice for that period. On the basis of that ongoing facility at Fremantle, many private companies invested huge amounts of money developing their facilities at that site. Then, without any preparation or consultation with industry players, suddenly we saw a U-turn in government policy in relation to the future of the Fremantle Port Authority and we will now have an entirely new port. The new port had nothing to do with improving costs. Then Minister Charlton said the advantage of the move was that it would enable the Government to put in place an entirely new industrial relations regime.

It is interesting to look at parts of the tender document. Members will recall that the minister refused to make the expression of interest document available to the general public or to this House. Indeed, if one wanted a copy, one had to fork out $1 000. So much for open and accountable government!

One of the things which the Government was keen to conceal and which was contained in that document was a provision that to have any chance of success in obtaining the contract, a tenderer must have undertaken to have a direct employee-employer relationship; that is, the successful tenderer must undertake to employ staff on workplace or subcontract agreements. Any tenderer who was prepared to employ people under an award or to negotiate an enterprise bargain agreement or any sort of collective agreement was precluded from participating in this port process.

We have this extraordinary situation of a Government that talks about choice in industrial relations not only not being prepared to give choice to the employees but also denying it to the employers on the waterfront. That is consistent with the policy that it has begun to adopt in public sector employment generally. It is an extraordinary proposition that the basis upon

which a tenderer would rise or fall in the development of a multi-million dollar port facility would be whether it had workplace agreements or employed people on an award. Even if the tenderer could demonstrate that the enterprise was more efficient or that the award would offer greater flexibility, it would be precluded. It was a sine qua non that unless the tenderer had workplace agreements it would not be able to participate in this process. What is driving the Government's agenda in port management? It is anything other than providing port users with efficient, cost-effective ports.

There is a number of other interesting examples. Dampier has a bulk handling port and a public port. For years the public port has offered stevedoring services provided primarily, although not exclusively, by P & O Australia Ltd.

P&O was not flavour of the month with the Government because it had not participated in the Patrick's dispute. It continued to engage staff and work in a more or less cooperative manner with the union. It was clearly marked for special treatment by the Government. When Buckeridge managed to get his $1m payout from Eric Charlton, courtesy of the fiasco on the Fremantle wharf, that money was used to set up Western Stevedores, a company that was notionally owned by John Perraldini who admitted that his financial backer was none other than Len Buckeridge. With the taxpayers' dollars, that new outfit was set up and moved to Dampier, which it had every right to do, where it set up a rival operation to P&O. I have spoken to many of the users on the Dampier port who believe a positive outcome eventuated from having Western Stevedores enter the wharf. It caused the P&O stevedoring operation with which they were generally satisfied to lift its game and to be more realistic about the way in which it did its business.

A seemingly worthwhile competitive model was operating on the Dampier wharf. However, we had not punished P&O and the people were operating under awards and collective agreements. What did the Government then decide to do? It acknowledged that competition existed on the wharf and that it was working well. However, it did not want that; it was not about competition. The Government indicated that what was driving its port policy had nothing to do with efficiency or reducing costs; it had everything to do with smashing the Maritime Union of Australia, so it went out to tender and said that competition would not exist on the Dampier public wharf any more; there would be a monopoly and therefore the tender would go out to one company. It was written into the tender specifications that preference would be given to an outfit that had a particular industrial relations arrangement. Not surprisingly the Buckeridge Western Stevedores company won the contract.

Mr Kierath interjected.

Ms MacTIERNAN: I have not heard one rational defence by any of the free marketeers on the other side of the House who can tell us why, when two companies are operating side by side in competition, creating an environment -

Mr Bloffwitch interjected.

Ms MacTIERNAN: I will give the member for Geraldton an opportunity to respond because I am fascinated to hear his response. I want to make sure members opposite get the picture: Two private enterprise companies are competing and improving the services to the port. Costs are being reduced and the port users are happy. Why move to a monopoly? What is the justification for removing a competitive environment and changing to a monopoly? I am inviting the "vegie patch" who were trying to get in before to make a comment.

Mr Johnson: You are being very rude.

Ms MacTIERNAN: I am interested in a response.

Mr Johnson: I would not say that about you.

Ms MacTIERNAN: I am inviting the esteemed backbench to make a comment.

Mr Johnson interjected.

Ms MacTIERNAN: I rest my case. When given the opportunity to explain the inexplicable they were unable to do so.

Mr Omodei: You should relate your comments to the Bill. All of the ports will have to act commercially and any directions given by the minister will have to be tabled in the Parliament. I know it makes you feel good to refer back to these issues but you should be talking about the legislation.

Ms MacTIERNAN: That is an interesting point. In responding to this I take the opportunity to deal with that precise issue. I refer to the degree to which, particularly but not exclusively in the Transport portfolio, the former minister effected policy and decision making by various agencies without using the formal process of a ministerial direction. The minister's staff telephoned agencies such as Main Roads and in no uncertain terms told them what, to use their words, "the old man wanted"; for example, the Australind bypass was opened and a strategy put in place somewhere else. The public servants did it.

I have no problem with ministerial direction but a question of which you are aware, Madam Acting Speaker (Mrs Holmes), is when is a direction a direction, or when do ministers quite improperly use their influence over their public servants in an environment in which little security of tenure exists for senior public servants. As the Auditor General said yesterday, they

are so scared of losing their jobs they will not even take annual holidays. As a result billions of dollars worth of leave entitlements are accruing. In that environment the backbone of many of our senior public servants is not there to resist the minister's putting pressure on public servants to give effect to directions without the minister's having to take the political responsibility for them. Given that the principle that is being enshrined in this Bill is one of commercialism rather than corporatism which the Labor Party supports, it is important we talk about the effects of ministerial influence on the way port policy is driven. It is a very live issue as we speak. Again, at the Geraldton port, under very strong government influence and direction -

Mr Bloffwitch: The board made that decision, not the government; let us get it clear. It is an independent board.

Ms MacTIERNAN: Just as the Western Australian Tourism Commission decided to give Global Dance $400 000 of taxpayers' money to engage in a complete fantasy?

The ACTING SPEAKER (Mrs Holmes): Will the member for Armadale kindly address the Bill.

Mr Bloffwitch: That is a long bow to draw.

Ms MacTIERNAN: The member for Geraldton raises another interesting point. I will make a discursion from my main line of argument to address that because it is relevant to this Bill; that is, the appointments to the board. Those appointments have always been made by government and we do not resile from that. However, on many of the port authority boards around this State people with any expertise in shipping or transport have been replaced by farmers - an inordinate number of farmers appear to have received preferment - and right-wing "industrial relations experts".

Mr Prince: What do you mean by experts in shipping?

Mr Bloffwitch: Who are the right-wing members on that board?

Ms MacTIERNAN: I am not talking about the Geraldton Port Authority I am talking about ports generally.

Mr Prince: Are these people from the MUA or are you talking about people who are actually employed?

Ms MacTIERNAN: It is interesting that the minister has not recognised that employees are legitimate stakeholders. This is a fundamental difference -

Mr Prince: I am asking you a question. Are you looking at shipping agents or is it people who are part of the work force? What are you saying?

Ms MacTIERNAN: I am referring to someone like Tony Carter who was taken off the Fremantle Port Authority. He was the former Chairman-Managing Director of Jebsens International Pty Ltd, a member of the port operations task force and the Chamber of Shipping. His term was not renewed. When his term was not renewed, major dissatisfaction was expressed within the Fremantle Port Authority and from industry stakeholders because there was no longer any expertise in shipping on the board. Who replaced him? A person of the calibre of Mr Carter was replaced with Russell Allen. Who is Russell Allen? He is a lawyer and an industrial relations specialist. He has been the architect of the Government's industrial relations policy. Therefore, we get rid of people who know something about shipping. We are not interested in that because port policy in this State is not about shipping. Port policy in this State is not about creating an efficient port for use. It is about fulfilling a National Party wet dream to get rid of the MUA.

Mr Bloffwitch: Do you think the board is there to manage it?

Ms MacTIERNAN: Russell Allen is a member of the board. Ron Aitkenhead and Ernie Strahan, who are farmers, are also members of the board. The Government has removed from the board those people who know anything about shipping and has replaced them with farmers and right-wing IR specialists! That is the sort of thing that is happening and it is a problem. There are two levels to this problem that we have identified: Firstly, the ideological view taken by the Government that unions representing employees are not legitimate stakeholders in the operation of ports. That is complete nonsense.

Mr Bloffwitch: You are saying that it is the board that manages the port authority. It is not the board that manages the port authority; that is the job of the CEO. The board is there for policy and setting direction. IR would be something about which some of your members should be looking to have some working knowledge within the board level.

Ms MacTIERNAN: People who know anything about shipping are removed from the board and replaced with farmers and right-wing IR specialists. Interestingly, we diverted to this issue of the calibre of people who have been put on these boards. A number of failed National Party candidates have been put on boards. We do not say that just because they have an unsuccessful political history, they are barred. I am sure that failed Labor Party members have been placed on boards. The overall direction of the appointments indicate that, in many instances, the boards have suffered because they have been loaded up with people who know nothing about the area, but have another issue to prosecute.

Mr Cowan: Absolute nonsense.

Ms MacTIERNAN: It is not nonsense. It is demonstrated.

Mr Cowan: You should be looking at the performance of the respective authorities and their ability to handle freight and win a greater volume of freight. In every case, the performance of those ports has improved and their freight numbers and volumes have expanded. While you might be dismissive in your inimitable way, the fact is that in the main those port authorities, despite their composition or because of their composition, have been performing very well. You could at least acknowledge that. Be big enough to acknowledge that.

Ms MacTIERNAN: If the Deputy Premier had been in the Chamber at the beginning of the debate, he would have heard me say just that.

Mr Cowan: I regret that the modern telecommunications of this building allowed me to hear you mumbling about something like that, but it was not very gracious.

Ms MacTIERNAN: I thank the Deputy Premier very much for that. I acknowledged from the outset that, since the late 1980s, we had a regime of continuing improvement. That is what gave the lie to the direction of the port policy which has been embarked on by this Government; that is, a port policy in which the overriding, overwhelming and overarching direction was determined by industrial relations considerations. The member for Geraldton is in the Chamber and he will be very interested in the Geraldton Port Authority. The member for Geraldton told us that the board made the decision that it wanted to contract out the services for the port.

Mr Bloffwitch: You don't think they should be able to do that exercise?

Ms MacTIERNAN: Can the member for Geraldton explain whether it is just pure coincidence that the same clause, which appeared in the tender documents for the new "fantasy" port at the Kwinana Naval Base - the James Point Port - indicating that a business should not bother tendering for those services unless a direct employee-employer relationship with workers was in place, was included in the specifications for the Geraldton Port Authority. We have heard from the member for Geraldton that this is not just a question of government policy. It is pure accident that these extraordinary clauses, which have never been seen anywhere else until they first appeared in the Kwinana port document, have suddenly popped up all over the State. They have popped up in Geraldton. Is the member for Geraldton able to enlighten us?

Mr Bloffwitch: A positive move.

Ms MacTIERNAN: Was it pure coincidence?

Mr Bloffwitch: I would hope that it was a master plan and that the Geraldton Port Authority is trying to have more efficiency on the wharves.

Ms MacTIERNAN: I am sure that the member for Geraldton, who is renowned for keeping his finger on the pulse in his home town, also knows that the Maritime Union of Australia then quite properly took action against the Geraldton Port Authority under the Trade Practices Act for engaging in restrictive trade practices. That matter went to the Federal Court. At that point, the Geraldton Port Authority realised the complete enormity and outrageousness of its action and made an undertaking to the Federal Court that it would withdraw that as a tender requirement and consideration. An acknowledgement that this master plan, touted by the member for Geraldton, was contrary to the Trade Practices Act and contrary to the very principles -

Mr Bloffwitch: No, it was not contrary. It was proposed that it was contrary.

Ms MacTIERNAN: Why did it back down from the master plan, as the member described it?

Mr Bloffwitch: Probably because it did not want to waste thousands of dollars of the port's money defending an action against the union. That is why it would have settled.

Ms MacTIERNAN: It knew it was going to lose.

Mr Bloffwitch: Because it was spending other people's money and it has some respect for that.

Ms MacTIERNAN: I am very interested to hear that port authorities do not like spending other people's money. This brings me to one of my pet topics: Why could the Fremantle Port Authority use public money to sue a member of the Opposition for defamation? Where has there been a precedent for this? People hear this, but do not believe it. It was not an action taken and paid for by individual members of the port authority, but a Russell Allen inspired action by the authority. "How can we best shut up the Opposition that has been critical of us? How can we best shut up the Opposition which has made the extraordinary allegation that the Fremantle Port Authority was involved and implicated in Patrick's asset-stripping operation that cheated so many thousands of workers of their entitlements? We will use the taxpayers' money to sue the member of the Opposition." The member of the Opposition paid her own legal fees, but the port authority used public money.

The member for Geraldton says, "We backed down from an action in the Federal Court that alleged that we were engaging in restrictive trade practices, because we do not want to spend taxpayers' money on legal fees," yet the Fremantle Port Authority, under the direction of Russell Allen and Eric Charlton, was using public money to sue a member of the Opposition. The member for Geraldton should be in Pakistan. That is the way they run Government.

Mr Omodei: But in the end you had to withdraw.

Ms MacTIERNAN: I make absolutely no bones about it. In the end, I had to give a qualified apology. Do members know why that was? I could not afford the potential $100 000 in court costs.

Mr Barnett: You would not want to defend yourself, would you?

Ms MacTIERNAN: No, I would not want to defend myself - absolutely not. I was a commercial lawyer, not a defamation lawyer. Peter Foss, QC, did not want to defend himself. Peter Foss, QC, used taxpayers' funds to defend himself against a defamation action. I was prepared to use my own money to defend myself, but at the end of the day I had to say, "Enough is enough." The Government had no fetters - it was public money. Russell Allen did not have to pay a cent, Ron Aitkenhead did not have to pay a cent, and not one of the other toadies that the Government has put on the Fremantle Port Authority has had to pay a cent, but I had the potential liability for legal costs. Of course, it is not a fair contest.

It is extraordinary. The member for Cottesloe, the minister for prosecuting unpleasant and unfriendly mayors, or the minister for mayoral witch-hunts, says that I should have defended the action myself, when Peter Foss, QC, his cabinet colleague, is milking the public purse to defend defamation actions against him. The minister's double standards are extraordinary. I had to give a highly qualified apology to the Fremantle Port Authority, not because I thought that I should but because I thought that it was a disgraceful act on the part of the Fremantle Port Authority, with the full connivance and support of the former Minister for Transport, to attempt to shut me up in my investigations of the Fremantle Port Authority and his performance generally. It will not shut us up; we will continue.

Mr Osborne: The member's resentment is fuelled by the fact that she feels very bitter about it.

Ms MacTIERNAN: Not at all. Like many of Lord Osborne's colleagues, there was wry amusement throughout the profession that the Attorney General's first act as Attorney General was to make himself a QC. That says something about not only the priorities but also the ego of the man.

Mr Osborne: The member is a very bitter person.

Ms MacTIERNAN: Not at all. It is outrageous for the minister for mayoral witch-hunts to suggest that I should defend myself against such an action when I come from a commercial law background, but Foss, QC, can dip into taxpayers' funds.

Mr Barnett: The member took me a little more seriously than was intended. I was reflecting on her legal skills in court.

Ms MacTIERNAN: I do not know how much the minister understands the various aspects of law, but defamation is highly technical. Anyone who did not have expertise or specialise in it would be an absolute fool to defend himself or herself in a defamation action, particularly when the taxpayer was funding a firm that engaged defamation experts. The minister's comment was nonsensical. However, we have veered from the debate.

I repeat that I am completely disgusted, as are many people in the State, with the conduct of the Fremantle Port Authority and the former Minister for Transport in this gross abuse of power, of using taxpayers' funds - public funds - to launch a defamation proceeding against a member of the Opposition for making basically an allegation that virtually everyone in the community believes is true. One day, when we are in government and we have a royal commission, we will establish the truth.

That demonstrates the politicisation that has occurred within the port authorities - that a port authority would actually take such an action. We have the master plan by the Geraldton Port Authority to include that restrictive trade practice requirement.

Mr Bloffwitch: Don't say that it was restrictive; it was never found that way.

Ms MacTIERNAN: The Geraldton Port Authority went to court and it slunk out with its tail between its legs, waving a letter saying, "We will not pursue this." Very interestingly, what do we now see? The Bunbury Port Authority. From my discussions with various players in the industry in Bunbury - my discussions are certainly not confined to the union - I know that Bunbury Port Authority is not happy about having to go out to tender. It feels that its will has been overborne by the Government and the Minister for Transport and it is putting its services out for tender. Again, what do we see? We see propped up yet again the master plan - the restrictive trade practice clause, which says, "If you want to provide stevedoring or maintenance services for the Bunbury port, you must be prepared to put your workers on workplace agreements. We will not have anyone who will be prepared to work in a collegiate way with the work force. We will not accept that productivity is a group effort and that we must have collective agreements."

Mr Osborne: All they are asking is that the work force's first loyalty is to the port, not the Maritime Union of Australia.

Ms MacTIERNAN: It is important to understand one point in the nonsense about direct employee-employer relations. How does one deliver productivity, particularly in light of the successful model that was set up with the integrated labour force program? It is all about collectivity, flexibility and the work force working together. The focus on direct employee-employer relationships is to deny the importance of that collective arrangement and to deny the importance of working in a collegiate way with one's colleagues to achieve a productive outcome. It is utter nonsense. Members should think about it. How are we to get productivity out of a fragmented work force when there are no cross-worker relationships and it is all individual employee-employer relationships? It is complete nonsense. It will break down the great strength. Lord Osborne, in his maiden speech, said exactly that. He talked glowingly about the integrated labour force program. That is a recognition that we need a collective approach.

Mr Osborne: There is no reason that it will be lost.

Ms MacTIERNAN: It will be lost. There are individual performance assessments.

I know that the member for Bunbury does not like to travel and prefers to stay in his own area, but he may have travelled to Kununurra and spoken to the Argyle workers about the change that occurred in their workplace relations when they went onto individual contracts. The collectivity that had been very positive for the company and that had led to productivity achievements well in excess of the benchmark that had been set by that company disappeared, and suspicion and conflict was created between workers with the introduction of individual performance assessments, because all the workers were looking over their shoulder to see how the other workers were getting on with the boss and they ceased working as a team. The teamwork and collectivity that is essential to a productive outcome was absolutely destroyed. That is the philosophical difficulty with the Government's approach to productivity.

Mr Osborne: They still work as a team, but their primary loyalty is to the port rather than to the Maritime Union of Australia.

Ms MacTIERNAN: That is nonsense. These people have great loyalty to the port, as has been demonstrated by the results, as the Deputy Premier said. The integrated labour force program has led to great productivity improvements. That is because people do identify with their employer. I know that members opposite are by nature purely materialistic. Their philosophy is based on the notion that people who do not receive a direct profit from their employment will not take an interest. That is why members opposite are anti the public sector. They cannot understand how people who are not dipping their fingers in the cookie jar and getting a share of the take can identify with the outcomes of an organisation and have a commitment to an organisation. That is the basis of their ideology.

Mr Cowan: That is quite wrong.

Ms MacTIERNAN: The agrarian socialist opposite claims to have a different view!

Mr Cowan: My view is very different from your view - you are right about that - but I do not know that I would describe it in the way that you have described it.

Ms MacTIERNAN: The Government is taking the wrong action with regard to the State's ports. I have visited most of the ports in Western Australia - that is, when I am allowed onto the premises and am not ejected by the Minister for Transport, which leads to a stoppage of work - and I have been quite impressed with the people whom I have met in those port authorities. I was particularly impressed with the Broome Port Authority. I am very pleased that notwithstanding that that port is much more directly managed by the Department of Transport, there is a great deal of energy and dynamism among the management of that port, and a real desire to expand the areas of operation of that port, all of which is being done quite happily within a public sector framework.

We support what the Government is doing with regard to commercialisation, but we have great difficulty with privatisation. We hope that now that One Nation has out-polled the National Party 2:1 in O'Connor and 4:1 in Forrest, the National Party will change direction and move away from its focus on privatisation.

Mr Cowan: Do you want us to move down One Nation's path and adopt its philosophy?

Ms MacTIERNAN: The National Party can learn a few lessons. It can learn that its rural constituency is very disenchanted with privatisation. It has seen the results of privatisation.

Mr Cowan: Come on! What has been privatised in the bush?

Ms MacTIERNAN: Westrail track maintenance has been privatised. Substantial numbers of people were employed by Westrail throughout the State to maintain tracks.

Mr Cowan: That is not right. You should look at what privatisation really means. One of your big problems is that you do not understand half of the things that you talk about.

Ms MacTIERNAN: Come off it! Privatisation includes the contracting out of services that were previously provided by government. Westrail track maintenance is one example. We have also seen the dismantling of Main Roads WA. That is having a major effect on rural areas, because rather than base the workers in places like Narrogin, Buckeridge brings in his blokes, who stay in caravan parks during the week, and the pay cheques that go from Main Roads to those blokes are not spent in Narrogin but are sent to their families in Perth and are spent in Perth, and their children do not come to Narrogin and are not counted in the statistics for the provision of education and health services in that town. That story is being repeated around the State. The Government is now proposing to sell all of Westrail, not just the track maintenance. Some hospital privatisations have taken place in the bush. Employment services have been privatised, which have had an effect on the bush. The list goes on and on. Stateships is being privatised, notwithstanding that the National Party gave a cast iron guarantee not to do that. I think the National Party has turned into a complete and utter joke, and that is also what most people in the bush are beginning to think.

Mr Cowan: We will see how we go in 2001. I am looking forward to it!

Ms MacTIERNAN: Absolutely, particularly if we have one vote, one value. If we can do a deal with Douggie, National Party members will go down the gurgler!

Mr Cowan: I do not think you are right there either.

Ms MacTIERNAN: What percentage of the vote did the National Party get in Kalgoorlie? That was really good! It was under 10 per cent!

Mr Cowan: If I were you, I would not use federal figures and get too cocky about them.

Ms MacTIERNAN: That is right. We should not get too cocky. Certainly National Party members are not very cocky these days.

A message can be found there about privatisation and about the dismantling of services in the bush. These are now very live issues in country Western Australia. These activities are taking place around Western Australia. The Geraldton Port Authority is seeking to dismantle this highly successful integrated labour force program. That is also happening in Geraldton. I note with some satisfaction that the Esperance Port Authority issued a statement yesterday that it would not be bullied - it is interesting that the port authorities are talking about being bullied - into privatising its services. Quite apart from the issue of equity, there are very good arguments for retaining an integrated labour force program rather than trying to carve up port activities into a plethora of small, privately operated areas.

This Bill gives port authorities specific power to contract out, and also to grant exclusive licences. There has been a great deal of criticism about the grant of exclusive licences. The Chamber of Minerals and Energy of Western Australia and the Chamber of Commerce and Industry of Western Australia stated in a report that they prepared recently that they are very concerned about the trend by the Government to grant exclusive licences, because they believe that in most instances, that is not the way to gain greater efficiency in these areas and that the threat of competition is a far greater incentive than is the grant of exclusive licences.

In the fullness of time, I would be interested to review the outcome of the Dampier Port Authority replacing the thriving competitive market that was in existence before the Government decided it wanted to grant a five year monopoly. I also note that the Geraldton Port Authority backed away from the five-year model used at Dampier, and has gone to three years. That is obviously a small concession, although not enough to make it immune from the action that was taken against it for restrictive trade practices.

I know we have only a representative minister in this place, but, in light of the Geraldton experience in the Federal Court, I would be interested if in responding to the debate today the Minister for Local Government would advise why an identical provision has been repeated in the Bunbury tender and whether he anticipates another Federal Court action by the Maritime Union of Australia. It seems to be rather silly to continue to insert those clauses when there are clear doubts about their legality.

The Opposition will move amendments to the legislation dealing with accountability measures. We are concerned about the statement of corporate intent, which is one of the major accountability instruments, because the performance of other corporatised entities such as AlintaGas and Western Power in the presentation of statements of corporate intent has been abysmal. The idea is that the statement of corporate intent is tabled at the beginning of the financial year, although in reality that has not occurred. The Opposition will propose amendments requiring that a statement of corporate intent be prepared in time for inclusion in the budget papers. Then the Parliament through its normal estimates process could call the relevant ministers and chief executive officers and examine them on the proposals in the statement of corporate intent. The Opposition agrees with the notion of the statement of corporate intent. However, it has become a way of avoiding rather than improving accountability, so the Parliament must take measures to deal with that.

The Opposition also wants to ensure that port policy is directed for proper purposes and not by bizarre industrial relations

fantasies or unrelated outcomes. We will propose amendments that will ensure that when services go out to tender there is no capacity for direction on industrial relations issues, and decisions are made on a commercial basis. There are some occasions in which contracting out is appropriate; for example, the Fremantle towage has always been contracted out. If the Government wants to impose an obligation, say, on continuity of supply that should be an obligation on the owner, and it would then be up to the proponent to set in place the industrial relations mechanisms to deliver on those commitments.

MR THOMAS (Cockburn) [12.14 pm]: I am pleased to have the opportunity to speak on this matter to support my colleague, the member for Armadale. I will make a few observations about the Government's policies on ports, the gross damage it has inflicted on some sections of the Western Australian community, and the adverse impacts on my electorate.

In reviewing the minister's second reading speech I was interested to note that one of the accountability mechanisms in the Bill - as the ports move to a more corporatised model - is the provision of statements of corporate intent. They will be drawn up by the various port authorities and will be the public documents against which performance is measured. When I read that I chuckled a little, but at the same time I was concerned. I suspect that is likely to be as much a fraud in terms of accountability as it has been the case with the energy corporations. I am pleased that the Minister for Energy is present for this debate and is following it so closely, because he is responsible for providing to this Parliament statements of corporate intent on behalf of Western Power and AlintaGas. In the four years since those organisations were created and have had a legislative obligation to prepare statements of corporate intent and bring them to this Parliament, not once have they complied with that statutory obligation.

When I have quizzed the minister about his responsibility under the accountability provisions of the Electricity Corporation Act and the Gas Corporation Act to answer to the Parliament, the minister has said that that was one of the mistakes that was made in drafting the legislation, because it has not been possible. I refute that. It is possible if one is prepared to devote the priority and resources to accountability. However, it is not important enough to those corporations or to the minister and they shrug their shoulders and say that it is not possible. The minister has not prepared amending legislation to provide for some other accountability mechanism, and is happy to live with the fact that he is acting illegally and the corporations are acting illegally and they are prepared to treat the public and the Parliament in a cavalier manner.

On the face of it, the legislation looks good. I am cynical because I have not seen any degree of accountability in the performance of corporatised entities and this Government. One has to look only at the answers we get to questions. I asked a series of questions some time ago to which I received three or four answers yesterday. The answer to the question was, "We are not going to tell you because it is commercially confidential." The shroud of commercial confidentiality behind which this Government hides is extraordinary. The lack of accountability of these corporatised entities is profound, and flies in the face of every single authority that has considered the issue of accountability of government trading enterprises - from the Commission on Government to the Royal Commission into Commercial Activities of Government and Other Matters. On each occasion when those bodies have looked at these matters they have made recommendations on procedures which the Government in a cavalier manner has shown that it is not prepared to accept.

That will be the Government's undoing. While things are going well the minister can sit in this place and sleep through speeches in Parliament and treat the people of Western Australia in a cavalier manner. However, that will be the minister's and the Government's undoing when they get caught out. I predict that they will be.

The community that I represent in this Parliament is closely related to the port of Fremantle. A substantial number of people who work in the port of Fremantle - there are not that many of these days - live in Cockburn. The older area of the electorate consists in very large part of retired waterside and other port workers. The shock and trauma caused in that community during the dispute on the wharves of Fremantle earlier this year was very serious. This Government was an accomplice in that dispute. The image that will always typify the Government's approach to industrial relations was the picture of the thug wearing the balaclava accompanied by a Rottweiler. People who had worked or played there and who had fond regard for the port found that very traumatic. I recall taking my young son to soccer one Sunday morning after it was revealed that the police had been undergoing training in the use of teargas at the showgrounds. A parent of one of the children in my son's soccer team said that a Government that has to turn teargas on its citizens is bereft of any morality. That was the observation of an ordinary person - not a waterside worker. That has been the approach taken by this Government to industrial relations. It is a terrible thing and it is unnecessary.

This Government's approach to the Port of Fremantle is vandalism. I am particularly concerned about what will happen to the port and about the impact of the redevelopment of Victoria Quay, which will include the *Australia II* yacht, and the effect that that might have on the commercial operations of the port. I recently had a briefing from the Fremantle Port Authority on future developments and a briefing from the City of Fremantle on the redevelopment of that area. My concern is the rail link between the north wharf, which is to remain, notionally at least, as a working port. It is the link between Fremantle and Sydney and other places on the east coast. If it is to be a container port - as it is, and we would like to see that role grow and prosper - that link must remain. The redevelopment plans for the Maritime Museum and other facilities on Victoria Quay show that railway line going through a park.

Members should visualise the Fremantle railway station as it is and superimpose a railway line through the western side. The long trains carrying containers will go through a park in which people picnic and recreate. That is very bad planning. I am fully in favour of development of Victoria Quay. It has fantastic potential as a tourist attraction and recreation site. However, much of that potential revolves around its being a working port. People like to go to a working port and to see ships coming and going and being loaded and unloaded. They will be able to see that on Victoria Quay because most of the activity will be on the north wharf. That will provide an ambience and atmosphere.

If the working railway line between the north wharf and Kewdale, and on to the eastern States, runs through a park, the pressure to remove it will be enormous. I cannot imagine how it will be done. I spoke to Westrail officers during a briefing on another matter and asked how that will be done, but they do not know. Will they have a person walking ahead of the trains waving a red flag? It is bad planning and there will be a conflict between pedestrians, recreation interests and working rail interests. I implore the Government to reconsider that aspect of the redevelopment. I am sure a way can be found to achieve all the desirable goals planned for the Maritime Museum and the redevelopment on the western end of Victoria Quay without that conflict between rail and pedestrian interests.

Statistics indicate that the Port of Fremantle takes about 250 000 containers a year. That could easily increase to 600 000 or 650 000 without any major capital investment. The capacity is there; we do not need to build any more port facilities to increase that capacity. That would be a very attractive thing to do.

It concerns me that earlier this year the Government called for expressions of interest for the construction of a port in the electorate of Peel to compete with the Port of Fremantle. That proposal sits alongside the Fremantle-Rockingham Industrial Area Regional Strategy report, a document which discussed the need for industrial areas in that region. That port proposal and the other industrial developments foreshadowed and considered in the FRIARS document are hanging over some of the areas that I represent as potentially affecting the way they will develop. Indeed, the report singles out two of the suburbs - Wattleup and Hope Valley. Each has an asterisk beside it on the map in the report. The key at the bottom of the map denotes that their future is to be determined; that is, it is yet to be determined whether they will remain as suburbs or residential areas. I have raised the issue with the Minister for Planning in this House on several occasions, and I have written letters and issued press statements. I have had nothing but a bland, cavalier response.

Mr Omodei: Bland and cavalier?

Mr Osborne: That is an oxymoron.

Mr THOMAS: No, it is not. "Cavalier" means one takes no notice, and that is done by being bland.

I have asked the Minister for Planning many times about this issue and he has ignored me. How would the Minister for Local Government and the three other members here - two of whom are following the debate - feel if they lived in an area and the Government issued a planning document suggesting that its future is yet to be determined? They would feel insecure and they would be reluctant to put up a new garage or paint the house.

Mr Omodei: What is the connection between that and this Bill?

Mr THOMAS: One of the things hanging over these suburbs is the future port development. We have been told that expressions of interest have been called for the development of a port to compete with the Port of Fremantle. What need is there for a second port to compete with Fremantle? There is no need.

Mr Masters: Which suburbs are you talking about?

Mr THOMAS: Wattleup and Hope Valley.

Mr Masters: I will listen now.

Mr THOMAS: I will send the member a copy of *Hansard*.

The current Port of Fremantle is handling 250 000 containers a year and has the capacity to handle 650 000. On the most generous demand projections for container traffic in this State there is no need for another port for at least 20 or 30 years.

I want to see the port of Fremantle prosper and see this coast become the place at which the containers are dropped off to service the rest of Australia, and that can happen. It obviously requires port facilities, but we already have port facilities. Competing container companies are handling those containers and a railway links Western Australia to the rest of the Australia. That second port is not needed. Given that the Government is the Government and it has the capacity to do these things, I have said that a decision should be made soon so that everybody knows what is happening.

The Fremantle-Rockingham Industrial Area Regional Strategy document, which is casting such a pall over these suburbs, was due to be resolved last year. Apparently something more pressing came up and the planning officers who were dealing with it were diverted to other things. I have asked time and time again when that study will be completed, and when the people in those suburbs will know what lies in their future. The Government at least owes that to them. To determine the

very existence of a suburb in which people live is bad enough - I guess sometimes these things happen, but in this case I do not think it is justified - and the Government has an obligation to move quickly to resolve the uncertainty that these people are experiencing, but it is not. I cannot for the life of me understand how any Government can be so inhumane and insensitive to leave a matter such as that hanging year after year. When we ask when this matter will be completed, the Government says it is working on it but other matters come up and planning officers are diverted, or they are on annual or long service leave and so on. When these officers get around to it, they will finish it off. It is a very cavalier way to treat people.

The hidden agenda of this is clear: The notion is that it was Hon Eric Charlton's scab port. The Government wants to build a port which will compete with Fremantle and which will be un-unionised. It has been unsuccessful.

Mr Bloffwitch: That is scab, is it?

Mr THOMAS: That is scab, yes.

Mr Bloffwitch: To build another port automatically makes it a scab port, does it? I never heard such rot in all my life.

Mr THOMAS: The port of Fremantle already exists and handles 250 000 containers a year and could handle up to 650 000 a year without building any more ports. It can cater for all the projected traffic for the next 20 or 30 years. There is no need for another port given the level of demand. That port of Fremantle is already a free enterprise port. Two private companies operate container facilities and they compete with each other.

Mr Osborne: It is like having Tony Lockett on your back with a big arm around your throat.

Ms MacTiernan: Why does the Fremantle port show better results year after year? Why is it so successful?

Mr THOMAS: I would be quite happy to introduce the members for Bunbury and Geraldton to some people in the ports because they have an image of workers and unions as being unproductive and not desirous to be productive.

Mr Bloffwitch: We know of a few unions in positions of absolute power and one of them is the Maritime Union of Australia.

Mr THOMAS: I do not know the last time that the member for Geraldton met a waterside worker or a member of the MUA.

Mr Bloffwitch: Most of the debate on your side has been about everything else bar the legislation. You relate what you are saying to the legislation.

Mr THOMAS: It is about what the Government is doing about ports. The Government had chain link fences put up on north wharf with Rottweilers and people wearing balaclavas; that is thuggery and fascism and I do not ever want to see that again. That is what I am fearful of because that is the Government's approach to industrial relations. It is trying to break the port of Fremantle and the people who work there. I get upset about that because I used to work at the port of Fremantle and I have an emotional attachment to that place and institution. I want to see it continue to prosper and so do the people who work there, as do the unions. The Government's prejudice prevents it from seeing what is happening and what is capable of happening. How many MUA workers work in the port of Fremantle now?

Ms MacTiernan: A contribution from the member for Vasse; he said no wharfies work.

Mr Masters: No, I did not.

Ms MacTiernan: Yes, you did.

Mr THOMAS: The number of people who work at the port of Fremantle can be counted in their hundreds. When I was working there it was thousands. The numbers have been reduced to improve productivity and that has occurred in cooperation with the unions. The Government must understand that people operate within a cultural milieu. Those cultural milieus can change, even towards different ends.

Ms MacTiernan: You do not want the Labor Government without any blood on it.

Mr THOMAS: Exactly.

I tell members a somewhat related tale: During the 1980s when the Labor Party was in power, an accord was reached at the state and federal levels between the Australian trade union movement and the Government to promote productivity and prosperity in Australia. Under that arrangement, the Australian Council of Trade Unions, led by people such as Crean and Ferguson, presided over a wage decline. That was absolutely unprecedented. That was a remarkable cultural transformation; the ACTU went to its members and said, "We would all like to get more money, but if you do not have a job, you are even worse off, so let us exercise restraint for the good of the country", and it worked. A small eddy, if you like of that overall current, occurred in the iron ore industry. I was responsible, along with a number of other people, for setting up a consultative council in that industry. Productivity remarkably increased and the number of people employed in that industry decreased dramatically. This was done with the cooperation of the union. The employers went to the unions and said, "We

must remain internationally competitive in an international market. If we do not remain competitive, we do not have an industry or a job anyway." An industry which had once been characterised by an adversarial relationship between the employers and the unions was changed to one of cooperation. Members need look only at places like Japan. Members opposite seem to gain their philosophical inspiration from people such as Buckeridge who is a thug. They seem to assume that when an employee-employer relationship exists, the employee will be unproductive, the relationship must be adversarial rather than cooperative, and the only way that productivity can be gained is to go through the fraud of getting individuals to incorporate themselves as companies and engage in a contract for service, rather than of service; a subcontract relationship rather than an employee-employer relationship.

That is patently untrue. Government members need to open their eyes and look at other countries such as Japan in which there are amazingly cooperative relationships between employers and employees. The employees have an exceptional sense of identification with their companies and a high degree of productivity. They are an example of good employee-employer relationships. The notion of contract "for service", as it is known in the legal sense rather than "of service", is almost unknown in Japan.

Mr Bloffwitch: Because of subcontracting our housing industry is the most efficient and cost effective in Australia.

Mr THOMAS: Horses for courses.

Ms MacTiernan: It also has a very high accident rate. There are endemic problems in that industry.

Mr Bloffwitch: They are not all union members.

The ACTING SPEAKER (Ms McHale): Order members, the member for Cockburn is on his feet.

Mr THOMAS: The members for Geraldton and Bunbury and their colleagues must understand that cultures and attitudes can change. These are separate variables. Members opposite support the sham of people who contribute labour going through the motions of being only subcontractors. One example worth noting is Austal Ships Pty Ltd, an industrial shipbuilding success story in Australia. It is a terrible place in which to work. Everyone who works at Austal Ships can be employed only as an incorporated entity. A person who wishes to work must have formed his own company.

Mr Bloffwitch: It is operated totally on a subcontract basis.

Mr THOMAS: That is right. One of my son's friends, who is a shipwright, was given some work there. That young man, who has travelled widely around the world and sailed on the *Endeavour* to New York and such places, said it was like working in the Bronx. Workers are not game to leave their tool boxes lying around because they get stolen. The relationship between the workers, the culture and the atmosphere is poisonous. It is the sort of place in which he did not want to work. He is not politically oriented, but conveyed what the atmosphere was like. On many occasions I have taken visitors and VIPs to Austal Ships. It is one of the success stories of Australian industry. However, behind the gloss and glitter and the achievement, which is very significant, is a place like that. I would encourage neither a development nor a community of that nature. I especially do not want to see it on the ports. The unions and the workers -

Mr Osborne: Don't you want to see success?

Mr THOMAS: I want to see success. Members opposite might try to understand a proposition that has two or three variables, which is more complex than sloganeering. It is possible to have cooperative relationships between organisations and employees who are committed to a common end; that is, the prosperity of the organisation for which they work. I have seen that at the port of Fremantle where I once worked when Paddy Troy was there. We would not find a person more committed to the prosperity of his industry despite the way he was characterised by the then Premier, the present Premier's father. He was quite wrong. Those aspirations by the workers and their unions can be used to promote the common aim of productivity and expanded employment.

I am concerned that a scab port will be built.

Mr Osborne: A free port.

Mr THOMAS: No; a scab port at Kwinana to compete with the port of Fremantle in a deliberate attempt to break the port of Fremantle. That is vandalism.

MR RIEBELING (Burrup) [12.44 pm]: During the past half hour we have witnessed the true reasoning behind this Bill and the Government's intention regarding the maritime industry. The two members opposite have been enlightening in their hatred of the unions. "Bill and Ben" have been making comments about unions and incompetence and the like. About a year ago I read out about 15 or 20 company references in relation to the stevedoring industry provided through the Dampier materials offloading facility wharf. Glowing endorsements of every user said that the union-dominated work force there was flexible. It changed its work practices to suit the unusual conditions on the MOF wharf. What did this Government do in relation to work practices that fitted the industry and its efficient workers? It got rid of them and put in place a stevedoring

company that could not compete with P&O Australia Ltd, the operator on that wharf. The Government got rid of P&O because, despite the fact that this Government was pushing Western Stevedores, Dampier, it could not compete with P&O. I hope that everyone on the other side of the House knows about that. It was clear that it was the intention of the then Minister for Transport to get rid of those people irrespective of whether they were good workers. They were unionists so they had to be got rid of. The members for Bunbury and Geraldton support that unequivocally; they want to get rid of anyone who wants to remain in the union. The hatred of the union by that mob is unbelievable. If we did the same when we were in Government we would attack the Chamber of Commerce and Industry and drive it underground at every opportunity. That was not the case.

Mr Marlborough: I have just been asked to join my Chamber of Commerce and Industry. I told them to get lost.

Mr RIEBELING: One thing members opposite cannot understand is that members on this side support businesses making profits and employing people.

Mr Osborne: So that you can bleed them.

Mr RIEBELING: No. The Premier used to proudly say that Western Australia wants to be just like the tiger economies of Asia. We do not hear him saying that anymore. I wonder why. He has not mentioned them for some considerable time. They have the workers whom members opposite want. Workers there have no rights. Everyone has a job, especially in Bali, but they do not receive very much pay. If members opposite want that sort of work force in Australia it will come back and bite them very shortly. When the world economy starts to impact here people will ask who destroyed their job security. Members opposite destroyed it with legislation directly designed to destroy unions and the rights of workers. People will know that very shortly.

Mr Prince: Where do you get the connection between the world economy and union rights?

Mr RIEBELING: I am saying now that the Government's push to destroy unions and job security will come back and bite it hard. People will never forgive the Government for what it has done to this economy. As soon as the crunch comes - and it is coming - members opposite will be in all sorts of strife. The sooner those opposite are sitting over here, the better. Let us bring on an election quickly.

[Leave granted for speech to be continued.]

Debate thus adjourned.

PORT AUTHORITIES BILL

Second Reading - Cognate Debate

Resumed from 15 October.

MR RIEBELING (Burrup) [7.44 pm]: I was some way into my contribution when the Bills were last before the House. I see that I have 16 minutes in which to speak, which is plenty of time. I was not sure how long the House must put up with my comments.

Mr Prince: It is called Alzheimer's.

Mr RIEBELING: It seems that I must repeat my earlier comments because members opposite need their memories refreshed.

I am concerned about the agenda behind these Bills. As I spelt out in earlier comments, this Government has a propensity, no matter how efficient a port authority may be, to change the structure of the authority if the Government perceives that the unions involved have too much power. The last time we debated this matter, the members for Bunbury and Geraldton interjected at great length about how good it was that the destruction of the unions was part of the intention of the legislation.

Mr Osborne: That is not quite what we said. You have excited me again. We said that the priority loyalty of the work force should be to the port, not the MUA.

Mr RIEBELING: The primary focus of workers' loyalty should be to their families and workmates, as well as to their employer by ensuring they work for the betterment of the organisation.

P & O operated out of the Dampier Port Authority wharf since its public inception. This wharf was not designed for general cargo. The MOFF wharf, as it is known, was designed for a specific heavy lift; namely, the lifting of a cryogenic convertor, which is a heavy part of the refrigeration process in the liquefaction chain on the North West Shelf. That equipment required an entire ship to bring it out from the United States. This delicate and heavy equipment contains 1 500 kilometres of copper tubing. That wharf was designed specifically to pick up that instrument and, consequently, the wharf is short and has grave limitations when it comes to handling general cargo.

P & O stevedores at the wharf had to adjust their method of working to ensure they were efficient enough to attract business

to the wharf. This was done successfully, especially for the offshore oil and gas industry as it services large rigs. The time spent with boats tied up to the wharves is very expensive indeed with this type of business. Far from being inflexible, the workers developed practices by which ships with general cargo were loaded and unloaded as quickly as possible no matter the time of day. A 24-hour service was provided at that port.

In November last year I outlined in this place my fears that the then Minister for Transport, despite engaging in the process of tender selection, had decided months prior to that process that Western Stevedores Dampier was to be granted the exclusive operation of that port. The minister made it clear that the tender process was a sham, which has since proved to be the case. We ended up with a stevedoring company which had no track record taking over from a company which had numerous testimonials from user groups regarding its efficiency, flexibility and safety record. Every aspect of the P & O stevedoring operation received high praise from private industry, which presumably is interested firstly in bottom-line profit and then running a safe workplace. The vast majority of employers have those two main emphases. I hope most also want a happy work force. Many of these companies achieved all that. Some of them felt that the inexperience and workplace practices of the new unproven company meant it would not be as successful as the company that had operated from the Dampier public wharf for a number of years and had created that industry. This legislation allows the process used at the Dampier wharf to spread more rapidly throughout other wharves. This Government, along with the Federal Government, is hellbent on breaking the Seamen's Union of Australia and the maritime workers under whatever process it can. The previous Minister for Transport thought he was relatively clever in achieving what he did in Dampier, without the industrial disputation that occurred in the eastern States when changes were attempted to be made rather more brutally than occurred in Western Australia. However, the Government's being somewhat smarter does not mean its intention is any different from the intention of the federal authorities.

In the Dampier situation the work force has been requested to join the Maritime Union of Australia, and the organisational structure of the union within the Dampier organisation has been removed. These people are members of the union and, I am pleased to say, some of the employers are the old employees who were deemed not to be efficient enough to run the wharf previously. It is disappointing that some of the organisers of the original structure of the wharf have in some way been blacklisted in the Pilbara region and they are finding it impossible to gain employment, although they are very efficient workers, because they are somehow tied to a workplace that the Government decided was not efficient. In my view the Government should acknowledge the pioneering work done in that region. If the Government were genuine, it would acknowledge that the previous company was efficient and that Western Stevedores Dampier, to which the Government gave exclusive operational rights, could not succeed in a competitive environment. At the end of the day, Western Stevedores told the Government it could not survive unless it had exclusive operational use of the wharf. On the other hand, P & O Australia Ltd was happy to compete for the business because it was a better operator and knew that the users of the wharf would remain loyal to it and use its labour and expertise even if the cost was slightly higher. P & O was not afraid of the competition.

Ms MacTiernan: The extraordinary thing is that no-one on the Government's side has been able to give any justification for taking away the active competition and inserting a monopoly.

Mr RIEBELING: The only reason I have ever heard for that action is that Western Stevedores could not survive unless the competition was removed. The previous minister had a commitment to ensuring that Western Stevedores survived.

Ms MacTiernan interjected.

Mr RIEBELING: The original company had some linkages to the Buckeridge Group of Companies but that was removed in some share transaction that left the current owners in charge of the operation of the wharf. I understand Mr Buckeridge is no longer an active part of the company.

Ms MacTiernan: It is more accurate to say that his name no longer appears on the document.

Mr RIEBELING: That is right. The stevedoring company that the users of the wharf wished to use was removed in the name of efficiency, but the Government has given no indication of how successful the new company has been or whether more product has been shifted across the wharf. The annual report next year will probably show less productivity on the wharf under the new operators. There are various reasons for that, but I can guarantee that the volume of product moved across the wharf will be lower. The Government went through an absolute sham to remove P & O from the wharf. A year ago the Opposition knew the tender process was not genuine and it said so in this place. Everything the Opposition said and every claim it made in November has come to pass. If members opposite had checked the references I read in this place from various companies about P & O, they would have found that all the references were current and real. Companies genuinely regarded P & O as flexible, efficient and cooperative, and as an operation that enhanced their ability to compete internationally with its work practices and adaptability to the changing environment. As I said previously, that environment was designed for nothing other than one specific heavy lift. The wharf was not designed for general cargo. For the next five years Western Stevedores Dampier will operate that wharf. One of the competition agencies indicated that it thought a tender process once every five years was competition - serial competition.

Ms MacTiernan: It made some profound miscalculations and errors of fact in making the judgment, one of which was that Port Hedland was a realistic competitor. The rig tender operators I spoke to said that was absolute nonsense.

Mr RIEBELING: In my view the tender process was corrupted because before it started a successful tenderer had been selected, and the Government then worked out why Western Stevedores Dampier should gain that work. Quite clearly, P & O has been prohibited from competing. This Government crows about its support for competition and it creates competition wherever possible, except in a situation where the company it wanted to succeed was not doing well because it did not have the skills, expertise and knowledge that its competitors had. Therefore, the Government wiped out the competition and put a less efficient operation into place, and it hopes that in the next five years that operator will become as efficient as the operation it replaced. That type of action will be repeated throughout the State unless the union movement, especially, starts to grapple with this Government's real agenda.

MR OSBORNE (Bunbury) [8.00 pm]: It has been remarked by the member for Burrup and others that the member for Geraldton and I took a significant, if informal, part in the debate on this legislation last week. I take the opportunity to make a few remarks about the recent issue that has arisen with respect to the Bunbury port; that is, the contracting out of services process initiated by the Bunbury Port Authority. I make these comments with the intention of setting the record straight on my response to that process and the Government's position and its responsibilities to not only the people who work on the wharf, but also to the producers who use the wharf as an essential component of their business operations.

A range of options are open to the people who work on the wharf in Bunbury today. In recent weeks the maritime union has been quoted in the newspaper. Mr Buck has commented publicly in the local media. The effect of the comments he made is that a crisis has arisen and the workers at the port are faced with a take it or leave it situation. That is not the case. In all instances where this Government has sought to examine the contracting out of services from the public sector to the private sector, a full range of options has been open to people who may or may not be affected by those changes. That has been the case in this instance as well. The truth is that the workers on the Bunbury port have four options open to them. They can submit a bid for the contract of services which will be examined by the port authority. I understand that the port authority is prepared to make a significant amount of money available to the workers at the Bunbury port to enable them to make their own tender submission to it.

Ms MacTiernan: You are a socialist after all. You are postulating socialist control of the Bunbury port.

Mr OSBORNE: No, not at all. The Bunbury Port Authority is controlled by the board of the Bunbury port. One of the comments that Mr Buck made in our local media was to question the capability of the Bunbury Port Authority to manage the contracting process and the port. On behalf of the members of the authority, I take exception to those comments because no group of people such as John Willinge, the chairman, Louis Tuia, the deputy chairman - who has served 21 years on the Bunbury port - John Sullivan and Neville Eastman has a greater capability to manage an enterprise such as the Bunbury Port Authority. These people are not incapable; they form a local board which has the authority to manage the Bunbury port in the way that will best benefit the local community and the people who work there. They carry out those duties in an exemplary fashion. When Terry Buck made a comment in the local paper that cast aspersions on the capabilities of these people, he ignored the great debt that the people of Bunbury owe to them.

Ms MacTiernan: Are you talking about the wharf workers?

Mr OSBORNE: No; I am talking about the board of the port authority that Terry Buck criticised in the local media when he said he did not believe it had the expertise to run the port properly.

Ms MacTiernan: Do you think that the board was happy about going out to tender or do you think, if you read closely the announcement of its decision, that it felt it was compelled to do it because of government policy?

Mr OSBORNE: It is not compelled to do anything. At the end of the day, the board runs the port. The minister has discussed the matter with the board and it has agreed. Let us remember that the board has not been told to do this nor is it bound to do it. The board has been asked to examine the position and that is what it intends to do. The board has been asked to look at the tendering out of services to ascertain whether they can be done in a better way. The board agrees this is a perfectly reasonable course of action. At the end of the day it is up to the board to decide what it will do. If, on a fair examination of the facts, the board found that the tendering out of services did not give it a better outcome, it is not bound to proceed in that direction. Indeed, I would be very surprised if, against all the principles of economic sanity, this Government thought it could force the board to take that action. The board is not being told to do anything. It has made a decision in its own right and the decision at the moment is that it will examine the prospect of the tendering out of services.

At the outset I spoke about the range of options available if the Bunbury Port Authority decided to go down the road of contracting out. In the first instance the port authority workers are being encouraged to make their own submissions and the authority will give them financial assistance to do so. That is the first option that they can explore. If that course of action is unsuccessful, and the port authority decides contracting out is the way to go, the workers can transfer to a new employer. They can either take voluntary redundancies or stay with the port authority. In common with all public sector

employees when these processes take place, a full range of options is available to the people who are currently employed in the public sector; they can go to a new employer, they can stay where they are in the public sector or they can take redundancy payments and do something different. This case is no different from any other; the workers have a full range of options.

Ms MacTiernan: Have you looked at what would happen to the incomes of these port workers if they took redeployment? Have you any idea?

Mr OSBORNE: We must let the workers do that, because they are the ones who make the decisions in their own best interests. They can stay with the authority, they can go to a new employer or they can take redundancy. No-one is forcing these workers to do one thing or the other.

I reiterate that it is an assessment only. In common with the Government, the Bunbury Port Authority has a responsibility to make an assessment and determine if a better option is available for this work to be done. We have a responsibility to discharge on behalf of the producers and consumers who use the port and who rely on the port for the wellbeing of their businesses. As a government, we also have a responsibility to the taxpayers of Western Australia.

The other comment I make is that when the member for Geraldton and I spoke last week, the philosophical divide between the Opposition and this side of the Chamber could not have been plainer. I have made a similar statement before. It seems to me that the Opposition believes that the Public Service was established to provide employment for the members of the union movement. We do not see it that way at all. We believe that the Public Service was established to provide services to the public. As a government, we have a responsibility to ensure those services are provided as effectively as possible. If we can find a better way to provide those services, surely we have a responsibility to the people who are paying the bills to ensure that we pursue the best course of action.

The second point I make is that the Opposition always proposes the myth that if we privatise or contract out "jobs will be lost." That is a simple fallacy. The fact is jobs are not lost to the economy; they move from one sector of the economy to another. They move from the public sector to the private sector, but the jobs themselves do not disappear.

Ms MacTiernan: When Westrail's track maintenance was privatised, a massive number of jobs in country areas disappeared. The seven teams in Northam went down to three.

Mr OSBORNE: Let me put this proposition to the member: If she examines the conduct of a public enterprise and finds that the work can be done by 50 people when previously it was done by 200, the taxpayers are owed a responsibility -

Ms MacTiernan: No, they are simply not doing the job. They are cutting back on the service which is -

Mr OSBORNE: When a responsibility is owed to the taxpayer, what is one supposed to do? Are 200 people to be kept on the payroll, standing around using their time ineffectively and wasting Government and taxpayers' resources? In part, it is a rhetorical question. The fact is that we all have a responsibility to the people who are paying the bills - in this case the taxpayer - to get the job done as cheaply and effectively as possible. If people are working ineffectively, no fair and reasonable person would say that that should continue.

Public sector employees have always had a choice: They can stay where they are, go to a new employer, or take redundancy. As I said in an interjection last week, I do not have a philosophical objection to people being unionised or working cooperatively. However, I do have a problem with people working in an enterprise having a loyalty to someone other than their employer. If their primary loyalty is to a union rather than their employer, I have a distinct problem. Government enterprises are not the playthings, private fiefdom or milch cow of the union movement - they belong to those who have paid for the service to be established.

The most important responsibility in respect of ports is to the producers. As a former farmer and a member representing the south west region, which has a large number of primary producers including miners, foresters and agriculturists, I am very aware that producers live or die on a day-by-day basis, according to how well they manage their costs and the profits they make from the sale of their produce. If those profits are jeopardised by inefficiency or sabotage on the wharves, or if their costs are being pushed out of control by inefficiencies, we all have a responsibility to do the right thing on behalf of those consumers.

The Bunbury Port Authority is undertaking the contracting out process responsibly. It is not certain that it will happen; the authority has simply decided to examine the concept. If it finds that the work can be done more efficiently, it has a responsibility to pursue that course of action. If it ultimately does go down that path, the workforce at the port will have a full range of options open to it, including staying with the port authority, taking a redundancy payment or moving to a new non-government employer.

MR MARLBOROUGH (Peel) [8.13 pm]: No wonder we have just seen a massive swing back to the Labor Party in the recent federal election. The member for Bunbury has provided us with a weak imitation of his federal colleague Peter Reith. They think that by uttering the words, everyone will believe them to be true. The member for Bunbury said that government

workers need not fear for their jobs; the Government is simply asking that they be efficient. He also pointed out that government services are not the plaything of the union movement to provide it with membership; they are established to provide an adequate service to the community.

During this Government's term in office, workers have been machine gunned down as they have come out of the trenches, despite the fact that they have wanted to show that they are capable of competing with the private sector. The Government does not care that nurses have agreed to changes in their rosters, that school cleaners and teachers have agreed to massive changes in the education system, or that lecturers in the TAFE system have agreed to major changes that have provided savings. It has not cared that a person was a port authority worker, drove buses for Transperth or worked in a power station providing energy for this State. Whenever workers employed by this Government over the past four years have agreed to major industrial changes that the Government has said are necessary to make industry more efficient, and in making it more efficient they have been in a position not only to provide a better service to the community but also to compete with private enterprise, at the end of the process it did not matter that they could achieve those goals or that those actions would result in millions of dollars being handed back to the Government in savings. It also did not matter that in implementing those efficiencies they could provide the same or a better service, because behind the Government's intention, driven by a very sick ideology, was a desire to ensure that it got out of those enterprises as rapidly as possible and handed them over to the private sector.

That sick ideology has resulted in revolution. No Australian, regardless of his politics, would support what Peter Reith did with the waterside workers of Australia. At the end of that process - during which he was willing to send retired Special Air Service officers to the Middle East to be trained, to come back and climb over the ramparts on the wharf and take over the cranes if need be -

Mr Omodei: Don't get too carried away. It was the Hawke Government that brought in the Army to break the pilots' strike.

Mr MARLBOROUGH: I am not getting carried away. These events have been judged in the past few weeks by the Australian people, and 51.7 per cent of them have told the Howard Government, which supports the same principles this Government supports, that they no longer want those policies to be pursued. I am more than happy for this Government to continue on in this way because it brings political benefits to the Labor Party. I would have loved to see images of Peter Reith popping up everywhere during the election campaign - it was the best thing the Labor Party had going for it at the federal level. However, we should not get carried away by the influence of the individual.

We have heard from the member for Bunbury today and on the wharves over the past four years an ideological commitment on the part of this Government to replace workers regardless of how efficient they are. I and the Labor Party believe that when government workers can bring about the efficiencies that are required in the modern industrial society, they should be supported in their job opportunities. Under this Government we have seen the undermining of job security, and that has led to a shaky economy. People are afraid to spend a dollar. In fact, some lending authorities in Australia will not finance the purchase of homes and vehicles.

Mr Prince: It has happened across all western economies and we have caused it. My, we are powerful!

Mr MARLBOROUGH: The minister should not scurry away; he should sit down and I will debate with him. He is the loser from Albany. We know his moral standards.

Several members interjected.

Mr MARLBOROUGH: There he goes - scurrying away! He is like a rat deserting a sinking ship - he cannot get down the rope quickly enough.

Mr MacLean interjected.

Mr MARLBOROUGH: The member for Wanneroo cannot get over the fact that his doctor mate was in gaol because he was a crook and the bloke he took over from, Wayde Smith, was gaoled for it. They were all found guilty before a tame royal commission ever took place.

Mr MacLean: You use the privilege of this place to defame and rubbish people. You don't have the guts to say things outside. You have no credibility in this place, so why don't you sit down?

Mr MARLBOROUGH: Having seen his mates in gaol because they were crooks, the member for Wanneroo now wants to rewrite history. The truth of the matter is that they were in gaol; it was not me.

Mr MacLean interjected.

The ACTING SPEAKER (Mr Sweetman): Order, member for Wanneroo.

Mr MARLBOROUGH: It was not I who removed the former Attorney General from her position. In fact, the day after we rose in 1996 the Premier called a press conference and said that the Attorney General had been removed from her position as Attorney General because of the damage caused by Wanneroo Inc. The Premier had that view.

Point of Order

Mr OMODEI: I know that the second reading debate allows for general debate. However, we are discussing the Port Authorities and the Port Authorities (Consequential Provisions) Bills. I suspect that we are not sticking to the legislation.

The ACTING SPEAKER: I am glad the Minister cleared that up. We are debating the Port Authorities Bill. The member for Peel has the floor.

Debate Resumed

Mr MARLBOROUGH: I am also more than happy to engage the member for Wanneroo, who wants to rewrite history about his crooked mates who spent time in gaol.

The reality is that this Government has never worried about efficiencies in the Government work force being the measure by which government departments provide services to the community. That philosophy is evident in the port authorities more than in any other area. The Government has parachuted onto boards of port authorities its political hacks - usually broken-down farmers - members of the National Party and a few scattered Liberal members.

Mr Trenorden: They cannot be broken-down hacks if they are members of the National Party; they are superb people!

Mr MARLBOROUGH: Most of the hacks are in here. It is interesting to note in the Bill what authority the boards will have and to whom they will be answerable. The track record shows that as soon as the previous Minister picked up the phone and advised them to go along a path - the Buckeridge scenario in Fremantle with Stateships was a classic situation - they were willing to comply with the Minister. This Bill does not provide for the Minister to be able to influence a board in that way. What the public saw with both Buckeridge and Stateships and subsequently -

Mr Trenorden: No wonder you are choking when you talk garbage like that.

Mr MARLBOROUGH: What does the member think happened?

Mr Trenorden: The Minister has no ability to direct boards.

Mr MARLBOROUGH: The member should read the appropriate report. It may be his version of events but it is not the version of events in the report. It is clear that the Minister had major input into how the Stateships board determined its actions.

Mr Trenorden: Did the board tell you that?

Mr MARLBOROUGH: The board is simply a political hack of the Government.

Mr Trenorden: Did the board tell you it took direction?

Mr MARLBOROUGH: The influence the Minister had over the boards is obvious in the report. Buckeridge was one thing; but it is notable that the Fremantle Port Authority board did not comment to the contrary in response to Peter Reith's national attack on waterside workers around Australia. Why did he attack them?

Mr Trenorden: Are you happy to say outside this House that the board took direction?

Mr MARLBOROUGH: The member for Northam is never backward in coming forward in this House.

Mr Trenorden: The last member for Northam is dead.

Mr MARLBOROUGH: I mean the member for Avon. We have known for a number of years that he is dead from the neck up. He comes in here and someone pulls his strings, so he bobs up and down accordingly.

The ACTING SPEAKER: Order, member for Peel.

Mr Trenorden: He is not hurting me. He is the only member with no credibility.

Mr MARLBOROUGH: I have no problem living with my credibility.

Mr Trenorden: You could parachute out of a snake's backside.

Mr MARLBOROUGH: That is one of my old sayings; it is not even new. It is so old it is not worth responding to. The member for Avon can say what he likes. The proof of what occurred was before every Australian. The involvement of the Government through its Minister and the acquiescence of the Fremantle Port Authority board was obvious to everyone. Anyone who wanted to see how Australians reacted to that regime needed only to be in Fremantle on any night that dispute was underway. I have lived in Fremantle since 1963 except for seven years when I was in the Pilbara. I saw people on that picket line night after night whom I had not expected to see on a picket line.

People were there whom I have known for many years in the Fremantle community and whom I would not have naturally

suggested were Labor voters or even union supporters. However, they were there because they recognised that the Government was willing to go to any length to crush Australian workers using the military if it had to in this State. In this case it amounted to massive overuse and misuse of the Police Force. The outcome was that Australians could see that waterside workers were being attacked not for their inefficiencies, although that was the message government members wanted to paint. There was plenty of evidence to show that major breakthroughs in making the waterside more efficient had occurred over a long period.

Simply because a group of workers were members of the trade union movement, the Government tried to paint them as un-Australian, thereby suggesting to the community that they were not meeting the demands of the community; they were doing everything within their power, because they were un-Australian, to break down the standards required for moving goods and services across the Fremantle wharf. Behind all of that was one issue only; that is, through the madness that drives the likes of the Peter Reiths of this world and the skewed logic of the member for Bunbury, an issue about workers wanting to be members of a trade union movement.

That was all. As companies can choose to be members of the Chamber of Commerce and Industry, workers on the wharf in Fremantle wanted to be members of the trade union movement. That was their only crime; it had nothing to do with inefficiencies. We know that because the court determined it. The court of the land, in this democracy, analysed the processes of government at both the federal and state levels, had the opportunity of analysing the role of the unions and, more important, the court had the opportunity of determining whether Australian workers were right or wrong and it found in favour of Australian workers and the organisation that represents them. The court made the Government look stupid and, if it had any soul, shameful of what it had attempted to do. It had attempted to ostracise a group of Australians simply because they were members of a union. Once they were members of that union, the Government did not care what it said about those people to denigrate them in the eyes of the community. Unfortunately, we do not see any evidence in this Bill that that is likely to change. We see evidence of a minister being able to continue to handpick the board. The ministers of this Government will continue to do what they have done for the past four or five years. Under the Local Government Act, the minister has some say in selecting people but at least that Act requires those people to have some experience and expertise in local government. Nothing in this Act requires that a person selected by the minister to serve on the board of a port authority needs some experience in running ports, shipping or transport. It deliberately does not say that.

Mr Omodei: I hate to tell you but the question of the executive administration being chosen by the minister under the Local Government Act has been deregulated so people do not need experience.

Mr MARLBOROUGH: I know that. However, within the Local Government Act the minister has the ability to select a committee process and the people selected by the minister must have experience in local government. Correct me if I am wrong, but I think the Act says at least one of them can be nominated by the local government authority. The Local Government Act recognises that when dealing with taxpayers' money, the administration of that money and a board which can create its own charges - like the port authority - the minister can put in place a board to oversee certain aspects but the Act guides the minister on the sort of people he can appoint. That is not so in this Act. It does not give the minister any guidelines. Having been through four years of the types of boards this Government has put in place in Western Australia, the Opposition is concerned that these people will be handpicked hacks of the Government, broken-down cockies, ex-members of the Liberal Party parachuted in to do as the minister directs.

Despite the national embarrassment suffered by this Government because of the role of the Fremantle Port Authority in the waterside workers dispute, I did not see a board member be anything but supportive of the Government's position. I did not hear an independent voice of an elected board member say that the Fremantle port is an efficient port. Just before the dispute, ministers such as the Deputy Premier came into this Parliament and told us that the waterside was running efficiently. Before Peter Reith decided to attack that section of the Australian workforce, the Deputy Premier said the ports in Western Australian were running efficiently. There had been massive gains in productivity. The Government was proud of what had been achieved in that area. That is the sort of thing said by the leader of the National Party, the Deputy Premier. That was ignored when Peter Reith, the Federal Minister for Industrial Relations, deemed that it should because he was going to single out a branch of the Australian work force and slaughter it in whatever way possible. He brought out the machine guns and the hand-grenades, he did backyard deals with ex-members of the Special Air Service and paid the air fares to send them overseas to the Middle East to be trained in the latest techniques. He was going to use them on the waterside at Fremantle. Overnight the State Government, like lemmings to a cliff edge, ran to be part of the attack.

At the end of that process it deserved all of the acrimony it received. It may not have received that acrimony at a state level so much because of the state of the media in Western Australia with only one daily newspaper. However, nationally the thing that undermined the Howard Government in the eyes of Australians more than any other issue was the role of a Liberal Government in singling out Australian workers and turning them into the pariahs of our society. When people who are far more au fait with the processes of elections than I have time to mull over the recent federal election, the 51.7 per cent vote for the Labor Party and the claiming back of over 30 seats, the actions of Peter Reith, John Howard and the Premier of Western Australia in trying to single out a group of Australian workers and treat them in that way will be prominent in the view of the Australians who decided to return to Labor.

I would have thought any Government at a state level, having gone through that exercise, having seen how badly burnt it was, would have at least recognised the problems it created for itself and written an Act to minimise the chance of those things happening again. I do not know whether he will stick to it; however, John Howard on his re-election said that he would be an entirely different Prime Minister from what he was in his first three years. He said he had learnt from his mistakes. He will head in a direction of apologising to the Aboriginal people, a step he was not willing to take before. He will treat the issue of reconciliation in a fair and just way and he will provide the social dividend.

Mr Omodei: You agree with that, obviously.

Mr MARLBOROUGH: I agree with anybody who is willing to admit he was wrong and to head in another direction.

Mr Omodei: Kim Beazley did that as well with the capital gains tax.

Mr MARLBOROUGH: We can all make political mistakes. What we do not all do in making political mistakes is set out to destroy one sector of the community. That is what this Government has done for four years with the previous Minister for Labour Relations. Look at the Government's track record. It has sent people out with flamethrowers. The Kieraths and Reiths of this world were the Liberal Governments' flamethrowers. The member for Wanneroo carries on about my role with Wanneroo Inc. At the end of the day, about half a dozen people were burnt in Wanneroo Inc. Reith and Kierath went out to slaughter a nation. They wanted to burn everything within their path. Where are they today? Members should think about why neither one has the industrial relations portfolio. It is because smart political heads have recognised that Australians will soon tell us that they are sick of those practices, that we can be as tough as we like with a flamethrower in our hand, but if we burn their uncle, their aunty or their dad, they will not vote for us. The Liberals sent out their flamethrowers, and neither of those Ministers now has the industrial relations portfolio.

Already the new state Minister for Labour Relations has been quoted in *The West Australian* as saying that she wants to revisit whether state government workers will be employed simply on the basis of signing a workplace agreement. That is a magnificent start for the new minister. She has recognised that, at the very least, Australians want choice. Why would people want a Government that simply dictates that people will be employed under one agreement or another? People do not want that. I am not saying that the new Minister for Labour Relations is doing that because she is a better person than the previous incumbent in that portfolio; rather, she is looking at the insecurity that has been created by the Reiths and the Kieraths of this world.

People are now apprehensive about applying for a mortgage or borrowing money to buy a new car or a washing machine. They do not know how long they will be able to hold on to their jobs. Many people who approach their bank managers for a home loan have financial circumstances that are marginal. The bank manager will ask them, first, what is their income; secondly, how much deposit they can put down on a new home; and, thirdly, the length of their job contract. If these people tell the bank manager that they are on a state government workplace agreement, the loan will not be approved because the applicants have no job security. The bank managers, as money lenders, will say that the track record of people on workplace agreements in government employment is such that these people are very dodgy prospects, and for that reason the bank managers cannot go along with the application for funds.

We are seeing changes in both the state and federal industrial relations portfolios, because the capitalist process to which those opposite adhere is telling them that they have gone overboard, that it is time to bring back the flamethrowers and put them in their kennels. Reith and the member for Riverton are now in their kennels, where they belong. Until those opposite start writing legislation covering port authorities that allows ministers to be tethered, to be controlled, under this parliamentary system and not be allowed to select political hacks who will simply dance to their tune, we on this side of the House will never be convinced that this is all about a genuine attempt at simple reform. The track record of this Government is really bad in this area, and it has a long way to go before it will convince us and the public that it intends to do anything else. Some time in the very near future, those opposite will single out Australian waterside workers, attack them, denigrate them and make them be seen as a leprosy in society that must be removed.

MR AINSWORTH (Roe) [8.43 pm]: The previous speaker made some accusations about some people appointed by this Government to the boards of port authorities and some other organisations. I find the claims he is making to be totally amazing. We almost have a sense of deja vu: I heard similar claims made when his party was in government and a new general manager was appointed to the Esperance Port Authority, a person who, to my knowledge, had no industrial relations background or experience with the running of ports before; yet, despite comments made by a few people that this person was a Labor hack - that was a very unkind and untrue statement - he has proved to be an outstanding general manager of the Esperance Port Authority. He is still there and is recognised as being a leader in his field. Likewise, members of the board of that authority are not broken-down cockies and political hacks.

The long-standing chairman of the board who retired a couple of years ago was an eminent businessman in this State and has served the whole of the nation well, both as an international level sportsperson in three different sports, and a highly successful businessman. He is still a great asset to the community. He was succeeded by a businessperson who, likewise, was highly successful and certainly would not be regarded as a government hack. In fact, his grandfather was a Labor

politician. It strikes me as strange that this sort of claim should be made with regard to this port authority in my electorate. I am sure the other members of the board of that port authority would take extreme exception to being called government hacks or broken-down cockies, or any of the other various names with which the member for Peel has labelled these people.

Let us look at the industrial relations record of the Esperance Port Authority. Esperance has led the way in port reform, without strikes or coercion of its work force. It has shown what can be done by cooperation. We now have an integrated labour force there, with members still, in the main, belonging to the Western Australian branch of the Maritime Union of Australia; however, they are port authority employees and work as part of a work force team. They most definitely would not come under the category mentioned by the member for Peel.

Ms MacTiernan: You are just very lucky not to have one of the right-wing IR port authorities in Esperance.

Mr AINSWORTH: The new appointments to the board of the port authority - there have been some changes to the membership within the tenure of the recently retired Minister for Transport - have absolutely nothing to do with politics, but everything to do with the calibre of the people being put forward by the community as potential nominees for membership of the board. They have been appointed purely on merit. The running of that port authority, the way in which it operates and the success it has achieved and continues to achieve, in light of some quite difficult economic circumstances that it has been through in recent times, show that those sorts of appointments to which the member for Peel alluded have for some strange reason not applied to the port of Esperance. Why the port of Esperance should be singled out as not being part of this terrible cronyism and nepotism alluded to by the member for Peel, I cannot understand. I am sure that the same rules apply to all ports in this State; that is, the appointment of people to the boards has been based on merit and not because of any political opportunism by the previous minister.

Ms MacTiernan: There are some very solid performers on the Esperance Port Authority. He also indicated that they do not believe that the contracting out of services would be appropriate for Esperance. Do you agree with them?

Mr AINSWORTH: That may well be the case, but it could be because of the excellent industrial situation at that port and the practices that have already been put in place. My concern is that by generalising in this very inappropriate way, the member for Peel has by implication indirectly impugned the integrity of not only the previous Minister for Transport - I am sure he could take that because he was appointed to public office and that goes with the territory; but it does not go with the territory of a volunteer acting in the best interests of the district - but also outstanding members of the community. I reject that suggestion wholeheartedly. If I had more knowledge of the make-up of the other port authority boards and the nature of their individual chairmen, I am sure I would say the same thing about them as well.

MR OMODEI (Warren-Blackwood - Minister for Local Government) [8.50 pm]: I understand that the second reading debate can be a general debate on the issue. The second reading debate on these Bills was certainly very general and wide ranging and not too specific to the legislation. I remind members that the Port Authorities Bill is about the modernisation of port legislation. The functions of the port authorities have been expressed clearly, as have the roles, powers and obligations of the boards, together with their relationship to the minister and the Government. Similarly, the legislation has spelt out in clear terms the role and responsibilities of the minister and the accountability arrangements.

I will refer to a few matters in the second reading debate.

Ms MacTiernan: Does that mean you will not answer any of the questions but will just regurgitate the second reading speech?

Mr OMODEI: Give me time! I have been talking for only one minute!

The port authorities will no longer be agents of the Crown. That means that the port authorities will be put on a more equal footing with the private sector. New and innovative planning and building provisions have been developed, which will allow the port authorities to undertake port works and to develop port facilities without the formal approval of local governments. Port authorities will no longer be bound by the Public Sector Management Act, except insofar as the Port Authorities Bill expressly states that they are.

As part of the accountability requirements, the port authorities will be obliged to submit annual strategic development plans and statements of corporate intent for the approval of the Minister for Transport, with the concurrence of the Treasurer, and to table them in the Parliament.

Transport has been fairly active in developing this Bill and has provided the main interface between the port authorities and Treasury, the Public Sector Management Office, the Ministry for Planning, the Department of Local Government, the Native Title Unit of the Ministry of the Premier and Cabinet, the Office of the Auditor General, the Public Sector Standards Commission, the Department of Productivity and Labour Relations and the Department of Land Administration.

All the port authorities have participated in the development of the legislation, in person or in writing. Transport has replied in writing to every issue that has been raised by port authorities during the development of the legislation. The Bill has been

subject to legal scrutiny. Port authorities have used three private legal firms to examine matters in the legislation, and lawyers from the Crown Solicitor's Office, the Department of Land Administration and parliamentary counsel have also provided opinions. This process means that the provisions of the Bill are soundly based and will work in practice.

In the process of consultation, agreement has been reached with the relevant parties about all the key policies and details of the legislation. For example, written agreement from the Minister for Planning and the Department of Local Government has been obtained for the new arrangements that have been developed for planning approvals and building. The requirements of the port authorities have been accommodated in the process. All the major players support the legislation.

The Port Authorities (Consequential Provisions) Bill is straightforward legislation, as I mentioned in the second reading speech. The provisions are of a technical nature and are mainly to amend references to existing port authorities Acts and other Acts. The port authorities legislation also includes the Maritime Fees and Charges (Taxing) Bill.

The member for Armadale supported the underlying principles of the Bill and ministerial direction. However, she raised the issue of parliamentary scrutiny of port authorities. The port authorities must lodge with the Parliament annual statements and statements of corporate intent, subject to the approval of the minister and the Treasurer, and the minister will have the power to direct ports.

The member for Armadale also referred to the Government embarking on an industrial relations campaign and taking on the Maritime Union of Australia. The Bill requires the establishment of minimum staff management standards and the establishment of a code of conduct. Both of those matters will be subject to the scrutiny of the Commissioner for Public Sector Standards. The port authorities will also need to act in a commercial manner and will have more autonomy, and the minister will need to lodge in the Parliament any directions that are given.

Exclusive licensing will be permitted only with the minister's approval, and the minister can give approval only if it is in the public interest. Short-term licensing and contracts provide serial competition at natural monopolies, so we will see at least some competition.

The member for Cockburn talked about the Government acting illegally, and about accountability. The ports will be required to comply with the Corporations Law and the Financial Administration and Audit Act, and to lodge in the Parliament annual reports and statements of corporate intent. The member for Cockburn referred to a railway line through a park in Fremantle and Victoria Quay. That is a rather vague issue, and I do not know what he is talking about. However, if such a case did arise, all the normal safety requirements for railway lines would apply. The member for Cockburn referred also to the proposed port at Naval Base and to the Fremantle-Rockingham Industrial Area Regional Strategy report. He said that the planning was to be determined and was awaiting the port plans, and that a second port plan was not necessary and it would be a scab port. The second port will provide competition for the Fremantle Port Authority. The MUA currently has a monopoly on the work force and the provision of labour which cuts across the management capability of the Fremantle Port Authority, so when that proposal materialises it will certainly introduce competition.

By the time the member for Burrup made his contribution to the debate, the debate was deteriorating and getting away from the provisions of the Bill. The member for Burrup referred to matters that had occurred in ports around the country and about the philosophy of the Opposition as much as anything else. He talked mainly about the activities at the Dampier port, including the activities of Western Stevedores, and about its being hellbent on breaking the Seamen's Union. I remind members that the Bill will modernise the legislation and that checks and balances are in place on all these matters.

The member for Bunbury talked about the competence of the Bunbury Port Authority in examining the issue of tendering. The member for Peel strayed a fair way from the legislation and talked about the Government's handing over of the ports to the private sector, and about Labor's 51.7 per cent result in the federal election. I remind the member for Peel that John Howard won that election with a goods and services tax as part of a tax reform package.

Ms MacTiernan: He would not have won had we had the fairness clause!

Mr OMODEI: We would not have had many Labor Governments in Western Australia had we gone straight on the percentage vote. I can recall that the coalition lost a couple of elections and had a greater percentage of the vote than the Labor Party.

The member for Peel talked extensively about the Fremantle wharf and the activities of the unions. The member for Roe talked about the Esperance port and the competence of its board.

I thank members for their contributions. This is the Transport Minister's legislation, and I do not profess to be an expert on this legislation. A number of amendments will be moved by the member for Armadale and myself during the Committee stage, and I expect the legislation to be supported, as the Opposition appeared to indicate that.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Ms McHale) in the Chair; Mr Omodei (Minister for Local Government) in charge of the Bill.

Clause 1: Short title -

Ms MacTIERNAN: The Opposition supports the Government's overall direction of commercialisation, which still retains for the Government a degree of control over port authorities. The Opposition also supports the principle of a different standard of accountability and mechanism for accountability for these newly commercialised bodies. However, when we analyse the detail of the provisions that allegedly provide greater accountability, we see in many instance less accountability. Therefore, the Opposition will introduce a series of amendments to deal with the issues of accountability and transparency.

The Opposition is also concerned about the direction of port policy which in this State has been suborned to an industrial relations agenda. The Opposition will introduce amendments that will seek to obviate that problem, so that the newly commercialised ports will focus on the efficient delivery of services to customers and not on industrial relations agendas that have nothing to do with the efficiency of the ports.

Clause put and passed.

Clause 2: Commencement -

Ms MacTIERNAN: Is a single commencement date or different commencement dates for different port authorities proposed? What arrangements will be made in relation to the chief executive officers under this new structure - for example, will all CEO positions become vacant? Is it anticipated that ports will come on stream on different dates, and what transitional arrangements will take into account the changed structures and responsibilities?

Mr OMODEI: A uniform date is proposed for the startup time, and staff will be retained in the initial stages.

Clause put and passed.

Clause 3: Definitions -

Ms MacTIERNAN: I move -

> Page 2, after line 16 - To insert the following -
>
> > **"commercially sensitive nature"** means, in respect of a matter, information which would compromise the competitiveness or commercial operations of a third party not being related to, or a subsidiary of, the port authority;

A later provision in the Bill will give the Government power to remove from a report information that is of a commercially sensitive nature. The Opposition does not disagree with that principle. However, we have seen from bitter experience that the Government uses the concept of commercial confidentiality in circumstances in which it is totally inappropriate. Unfortunately, the Government has a tendency to use commercial confidentiality as a smokescreen for things that do not have a commercial nature, but are matters that the Government feels are an embarrassment.

This amendment will ensure that an exemption or deletion of material of a commercially sensitive nature relates to material that is commercial in nature. For example, the financial arrangements that a port user might have in an arrangement with the port authority and any information about the commercial details of a contract between a port authority and one of its customers would be commercially sensitive and would be exempt. Although I do not think these things should be exempt, the Opposition is giving ground here and would be prepared to allow exemptions for the arrangements between a private provider of port services and the port authority. The Opposition is seeking to incorporate into the legislation the principle that information that is commercially sensitive is exempt; however, we want a definition of what is commercially sensitive, so the clause cannot be used to delete information that may simply be embarrassing to the Government, and the banner of commercial sensitivity can be thrown up.

Mr RIEBELING: I would like to emphasise the importance of this amendment to the openness of the process. The Opposition believes that there should be an ability for commercially sensitive material to be kept secret. However, the current practice of this department and this Government is that everything is deemed to be commercially sensitive, therefore we are not allowed to look at what they are doing. The definition in this amendment enables transparency to be created and allows real protection of information that is commercially sensitive to the degree that competitors would gain an advantage if they knew the actual cost of operation. It is a genuine attempt to create a better Bill. I encourage the minister to accede to the amendment.

Mr OMODEI: Clause 64(3) permits a port authority to request the minister to delete an issue which is of a commercially sensitive nature from the statement of corporate intent before it is laid before the Parliament. If the Government accepts the

member for Armadale's amendment, it will prohibit the minister from exercising a discretion on commercially sensitive information relating to the operations of the port authority or its subsidiary. As the member for Burrup acknowledged, that would place the port authority at a competitive disadvantage to its competitors. Therefore, it is unacceptable to us. Competition to a port authority by any subsidiary or contractor would place that port authority at a competitive disadvantage. On that basis the Government is not prepared to accept the amendment.

Ms MacTiernan: Could the minister give an example of what he is talking about? Is he referring to information on the port's own charges?

Mr OMODEI: I am referring to anything of a commercial nature - lease agreements, tenders and things of that nature.

Ms MacTIERNAN: With respect, if one looks at the definition of our amendment, it will not prevent information of that type being deleted. Our proposed definition would mean that if company X leased the property from a port authority or provided services by way of a contract to a port authority, it is then a third party and entitled to protection; and information relating to the arrangements with that party would fall within our definition of commercially sensitive.

Mr Omodei: I am told that if company X was a subsidiary of the port authority, it would not be protected under the legislation, as it is now. Any commercial information would have to be released.

Ms MacTIERNAN: And so it should be. The port authority cannot race around creating subsidiaries so that it can then disguise or hide information. That is not an appropriate use of the concept of commercial sensitivity. It is a government agency, albeit a commercialised agency, subject to ministerial direction, dealing with publicly owned assets. Our real concern about this is that a whole range of information about the port authority and about its charges and practices will be removed totally from scrutiny by an overly generous definition of the notion of what is commercially sensitive. It makes a nonsense of the whole concept of any sort of accountability.

The key accountability document that we are now talking about, on which this whole Bill is predicated, is the statement of corporate intent. The statement of corporate intent lies at the centre of the enhanced accountability that we will have. However, what do we find? We find in several places that the minister is able to delete from the statement of corporate intent any reference to material which he deems, undefined, is commercially sensitive. That can mean that what we get in the statement of corporate intent is similar to what we got in the last budget papers - a whole collection of meaningless gobbledegook that does not allow any analysis whatsoever.

What we are trying to do is recognise that there are legitimate areas of commercial confidentiality that relate to third parties - private enterprises that are dealing with the port authorities - and they require some protection from public scrutiny under the ways in which we operate at the moment. We accept that. However, we are saying that we are not going to sign off on an open-ended definition of "commercially sensitive" that enables the minister to remove anything that he likes from the key document of accountability. It makes it an absolute nonsense, and we simply could not support it. As I said, the only example that has come back to us is where the port authority sets up a small subsidiary which does business with that port authority. Under this amendment that subsidiary's information would have to be made public. So it should be; it is not a private organisation. The subsidiary is a publicly owned asset and its affairs should be subject to public scrutiny.

Mr RIEBELING: I reiterate what the member for Armadale has so clearly put on record. The minister's example is exactly what we are trying to get to the bottom of. We think that publicly owned instrumentalities and bodies should be able to be scrutinised. For the life of me I cannot see why the minister would want a subsidiary to have the ability to hide what it is doing in the commercial world. Quite clearly, the private sector will want some contracts to remain confidential. However, dealings with public entities, such as whatever the port authority may wish to create by way of a trading arm, should be open to as much scrutiny as possible to avoid any allegations of impropriety. We are giving the Government a vehicle to do that and the minister should take the opportunity to accede to our amendment so that a more open system can be implemented.

Mr OMODEI: It appears as though the Opposition wants to render the port authorities uncompetitive. If we pass this amendment, no subsidiary of the authority would be able to compete with other parties. Contrary to what the member for Armadale said, the Minister cannot delete a copy of the statement of corporate intent. Clause 64(3) provides -

> A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before the Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

If the Opposition wants to render port authorities uncompetitive the Government is not in favour of that.

Ms MacTIERNAN: It is true that the request must come from the port authorities. However, as we have observed, a close relationship exists between a port authority and the minister who appoints the members of its board. Therefore the point still stands. In any event, even if the request emanates from the port authority itself that does not in any way justify the organisation not being subject to substantial scrutiny. The Opposition is not saying the organisation cannot act commercially or competitively. However, we must ensure that when we are talking about commercially sensitive information we are

talking about just that. How will we scrutinise these organisations if anything that relates to their competitiveness is not open for examination?

Surely one of the key indicators of performance of a port authority is the costs and charges it levies on its customers. Based on this open-ended definition of "commercially sensitive" we could delete from the statement of corporate intent all reference to any charges. How then would we, as a Parliament responsible for the examination and scrutiny of government agencies, be able to examine and report on their performance? We have not adopted a corporatised model nor have we decided not to privatise the port authorities; yet, if we do not accept this amendment, we have provided the opportunity to have all the instruments of scrutiny basically nullified.

Mr OMODEI: In the end, the Opposition must make up its mind whether it wants port authorities to be competitive. If commercially confidential information were released to competitors it would not be long before the port authority was in trouble.

Fees and charges are subject to regulation, therefore subject to the scrutiny of the Joint Standing Committee on Delegated Legislation.

Ms MacTiernan: How do they scrutinise the port authority?

Mr OMODEI: Fees and charges are subject to regulation which makes them subject to scrutiny by that joint standing committee.

Mr RIEBELING: I do not quite understand how a regulation committee which is in place to examine regulations can scrutinise the operation of a port authority's subsidiary.

Mr Omodei: We are not talking about the subsidiary; we are talking about port authority fees and charges referred to by the member for Armadale.

Mr RIEBELING: We are talking about our amendment that seeks to provide that if a subsidiary is an entity attached to the port authority its operations should be scrutinised. I understood the minister to say the Joint Standing Committee on Delegated Legislation scrutinises the operations of those bodies.

Mr OMODEI: The member for Armadale raised the matter of fees and charges not being subject to scrutiny. I responded that fees and charges were subject to regulation and therefore subject to scrutiny by the Joint Standing Committee on Delegated Legislation.

Mr RIEBELING: I am concerned about scrutiny of subsidiary companies owned by a port authority. How do we scrutinise them if we allow contracts entered into by those bodies to remain confidential? What ability does this Parliament, the purpose of which is to control the operation of government bodies, have to scrutinise their operations if it has no opportunity of knowing what they are doing?

Ms MacTIERNAN: I am not sure how familiar the minister is with the terms of reference of the Joint Standing Committee on Delegated Legislation. I do not know whether the member for Burrup has been on that committee. It is my understanding that its terms of reference are to examine whether the regulations are ultra vires the Act rather than to examine the merit of the regulations in an overall sense. I do not know whether we can get some advice on this. Although those charges would come before the delegated legislation committee, given its terms of reference, there would be no scrutiny of them.

The issue of fees and charges is one example, but that is not the core of our criticism and it is not all we are aiming at here. We are concerned that the internal affairs of the port authority that do not relate to its interaction with customers or service providers will be confidential. It could be anything. It could be the chief executive officer's salary or, as the member for Burrup said, subsidiary companies being created to evade scrutiny. They could be squirrelling away money. A range of things could be done.

As the Opposition says, there is an overuse by the Government of this notion. It is probably not the first Government to overuse the notion of commercial confidentiality. The Royal Commission into Commercial Activities of Government and Other Matters was established, in part, because of the overuse of that concept. Unfortunately we do not seem to have learnt the lessons of the royal commission and we continue to hide behind a smokescreen of commercial sensitivity. Clear parameters to this concept should be that it relates only to arrangements that impact on independent third parties; not that it allows subsidiaries to be knocked together in order to prevent parliamentary scrutiny.

Mr OMODEI: Ultimately we want to commercialise ports. That means subsidiaries will be created and some information will be commercially confidential. Port authorities must table annual reports as would any subsidiary company. That is the accountability measure.

Amendment put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Mr Grill	Mr McGinty	Mr Thomas
Mr Brown	Mr Kobelke	Mr Riebeling	Ms Warnock
Mr Carpenter	Ms MacTiernan	Mr Ripper	Mr Cunningham *(Teller)*
Mr Graham	Mr Marlborough	Mrs Roberts	

Noes (27)

Mr Ainsworth	Mr Day	Mr Masters	Mr Trenorden
Mr Barnett	Mrs Edwardes	Mr McNee	Mr Tubby
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Mr Board	Mrs Holmes	Mr Omodei	Mrs van de Klashorst
Dr Constable	Mr House	Mrs Parker	Mr Wiese
Mr Court	Mr MacLean	Mr Prince	Mr Osborne *(Teller)*
Mr Cowan	Mr Marshall	Mr Sweetman	

Pairs

Dr Gallop	Mr Strickland
Mr McGowan	Dr Hames
Dr Edwards	Mr Kierath

Amendment thus negatived.

Mr OMODEI: I move -

Page 4, line 11 - To insert before "over" the word "in,".

The amendment is required to bring pipes which are attached to the shore but suspended over navigable waters within the definition of a maritime structure.

I move -

Page 5, line 13 - To delete "114" and substitute "115".

This amendment is required to rectify a minor drafting error.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 4 put and passed.

Clause 5: Port authorities are not agents of the Crown -

Ms MacTIERNAN: A view appears to be held that the Government will escape responsibility in the event of a port authority failure because the port authorities are no longer agents of the Crown. I want to clarify the intent of this provision. I am not opposed to the general principle of removing a commercialised entity from the protection that is given to the Crown. I am concerned about an overly optimistic view that appears to be held of what such a provision might mean in overall governmental liability. What would happen if a port authority became bankrupt, which is a possibility, or at least racked up large volumes of debt which it was not able to pay off and it became insolvent? That is not an altogether fanciful scenario particularly if courts are built for industrial relations purposes and not for proper commercial purposes.

Mr Omodei interjected.

Ms MacTIERNAN: If the minister tells us he will not build this fantasy port, we will desist. Aside from that, some port authorities, one in particular, are in difficulty. Notwithstanding this provision, given that the port authority is ultimately under the direction of the minister, it appears that there would be every possibility that an action could be mounted by a creditor against the Government for compensation. I want the Government to make it clear what it thinks is the consequence of this over and above that it does not excuse the port authorities from various obligations to comply with various Acts. The issue is whether the Government is of the view that this provision will exempt or protect it from liability being attached to it in the event of the failure of any of these port authorities. I do not think that will happen because at the end of the day the buck stops with the minister who has the power to override the board, and who has the responsibility to supervise the conduct of the board. If things go wrong, it would appear that the minister has the sort of culpability that we see under the Corporations Law; the sort of culpability for allowing an operation to trade while insolvent.

Mr OMODEI: I understand the member has already had advice, but the advice that I have is that there -

Ms MacTiernan: Are you saying that I have discussed this?

Mr OMODEI: No, the member said she has been briefed.

Ms MacTiernan: Yes, and the impression I got was that a view is held that this clause does more than it appears to do.

Mr OMODEI: The advice that I have been given is that because the port authorities will no longer be agents of the Crown, the State will therefore have no legal responsibility to support a port authority in the unlikely event of bankruptcy, except to the extent of any existing or future guarantees that were issued. The port authorities will still be public bodies that are owned by and subject to the direction of the Crown. That may create a perception of government liability. This clause will not prevent any Government, of course, from choosing to support a port, but legally there would be no such requirement once port authorities were no longer agents of the Crown. These provisions are similar to those that are incorporated in the Water Corporation Act.

Ms MacTIERNAN: I do not have any difficulty with the clause as it stands, but I do not believe it has the consequences that the minister or his legal advisers are ascribing to it. It is true that I raised this point with the legal advisers but merely because they said that they did not see it as a problem is certainly no reason for us not to raise it here. The minister is opting for the commercialisation path and we are supporting him in that. We are not talking about a corporatised entity. It is really important to get clear the difference between a corporatised and a commercial entity. The difference is that with commercialisation, at the end of the day the overriding control remains with the minister. The minister has power to direct. It is a fundamentally different situation from that of a corporatised entity. Quite frankly, I am concerned about the quality of advice the minister is receiving on this point. I want to know whether the minister has advice about the different impacts of corporatisation and commercialisation on ultimate government responsibility. As I put it to the minister, the Corporations Law talks about the responsibility of directors. Directors who allow a company to trade while insolvent are liable to the creditors for the debts incurred during that period. The minister might argue that the directors of the board under this legislation are the direct equivalents of the directors who are found under the Corporations Law. That is clearly nonsense. Under the Corporations Law no person is standing on top of the board of directors directing them to do this or that. To give an example, let us take the port of Wyndham. Say the minister, for whatever reason, decided that he wanted to promote the growing of hemp in the area of Wyndham and he told the Wyndham Port Authority that it must carry out extensive renovation to the port to allow hemp shipments to go out. The Wyndham Port Authority would be directed by the minister to do that. It might go bust. It is not a totally unlikely or impossible scenario. Is the minister seriously saying that in those circumstances the directors would be found liable, that the blame would stop with the port authority, and that the creditors would not have recourse to the Government? It is absolute pixie land. Quite frankly, I want to see the advice given here and to get an analysis from the minister of how he could possibly state that a director under the Corporations Law is the equivalent of a director under this Bill when every director under this Bill is subject to the direction of a minister. It is the most patently stupid thing I have ever heard. The minister must understand that because he has that overriding capacity he has the overriding responsibility. We must go into this question a little closer because obviously it will impact on the degree of scrutiny that we must give these organisations. We cannot have them going off and committing themselves to all sorts of debt levels if at the end of the day the taxpayer of this State is to be culpable. Nothing has been said to allay our fears, other than a misunderstanding of the relationship of the directors to the decision.

Mr OMODEI: Obviously the member for Armadale has different legal advice from that which has been provided by Transport. She raised hypothetical cases. One could probably think of a whole lot of others. In the end I daresay that they will be all tested by a court of law and that will give the result. I have been given that advice. The member can bring up as many hypothetical cases as she wishes, but until one occurs in the unlikely event of a bankruptcy, except to the extent of any existing or future guarantees issued, the port authorities will still be public bodies which are owned by the State and subject to the direction of the Crown. Although it may create the perception that the Government is liable, that is the present situation. The clause would not prevent any Government from choosing to support a port but legally there would be no such requirement once a port authority was no longer an agent of the Crown.

Ms MacTIERNAN: The minister is just repeating it. The minister is a minister of the Crown. The minister receives advice.

Mr Omodei: Which is obviously different from yours.

Ms MacTIERNAN: I am talking about logic. Just think about this from first principles. The minister need not have done a law degree but need just think about it. He must be prepared to make up his own mind about this. At the end of the day he is receiving advice. How could it possibly be the case that the Government were not liable when at the end of the day the Government had the power to direct the entire operation? How could the responsibility stop with the directors of the board when the directors of the board were subject to the direction of the minister? One has only to think about it to realise that what the minister has been mouthing is just silly. It simply will not work. The minister talks about creating a perception. It will be more than creating a perception because this notion of responsibility goes with power. If a board does not have ultimate authority, if it cannot determine its own destiny, if it is ultimately at the direction of the minister, that minister has responsibility. The responsibility will go up the line. This is important because it goes to the question of the degree of

scrutiny that we will need to give these agencies. It goes to the question of the exposure of the taxpayers to the results of the decisions of port authorities. As I say, it is far more than simply a perception. One cannot have control without any responsibility. The minister is asking us to believe that under the law of the land we would contemplate a situation where the minister could go around making decisions left, right and centre, and directing port authorities, and yet at the end of the day the buck did not stop with the minister. That is the way that the Government would like things to operate, and it would like the chief executive officers to take the rap, but at the end of the day that will not be how it works. If a port authority became insolvent or acquired debt that it was unable to pay, there is no doubt that under the commercialised structure that is in place, the Government would have ultimate responsibility for meeting those debts. I am very concerned that the Government is moving on a false premise. As I say, it is not simply that the Government may ultimately be proved wrong, as the minister is saying; it really goes to the question of what provisions we need to insert to provide proper scrutiny.

Mr RIEBELING: I am concerned about the minister's response. In one breath he says that the removal of the privileges of the Crown will mean that the State is not liable, yet he next claims it may want to pick it up if it feels like it! Ultimately, which Government would allow a port to fall over? Would it be acceptable for a Government to allow its trading arm to go bankrupt - even if it were the Wyndham port, which is probably the least viable port in the State now that the meatworks are no longer based in town? What would happen? The Government would be required to open another entity. It is nonsense to say that the State is not liable for the entity; it has responsibility to the people of Western Australia to ensure that the service continues to operate. Even in the most basic operation of the State, the people of WA demand that the ports at Derby, Broome, Dampier, Albany, Esperance or wherever will remain open. They are not like bus stations or wheatbelt train stops, minister.

Mr Omodei: Derby was closed for a long time.

Mr RIEBELING: It was closed when the *Koolinda* blocked the port's passage when it broke its hull in the mud flats. It was closed only until the ship was removed. Is the minister saying that the ports' viability is under threat? With the loss of Stateships, maybe ports are under some threat. When the minister closed Stateships, he said that the services to the ports would be enhanced and all would be well. Perhaps that is not what the minister meant.

This provision of the Bill should be removed as it gives a false impression, as did the minister's explanation. He cannot say that the State is not liable, yet it may pay the debts and be liable. One does not operate in shades of grey with liability of the State - one is either liable or not liable. This provision means nothing and should be removed.

Mr OMODEI: The ports of Wyndham, Derby and Broome are not port authorities as they operate as government facilities under the Marine and Harbours Act.

Ms MacTiernan: It was an example.

Mr OMODEI: The member spoke about port authorities; they are not port authorities, but operate under the Marine and Harbours Act. Some ports such as Broome are viable. Derby would also be viable since Western Metals Ltd went into the area. The Government has capacity to pick up any debts. My advice is that the directors have a duty to act commercially; therefore, they are responsible.

Ms MacTiernan: What happens if the minister directs them? Does the minister not have overarching powers?

Mr OMODEI: It is getting complicated.

Ms MacTiernan: It is pretty simple. You are not corporatising, but commercialising.

Mr OMODEI: It depends upon the issue involved, how the authority is directed and when it is directed, and a range of other considerations.

Mr Riebeling: Does the minister have the power to direct?

Mr OMODEI: Yes, but he or she must lodge that direction in Parliament.

Clause put and passed.

Clause 6: Port authority and officers are not part of public sector -

Ms MacTIERNAN: This provision will take employees of the port authorities from within the application of the Public Sector Management Act. It is an interesting development, particularly given that we refer to a commercialised, not a corporatised, entity. The Public Sector Management Act was introduced, partly, following the Royal Commission into Commercial Activities of Government and Other Matters as it was considered that the former Act covered about only 20 per cent of all public sector employees; therefore, it was decided that an Act of more general application was required. Since introducing that Act, we have seen the Government at almost every opportunity try to reverse the process and return to the previous situation. The Public Sector Management Act covers an ever-decreasing number of public sector workers. What is the rationale for this development? It is a commercialised, not a corporatised, entity. The operation will still be subject

to the minister. We still have all sorts of tie-ins to the Commissioner for Public Sector Standards in this measure, so why take this matter out of the full force of the Act?

Also, how will this change affect the accountability of CEOs? For example, will we have the right to know the salaries and conditions of the senior staff of port authorities under these arrangements? Under the Public Sector Management Act, their salaries and remuneration packages are subject to the Salaries and Allowances Tribunal. That will no longer be the case. I seek some clarification about the mechanism which will determine the salaries of CEO and officers.

Mr OMODEI: Clause 14(2) refers to the port authority chief executive officer; it reads -

> The powers -
>
> (a) to appoint and remove the chief executive officer; and
>
> (b) subject to the *Salaries and Allowances Act 1975*, to fix and alter the terms of condition of service of the chief executive officer, . . .

Port authority employees will be removed from the provisions of the Public Sector Management Act to limit government liability for employees of the commercial entity, and to give the commercial entity maximum flexibility regarding the commercialisation of that authority.

Clause put and passed.

Clauses 7 to 9 put and passed.

Clause 10: Remuneration of directors -

Ms MacTIERNAN: I am interested in the phrasing of this provision. It deals with the remuneration of directors and contemplates that different directors on the same board may be paid different amounts of money. It states -

> A director is to be paid out of the funds of the port authority such remuneration and allowances as are determined in the case of that director by the Minister.

It would appear to contemplate, for example, that if the minister appointed someone such as Russell Allen, he might pay him $400 an hour, and if he appointed some other person who was not a lawyer, he might pay him substantially less. There is a real difficulty with paying directors differential rates.

Mr Omodei: Yes, that is correct.

Ms MacTIERNAN: Is the minister contemplating paying them different rates?

Mr Omodei: Could be.

Ms MacTIERNAN: That is a very unfortunate development and I would like clarification.

Mr Prince: You may well find a person of great experience who wants to serve but does not want significant remuneration because of the nature of his or her income. It can work both ways.

Ms MacTIERNAN: I would be interested to know whether that is the case with the current port authorities and whether the directors are paid at the same rate. I note that there does not seem to be any provision for the remuneration to be listed in the annual report. I seek to deal with that by an amendment to clause 69. I would like a justification to be given by the minister for the differential payment of directors, and to know whether that practice is in vogue in the port authorities at the moment or in any other government agencies.

Mr OMODEI: The usual practice with boards of directors is that they are not all paid the same amount, and the remuneration depends on their experience. The Minister for Police said by interjection that someone with specific expertise may not want to be paid the same as another member of the board. The Government is commercialising port authorities and bringing them into line with this.

Ms MacTiernan: The minister is making the decision.

Mr OMODEI: Obviously the minister is making the decision. What happens in other cases with other companies? From time to time they pay different directors' fees. The member is not suggesting every company pays exactly the same remuneration to directors.

Ms MacTiernan: In each company, do each of the directors receive the same remuneration?

Mr OMODEI: I understand it varies from company to company.

Ms MacTiernan: What is the situation with port authorities at the moment? For example, do the other members of the port authority receive the same remuneration as Russell Allen?

Mr OMODEI: I think they do, but I am not sure.

Ms MacTiernan: At the moment they get the same, but the Government is contemplating a change?

Mr OMODEI: That can be clarified at a later stage.

Ms MacTIERNAN: Given that the minister has said he will provide further information on this clause, can the clause be suspended until that information is provided?

Mr Omodei: Why not pass the clause and I will provide the information later. Another clause deals with remuneration.

Mr RIEBELING: I understand the minister will provide the information on this clause. The minister may want to skip past this clause and then provide information that may impact on the debate. It is highly inappropriate to move past clause 10.

Mr Omodei: You have an amendment to clause 69 that refers to that very matter.

Ms MacTiernan: No, that is about disclosure. This clause deals with the principle of differential payment.

Mr RIEBELING: In response to a question from the member for Armadale, the minister said he would provide the information. It related to this clause and, therefore, it is inappropriate to move on, even if the minister wants to, because the minister has undertaken to provide that information.

Ms MacTIERNAN: I would prefer to leave this clause until we receive the information requested.

Mr Omodei: It will not make any difference to the outcome of the clause.

Ms MacTIERNAN: I will move an amendment, given that the minister is not prepared to defer this clause.

The DEPUTY CHAIRMAN (Ms McHale): The member can move to postpone this clause until after another clause or until after all the other clauses have been dealt with.

Ms MacTIERNAN: I get the impression from the minister that he is not prepared to support that postponement.

Mr Omodei: Commonsense dictates that we pass this clause and I will provide the information.

Ms MacTIERNAN: The information is relevant to whether the Opposition supports the clause. I move -

That further consideration of the clause be postponed.

Question put and negatived.

Ms MacTIERNAN: I move -

Page 8, lines 20 and 21 - To delete the words "in the case of that director".

The current practice in respect of government boards and port authority boards is to have a standard rate of remuneration for directors. It is a dangerous precedent to set to allow the minister to discriminate between different board members. That would have a destabilising effect on board membership and would allow the Government to play favourites. We know people have probably been asking the Government for increased remuneration, particularly members of the legal profession, but it is inappropriate. Everyone who participates on a board has a contribution to make. This clause suggests that there is an A team and a B team on boards, and that is unacceptable. The thrust of the amendment is to remove the provision that allows discrimination between different board members.

Progress reported.

House adjourned at 10.12 pm

PORT AUTHORITIES BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon M.J. Criddle (Minister for Transport), read a first time.

Second Reading

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [9.50 pm]: I move -

That the Bill be now read a second time.

It is with great satisfaction that I bring this Bill before Parliament. The Port Authorities Bill will give effect to the Government's policies for port reform in this State as described in the Government's major policy statement on ports, *Principles to Guide Western Australia's Port Authority Development Through the Nineties*, which was released in November 1995.

The November 1995 statement clearly identifies that the role of the State's port authorities is to facilitate trade and export opportunities for Western Australia's farmers, miners and manufacturers and that this be undertaken in a commercial and efficient manner.

Port authorities are provided with the power under the Bill to provide all the services and activities which are required by port users. The legislation provides port authorities with the flexibility to provide a service themselves, enter into business arrangements which will allow the private sector to become involved, or stand back and let the private sector provide the service.

The overall objective of the legislation is to improve the efficiency and effectiveness of ports which will benefit port users and the Western Australian community. The Port Authorities Bill is based on the successful and proven model adopted for the water, electricity and gas corporations. Adaptations have been made where appropriate to tailor the legislation to the ports' environment. The legislation is also in keeping with the principles recommended by the Commission on Government report and national competition policy and principles.

Placing the new legislation in some perspective requires a brief overview of the present position. Each of the State's seven statutory port authorities has its own piece of legislation detailing its duties, functions and powers. Some of these Acts date from the turn of the century and all are in need of updating. Port authorities are also required to comply with a number of maritime Acts covering aspects associated with shipping, pilotage, navigation aids, dangerous goods, pollution and a host of central government and other Acts including the Financial Administration and Audit Act 1985 and the Public Sector Management Act 1994. The existing port authority Acts, together with the regime of other legislation, make it difficult for port authority boards and management to facilitate trade in a commercial manner. The Port Authorities Bill, together with the Port Authorities (Consequential Provisions) Bill and the Maritime Fees and Charges (Taxing) Bill will address these shortcomings. The Port Authorities Bill both reforms and modernises existing port authority legislation. It creates the opportunity for the State's ports to benefit from greater commercial freedoms more closely aligned with those of the private sector. Port authorities will be better placed to respond to changes in market conditions and meet users' needs in terms of price and service quality. In keeping with modern-day commercial thinking, port authorities will no longer be agents of the Crown or have the status, immunities and privileges of the Crown. Moreover, like the water, electricity and gas utilities, port authorities will not be subject to the Public Sector Management Act or the majority of the provisions of the Financial Administration and Audit Act. Provisions based on corporations law will apply in relation to the constitution and proceedings of boards, the duties and responsibilities of directors, the chief executive officer and staff, and financial administration and audit. Boards will be responsible for the appointment of chief executive officers and staff, subject to minimum employment standards and conditions.

The Port Authorities Bill also redefines the relationship between the port authorities and the Government. Port authorities will have a greater responsibility for day-to-day operations, and management autonomy and authority will increase. Management will put into action decisions in response to changes in the market. It will encourage port management to become more competitive in the provision of services to existing and potential port users. However, there will still be government controls and an emphasis on accountability to Parliament.

The legislation requires port authorities to develop an annual strategic development plan and an annual statement of corporate intent for approval by the minister and the Treasurer. This will enable the minister and the Government to play an important role in setting the overall direction of the ports while ensuring minimal involvement in the daily operations of a port authority. The Treasurer's focus will be on the financial and economic aspects of the plans. The statement of corporate intent will be the primary document against which the Government will annually evaluate the performance of port authorities.

The Port Authorities Bill requires port authorities to consult with the minister before embarking on any major initiative or taking any action that is likely to have significant public interest. The minister may give directions in writing to a port

authority in respect of the performance of its functions and the port authority is to give effect to any such direction. Directions by the minister must be laid before Parliament. Port authorities will continue to be audited by the Auditor General and annual reports will be tabled in Parliament.

Special provisions in schedule 6 of the legislation relate to the port authorities of Dampier and Port Hedland. These are necessary because both ports were initially developed and constructed by private sector interests. Schedule 6 picks up the relevant provisions from the existing Acts applying to both port authorities and confirms obligations arising from state agreements. The remainder of the Port Authorities Bill unifies an approach to activities already existing in current legislation, including navigation, port charges, proceedings for offences, miscellaneous provisions and regulations.

During consideration of this Bill in committee, I will be moving two minor amendments. These amendments will require port authorities to provide for environmental management in their strategic development plans and place responsibility for the approval and monitoring of marine safety plans with the minister rather than the Director General of Transport.

In summation, the legislation rationalises, unifies, reforms and modernises existing port authority legislation. It represents a new partnership between Government and the State's port authorities to take Western Australian port users into the next century. It meets the Government's competitive neutrality principles. It provides for rigorous accountability and for mechanisms to monitor and assess performance.

Port authorities will be expected to achieve certain financial and operational targets. There will be clear authority for management to seek opportunities, within the scope of a port authority's functions and powers, to improve productivity, reduce costs, and provide the best possible service to customers either directly or indirectly. It will enable the Government to set broad strategic policy directions. Most importantly, the Port Authorities Bill is a mechanism by which the State's port authorities can more effectively facilitate and foster growth in international trade and commerce. This legislation will improve the administration of the State's port authorities for the benefit of port users, the broader community and the State's economy. I commend the Bill to the House.

Debate adjourned, on motion by Hon E.R.J. Dermer.

PORT AUTHORITIES BILL

PORT AUTHORITIES (CONSEQUENTIAL PROVISIONS) BILL

MARITIME FEES AND CHARGES (TAXING) BILL

Cognate Debate

On motion by Hon Murray Criddle (Minister for Transport), resolved -

That leave be granted for the Bills to be discussed concurrently at the second reading stage.

Second Reading

Resumed from 27 October 1998.

HON KIM CHANCE (Agricultural) [12.48 pm]: I have been given charge of the carriage of Order of the Day No 5, the Port Authorities Bill, and by implication Orders of the Day Nos 6 and 7. At this stage I can feel confident only when speaking to Order of the Day No 5. I am assured by the Leader of the Opposition who normally carries Transport matters for the Australian Labor Party that as well as my express support for Order of the Day No 5, the ALP will be supporting the Port Authorities (Consequential Provisions) Bill, which is Order of the Day No 6, and the Maritime Fees and Charges (Taxing) Bill, which is Order of the Day No 7.

We will not be opposing the Port Authorities Bill, which is the only legislation on which I propose to speak at this juncture. I have some doubts in a purely mechanical sense that we will be able today to proceed so far, if at all, into the committee stage. At 1.00 pm today I have a briefing which I hope will culminate in the final version of three amendments that will be submitted by the ALP. I know that the minister is aware of the process that we are going through. It would seem that to proceed to the committee stage before Tuesday of next week would create difficulties for us. As I say, my instructions are not to oppose the Bill. Being the disciplined member that I am, I will not oppose the Bill.

However, I express some reluctance about the position we have adopted. To some extent the cause of that reluctance is expressed in the three amendments which I expect we will move to this Bill and which have already been discussed with the minister. My reluctance arises in part from my own first-hand observation about the intent of the Bill. The only reason that

I am prepared to support the Bill going on to the committee stage is that it will provide the opportunity for the amendments by the Opposition to be discussed. The observations I have referred to come from a close personal interest I have taken in the absurd process that has taken place at the port of Geraldton, and I will go into detail at length later.

The Opposition supports the process involved in this Bill insofar as it is a proposal to commercialise rather than corporatise the port authority structure. The Opposition's preference for the Government's choice to commercialise lies in the fact that commercialisation retains the minister's power to play an important role in the direction that the port authorities will take. Having acknowledged and endorsed to some extent the direction to commercialise rather than corporatise, we need to understand that the commercialisation of a former public authority and one which, in spite of its commercialisation, retains an ongoing publicly accountable function, creates a host of difficulties. We have seen this happen before in other service providers, and it comes into sharp relief in respect of the port authorities. Those matters form the core of my concerns.

The Opposition is concerned that the Bill has the effect of removing the port authorities from any real parliamentary scrutiny. The Opposition will propose amendments in respect of commercial confidentiality in an effort to address that aspect. However, the issue of the Parliament's capacity to oversee the financial functioning of the port authorities and the diminution of the Parliament's capacity is a matter of concern to the Labor Party and, I hope, is be a concern to every member in this place. Westrail is an illustration of that. Even though Westrail is the recipient of a substantial amount of government funding, the way in which its accounts are kept and the manner in which the Parliament has the opportunity to scrutinise its financial functions as it now stands - I am not talking about future plans - is pale by comparison with our capacity to oversee the financial functions of other agencies which receive public money. Westrail is a commercial agency and there are reasons it is more difficult to look into its accounts than it is those of, say, the Education Department or the Health Department. However, it bothers me that we will not be able to view the financial accountability of the port authorities in the detail that we do now. The financial transparency of port authorities will be more akin to that of Westrail than to the current structure.

We have less opportunity to look at the commercial functioning of the port authorities under the proposed regime. This is an arguable point, but the State still seems to have a contingent liability in the event of litigation against a port authority. I am relying to some extent on debate in the other place and on briefings which have been given to us. However, that proposition has been challenged by the Government, and in the context of this debate I will ask the minister to clarify that issue. The Bill also has far-reaching industrial relations consequences, and this is an issue in which the Labor Party will propose some amendments.

I will expand on the accountability of port authorities under the proposed legislation. One of the key accountability measures in the proposal revolves around the requirement for boards to publish statements of corporate intent against which their performance can be measured. Advice which has been provided by the member for Cockburn indicates that in the four years that Western Power and AlintaGas have had a requirement to present their statements of corporate intent to Parliament, on every occasion they have failed to meet their statutory obligations.

Hon M.J. Criddle: You are talking about corporatised bodies.

Hon KIM CHANCE: I am talking about the statutory obligation that those two authorities have to present a statement of corporate intent. On every occasion in the four years that the two authorities have had a requirement to provide Parliament with a statement of corporate intent they have both consistently failed to report to the Parliament.

Hon M.J. Criddle: Clauses 23 and 24 would deal with that.

Hon KIM CHANCE: I note the minister's interjection, and that matter is addressed. If my recollection of debate in the other place is correct, an opposition amendment which was later changed by agreement with the Government has seen that matter improved somewhat. That will strengthen the obligation to make the statement of corporate intent. I make the point for one reason: The assurances about the capacity of a statement of corporate intent to act as an instrument of accountability were given in this place at the time of the corporatisation of Western Power and AlintaGas. History reveals that those corporations were not able to honour that statutory obligation. We are now considering the issue of statements of corporate intent with the benefit of that hindsight. The Opposition is asking the Government not to make the same mistake again, and if it intends to rely on those instruments as measures of accountability, let us ensure that our legislative provisions are correct, so that we can compel those instruments to be tabled in the Parliament.

Sitting suspended from 1.00 to 2.00 pm

Hon KIM CHANCE: Prior to the lunch break I referred to the apparent failure of Western Power and AlintaGas to meet their statutory obligations in respect of reporting to the Parliament on their statement of corporate intent. What comfort does that give us that the port authorities will be any better performers in that regard? I acknowledge the minister's earlier interjection that the Bill contains provisions that address that point, and properly we will come to that in the committee stage.

Commercialisation of an authority of this nature brings with it a number of challenges when it is applied as a concept to a service for which government has an ultimate and ongoing responsibility. An example of that occurs early in this Bill. An outcome of the Bill is that port authorities will no longer be agents of the Crown. That would seem to be a natural enough

consequence of commercialisation. However, the question arises in my mind: If the public still owns the assets of the port and if the ultimate decision-making power still rests with the minister through his power to direct the board, how could we possibly expect that a litigator, having exhausted the assets of a bankrupt board, will not then pursue the public via the minister in order to satisfy the balance of a claim? If it is the case that the State can be pursued as the owner of the asset, and arguably the ultimate decision maker in the functions of the port, what purpose is served by legislating to remove the agency of the Crown from the board's status in the first place, whether or not we make the decision to commercialise the functions of the port?

The degree of ministerial control of the board's policy as empowered by this Bill must not be misunderstood. We have been told on a number of occasions, and at a local level it has arisen as a major issue in Geraldton, that the port authority board acts independently. Members should make no mistake about it: The power of the board to act independently under the terms of this Bill is very clearly limited in a number of ways.

Hon Derrick Tomlinson: Please explain "independently" to me. I thought I heard you say that they are functionally autonomous and not answerable to anyone.

Hon KIM CHANCE: If I said that, I said it in a particular context. At this stage I am talking about policy-making decisions and the manner in which the board carries on its day-to-day business. I will illustrate that.

Hon M.J. Criddle: They put out a statement of corporate intent.

Hon KIM CHANCE: I will get to that. One part of the Bill - it is probably not appropriate for me to refer to it now, but it is at about clause 62 - is divided into two subclauses. The first subclause deals with the requirement of the board to act in accordance with its statement of corporate intent. One can then weigh that requirement against the board's other requirement to act in a commercial manner. Which supersedes which if those two fundamental issues clash? If the board is required to make a decision whether to adopt course of action A, which is in accordance with the statement of corporate intent, or course of action B, which is what all the financial advice is telling it is the best and most appropriate way to maximise profits, it is bound by this Bill to take course of action A. It must ignore what most company directors are bound do to; that is, to follow the course of achieving maximum profit for the benefit of the shareholders as stated in the Corporations Code. It must ignore that requirement because its prime requirement is to follow the direction set by the statement of corporate intent.

That statement of corporate intent is not created by the board itself. The board can recommend the general layout and the fine detail of the statement to the minister. However, the minister might disagree and ultimately he or she can direct the board if it comes to a matter of conflict on what will be in that statement. The power of the minister and his or her capacity to direct the current and future financial direction of the port authority must not be underestimated. I am not saying for one moment that that is a bad thing; I support that.

Hon M.J. Criddle: That lines up with what you were saying previously.

Hon KIM CHANCE: Yes, I support that. However, when one stands in the place of a litigator who is making a claim in a court of law against a possibly bankrupt board in charge of a port authority, and the litigator is greeted with the argument from the State in defence that the board is not an agent of the Crown therefore litigation cannot be pursued against it, the litigator would be bound to say that the board was carrying out the stated direction of the minister.

Therefore, it would hold the minister liable. Perhaps I should not argue points of law, but these questions should be answered. I said earlier that I am advised that the Government's advice is that the State cannot be liable in those circumstances. We should be shown in clearer terms why that should be the case. I find the litigator's case to be easier to argue than that of the State, and that has nothing to do with the side of the House on which I sit - I am simply concerned that the State may in future find itself liable for the actions of port authority boards.

As I said earlier, I have concerns about the general trend of the Bill and what it will facilitate. It could be argued that the Bill does little more than facilitate, and in some respects validate, what was attempted in Geraldton - namely, an absurd process. It is also an unfair and short-sighted process in some respects. We will deal with this aspect in the amendments. The process causes me to wonder why the interests of serving a dogmatic belief - that is, deunionising the WA waterfront - have been put ahead of a proven system which has demonstrated it can achieve, and could continue to achieve, higher productivity.

The Bill sets out to provide port authorities with the capacity to make a number of fundamental commercial decisions either on their own initiative or, in some cases where it might draw it into conflict with a statement of corporate intent, with the consent of the minister; in some cases, in large commercial transactions, this will be a decision after consultation with the Treasurer. I will address that aspect later because it is a separate facet of the Bill from that which governs the functions of the authority. However, it raises a number of issues relating to the future transparency, accountability and clarity of decisions made in the management of what, after all, is a public facility and has influence on the State's exporters.

The Bill provides port management with a range of choices, which I condense to three points: First, to continue to provide

all services itself; second, to contract out some of the services; or third, to fully contract out all services. I hope the minister will address in his response the first question which arises; namely, why is this aspect of the Bill required at all? All three options I have listed are available within the current Acts; that is, the Ports (Functions) Act and the individual port enabling Acts. Strangely, we are overhauling the principal legislation only six years after the passage of the Ports (Functions) Act.

Although in theory nothing in this part of the Bill prevents any port from initiating the operation of an integrated port labour force - it could be a decision under the first-mentioned option - I am concerned about our experience with port authority boards in exercising the present range of choices. Nothing I have seen indicates that port authorities have any other interest than to exercise their option to act as an instrument of government policy and deunionise ports for what amounts to purely political purposes. That experience leads me to be wary of the real purpose of the Bill. I could be wrong in this, and I sincerely hope I am. Given what I saw happen in Geraldton, and given its timing, why would anyone introduce such a change in the system if the only purpose was to make the ports more efficient? The only conclusion I could draw was that the only purpose of the change was in the first instance to deunionise the port of Geraldton, and later all other WA ports.

Hon M.J. Criddle: Each port is different, is it not? One charges one way, and another charges another.

Hon KIM CHANCE: Absolutely. I became acutely concerned about this aspect when the person driving the new process in the port of Geraldton, the general manager, Mr John Duran, said on radio that these proposed changes had nothing to do with productivity: It was not reported to me as I heard him say that. If it has nothing to do with productivity, what is it all about? The only conclusion I could draw was that the purpose of this exercise was to attack the Maritime Union of Australia.

The attempted action of the Geraldton Port Authority was, in theory if not in practice, something for which the members of the authority board should take full responsibility. To their credit, they claim full responsibility. I believe that the board was driven by something more than a nod and a wink from the previous Minister for Transport, who was at the very least actively encouraging the board in its efforts to deunionise the port of Geraldton, and later the port of Bunbury. My belief that the Government has been specifically involved in the decisions regional port authorities have made in this regard arises from reported statements from regional port authorities' board members, and at least one documented source; that is, the draft of the port of Geraldton strategic development plan.

Point of Order

Hon M.J. CRIDDLE: A court case relates to the operation of the port of Geraldton. Both the former minister and I are involved. I would not like to think that we would draw some conclusions on that matter from the remarks made.

The PRESIDENT: I thank the Minister for Transport for raising that matter and drawing it to the attention of the House. The question of the sub judice rule has been raised before. I am confident in my mind that Hon Kim Chance is aware of the limits that it imposes on the House. The bottom line is that I must decide whether what is said would substantially prejudice a case before the courts. To date, having listened closely to Hon Kim Chance's comments, I do not think it has occurred. However, Hon Kim Chance has also heard what the Minister for Transport has said. I will leave it to Hon Kim Chance to confine his remarks within the sub judice rule.

Debate Resumed

Hon KIM CHANCE: I thank you, Mr President, and the Minister for Transport for raising the point. It is not in my interest or that of the Opposition to in any way prejudice a matter before the courts. After the Minister for Transport raised this issue late last year, I was sufficiently concerned to write to the President. I carefully considered his response. In the main I have constructed this speech following his advice. That is not to say that I have understood or applied it completely. I hope I have. The references that I have made to either the current minister or the former Minister for Transport are probably the only references in the speech.

Hon M.J. Criddle: It is just a caution.

Hon KIM CHANCE: I understand that and I am grateful for the minister's advice. The documented source which I referred to is a draft of the Geraldton Port Authority strategic development plan. Under the heading of port services, it states clearly that with regard to the work practice review, the Government has specified certain actions and desired outcomes. That suggests to me that something more than a simple decision is being made by the Geraldton Port Authority. However, in the light of the President's advice, perhaps there is no need for me to take it any further.

I turn now to a document which again I do not have with me because this debate was called on rather earlier than I thought it would be. It is dated 6 July 1998 and I think it is headed "Information Memorandum for Applicants for Licences to Supply Stevedoring Services at the Port of Geraldton". The authors were Freehill Hollingdale and Page. That document sets out for prospective tenderers to supply stevedoring services at Geraldton the evaluation criteria that need to be met for potential applicants to be deemed to be conforming tenderers and possibly the recipient of a licence to provide the service. From memory, page 3 of that document makes it crystal clear that the prime function of the tendering process is to bring about

a change from the present Maritime Union of Australia work force under the integrated port labour force arrangement to that of a contracted work force working outside the award and under workplace agreements.

Hon Derrick Tomlinson: Is that not to be desired?

Hon KIM CHANCE: I do not believe so. However, I can understand that some people may think that it is a desirable outcome. I have no argument with them on that matter. I discussed this matter with the minister's officers at lunchtime today and, oddly, we may be able to reach agreement on it. However, my difficulty is that a number of legal employment arrangements could be conducted under the terms of the stevedoring arrangement: The enterprise bargaining agreement process, the award, state workplace agreements, Australian workplace agreements and a contracting-type facility. I am happy for those arrangements to be treated on their merits. They are all legal arrangements, and it is not for me to say that one legal arrangement should be excluded. However, that is my problem, because this document excluded legal arrangements. It said clearly to intending tenderers to provide stevedoring services that if they came along with evidence of an employment arrangement with their employees based on the enterprise bargaining arrangement, they could forget about being conforming tenderers. The only way that they would be treated as conforming tenderers was if they could prove that they had one-to-one employment arrangements. That is achievable by only three mechanisms: Western Australian workplace agreements, Australian workplace agreements or a direct subcontracting arrangement. It cannot be done any other way. It specifically excludes the other two legal forms of employment contract - the award and the EBA.

What we have put to the minister's people today - I hope the minister will consider it when eventually we come back to the House with an amendment - is that there should be a requirement in such documents that the forms of employment of tenderers be non-exclusive and non-pejorative; that is all. We are not saying that they have to be MUA members; we are saying that they can come along with any form of employment, as long as they can prove that they have an effective means of communicating with their employees.

Hon M.J. Criddle: That happens in some ports now.

Hon KIM CHANCE: Yes. That is all we are seeking. In the absence of any evidence of inefficiencies in the port of Geraldton, I was disturbed when I read that provision because there has been no argument that this would make Geraldton a more efficient port. In fact, evidence to the contrary indicated that the integrated port labour force arrangement which operates in the port of Geraldton was highly efficient and productive; yet it was that very arrangement which I think exists at four or five other ports on the Australian coast which was to be the victim of this proposed legislation. They were going to break down the IPLF, which provides that, the chief executive officer aside, every employee of the port of Geraldton is a member of the MUA, works under the same industrial conditions and can do everyone else's job, so that the receptionist who might answer the telephone in the morning can be down in the hold of a ship operating a bobcat in the afternoon and vice versa. That was the arrangement that was in place. It minimised the number of casuals who were employed, which maximised the amount of productive work which could be done by the waterfront work force and minimised the wasteful down time and demarcation disputes which occurred when there was not one union, but three unions operating in the port of Geraldton. It eliminated that. That arrangement was to be set aside on the basis that the people who employed waterfront labour at the port of Geraldton would need to bring in their own work forces.

I spoke at great length to one waterfront employer. At times he will need perhaps 20 workers on Tuesday, none on Wednesday, Thursday and Friday, four on Saturday, none on Sunday and 10 on Monday. How will he employ a work force under those conditions? Under the IPLF, he was able to structure that into the standing labour component at the port of Geraldton and work effectively. He has serious doubts that he will be able to provide the services that he is currently providing. On that basis, I argue that the changes will probably be less productive than more productive.

I found the Geraldton Port Authority's position on that remarkable given its long experience with the Maritime Union of Australia and its knowledge of the MUA work force in Geraldton having already delivered on its agreement for productivity and continuity of service. Looking at the port of Geraldton's record, it is evident that there was not and never had been a problem with stoppages. There was certainly no problem with increased productivity and if there were no problems, as was acknowledged by the chief executive officer of the authority, one wonders why the authority embarked on such a radical course. Its actions become even more obscure when we consider that just three and a half months before the publication date of the document I referred to, on 18 March 1998, Co-operative Bulk Handling and the Maritime Union of Australia signed off on the Kwinana agreement, which provides for guarantees of continuous service 24 hours a day, 365 days a year, stoppage free with no penalty rates and no loading. That agreement led Co-operative Bulk Handling and the MUA to release a joint media statement which noted the value of collective bargaining to all parties to the agreement. Three and a half months later, the Geraldton Port Authority reinvented the wheel. All of the factors in the Kwinana agreement were on the table for the enterprise bargaining arrangement being negotiated between the port authority and the MUA at the precise time the port authority was planning with Freehill Hollingdale and Page to stab its employees in the back. For the Geraldton Port Authority to now insist that applicants for licences be able to demonstrate their having workplace agreements in place because that is the only way their objectives can be met is beyond belief to me. It is history now that the Geraldton Port Authority has substantially backed away from that position, at least for the time being. I do not know whether it did so

because it realised that what it was trying to do was unsustainable and counterproductive; I would like to think so. When we look at the culture of the Bill and the language it uses in an attempt to make it acceptable, the similarities between it and the Geraldton scenario are too great to ignore.

Even before the Geraldton Port Authority set out to destroy MUA representation in Geraldton, the former minister had begun the process of structuring boards in a more coalition-friendly form under the guise of providing a more commercial focus, which is precisely what the second reading speech describes as the Bill's objective. At the time, the former minister said that while employees and port users would continue to provide important advice to the boards through other mechanisms, the boards themselves would be structured from people with a commercial background. That sounded fair enough to me. In principle there is nothing wrong with it, but in practice the MUA representatives, farmers and other port users who were removed from the boards were replaced by people like Mr Russell Allen, now on the Fremantle Port Authority. He is a right-wing industrial relations law specialist whose commercial shipping experience is probably not all that extensive. Notwithstanding Mr Allen's apparent inexperience in commercial shipping, his field of particular exercise concerns me. What message was the former minister sending to the people of Western Australia when he replaced an experienced shipping person with a man who espouses a particular brand of labour market reform? Each of us may form a different view of that action but it is apparent to me that Mr Allen's appointment is more aligned towards implementing the coalition's anti-union position than it is towards improving productivity on the waterfront. Even though the maritime representatives were removed, the former minister did not maintain his commitment to replace farmer members with persons with commercial credentials; he appointed farmers to boards. They were farmers with undoubted integrity and ability but also farmers with long and substantial links to the National Party. The former minister's intentions were quite clear - to create port authority boards which would be politically compliant and prepared to implement the minister's agenda without question and without the messy requirement for formal direction, which must be noted in the authority's annual report.

Unfortunately, I believe this legislation serves little real purpose other than to facilitate and validate the coalition's grand plan to break down and debilitate workers' right to bargain collectively. The difference between this legislation, this Government's brutal industrial laws and the stupidity of Peter Reith's recent mad fantasy is only a matter of degree. In the end they all serve the same purpose. The Bill is presented as enabling the authorities to operate with greater commercial freedom and that might be so. However, notwithstanding the continued oversight by the Auditor General, it also separates the operation of our ports from the transparency guarantees which presently exist through the parliamentary processes and the accountability provisions provided by legislation, particularly the Public Sector Management Act and the Financial Administration and Audit Act. In short, the operation of our ports will be less visible and less accountable to the owners of the port - the Western Australian public - under this legislation than at present. That is acknowledged on page 4 of the second reading speech, and not only will private service providers operating under the effects of this Bill not be subject to the accountability provisions in the aforementioned Acts, but the port authorities themselves will be largely exempt. That would have too many consequences in practice for me to even begin to mention even if I knew them all. I will give the House one example.

Section 58C of the Financial Audit and Administration Act makes it an offence for a minister or an accountable officer to enter into an agreement or contract which could prevent or inhibit the minister from providing any relevant information to the Parliament. Section 58C is one of the many very good provisions which arose from the recommendations of the Burt Commission on Accountability. It means that when, for example, a port authority contracts for the provision of a service under the current Act, that contract cannot include a confidentiality clause which could prevent the Parliament or an officer of the Parliament, such as the Auditor General or a parliamentary committee, from requiring details relating to the contract because the contracting authority - the individual port authority board - is presently bound by all the requirements of the Financial Administration and Audit Act, including section 58C. Once this Bill becomes law, nothing could prevent a port authority from entering into such confidentiality agreements thus evading the present accountability requirement. The boards will be freed from the proper accountability requirements under the Financial Administration and Audit Act except those pertaining to access by the Auditor General. The boards will be bound instead by the provisions of Corporations Law which relate to accounting standards. However, the board would be maintaining a public and not a private entity. That is when we begin to face some of the specific areas of difficulty I referred to earlier because at that point the process starts to go haywire.

Accountability and accounting standards for both public and private enterprises are living things; they are constantly evolving to meet the changing environment in which the two systems exist. Because of their fundamentally different roles, the standards that prevail in the two systems have evolved quite differently. Both have standards which work well enough and are constantly adapted to evolve and improve them. Section 58C of the Financial Administration and Audit Act is one example of that adaptation. However, when we attempt to alter the nature of an agency, for example by commercialising a public sector operation, the public sector standards designed for the agency's operation actually become a hindrance or less relevant than they could be to its new, largely private sector, role. It is a temptation in such circumstances to revert in whole or part to the standards designed for the private sector. That seems to be the intelligent way to go, and it has been attempted in this Bill by dumping the provisions of the Financial Administration and Audit Act and the Public Sector Management Act in relation to the operation of the authority, in favour of the Corporations Law. That over-simplistic answer

comes unstuck in the fundamental truth that, while the nature of the operation may change as a result of commercialisation, its ownership remains public and not private, and all kinds of contradictions occur.

The standards designed for private enterprise do not work if the enterprise remains in the public's hands. It is not possible to transplant an agency from one system to another without developing an entirely new and applicable set of standards for an enterprise of that nature. All of the reasons that exist for the development of specific standards for the operation of a public sector agency remain in place, regardless of the operational style adopted by the agency. The public's demands, and what they quite properly expect from a public agency, cannot be met by the standards designed for the private sector. The exclusion of port authorities from the requirements of section 58C of the Financial Administration and Audit Act is one example of what can go wrong if an attempt is made to do this. The Government is trying to transplant an agency from one set of rules to another.

Earlier I said that the Opposition is happier that the Government has proposed commercialisation rather than corporatisation, and that remains true notwithstanding what I have said. However, when I said that, I said also that, unfortunately, commercialising a public sector agency involves a whole range of challenges and the bulk of those challenges lie in this area. It is rather like trying to keep a sheep in a pen designed for a horse, or a horse in a pen designed for a sheep. They work perfectly well for the purposes for which they were designed, but a sheep can walk straight underneath the rails of a horse pen, and a horse can step over the fence of a pen designed for sheep.

Hon M.J. Criddle: You do not need much business acumen to know that.

Hon KIM CHANCE: Every member should feel uncomfortable with legislation that sets out to nobble the accountability mechanisms that the public have so strongly indicated they want in place. The public, through the Parliament, will have a vastly reduced oversight of the ports' operation and finances if this Bill becomes law. I find it difficult to believe that defenders of the accountability processes, that extended from the Burt commission's report, including people of the stature of the Attorney General, have even allowed this to go through Cabinet.

Hon M.J. Criddle: There is the statement of intent and the annual report will come to both the minister and the Treasury.

Hon KIM CHANCE: I have dealt with that, and I will leave questions on the statement of intent until the committee stage. Fundamental to the Opposition's reservations about this Bill are the sweeping powers granted to the port authorities and the dispensing with public accountability requirements in relation to the exercise of those powers. Port authorities will have the power to contract, on either an exclusive or a competitive basis, all port services, including stevedoring. They will have the power to enter into joint venture and subsidiary company arrangements, and to enter into futures and hedging arrangements. In each function the authority will be free from the requirements of section 58C of the Financial Administration and Audit Act and most other provisions of that Act.

Hon M.J. Criddle: They will be audited by the Auditor General and the annual reports will come to the Parliament.

Hon KIM CHANCE: I acknowledge that they are still answerable to the Auditor General.

Hon M.J. Criddle: And to the Parliament.

Hon KIM CHANCE: To the extent that the Parliament gets to see what they are doing.

Hon M.J. Criddle: There will be an annual report.

Hon KIM CHANCE: We have all seen those! I would have more faith in the port authorities responsibly and effectively carrying out these duties if their past performance, particularly in recent times, had not been so obviously politically driven. The Geraldton Port Authority introduced changes that sought to sweep away the integrated port labour force which had delivered significant productivity increases. The port authority failed to consult adequately with its work force and that failure to consult extended beyond the work force to the users themselves, some of whom expressed extreme dissatisfaction, even outrage, about the new arrangement. In one fell swoop the Geraldton Port Authority managed to destroy all the goodwill it had built up between the board, the management, port users and employees for a purpose which was undefined, other than that it had nothing to do with productivity. Within days of making the announcement that it would scrap the integrated port labour force arrangements, it was reported in *The Australian Financial Review* of July 18-19 that the board of the Geraldton Port Authority had notified the union busting stevedoring company, CDF Australia, that it could attend discussions relating to the new arrangements within 10 days. CDF comprises the core work force of the failed PMC Stevedores, and contains the former military personnel who trained in Dubai last year. It was the most inflammatory thing the Geraldton Port Authority could have done. It deceived its employees, failed to ask its customers if the new arrangement suited them, and then called in the union busters. It then expected to be believed when it said it was not political and that it was interested only in a more commercial operation. I do not believe any of that and I wonder why I should have any confidence in that port at all.

Another aspect of this Bill worries me; that is, the extent to which actions may be taken by the Government, or even the port

authorities themselves, to lock the State into contractual agreements which would be legally binding on the next and future Governments. I have raised this matter before in different contexts, but it is no less relevant in the question of the management of our ports. There is no apparent limit on the number of years which could be written into the terms of a contract entered into under the provisions of part 4 of the Bill, and particularly under clause 35(2)(f), which can include a contract for the provision of any authority function, including stevedoring. It would be possible therefore for a port authority, with or without the consent of the minister, to enter into a disadvantageous contract for stevedoring or tug services, for example, on conditions that might be completely unsatisfactory to a future Government, for a period of time which includes all of the next Government's term. As I have said, I have raised this matter before in other circumstances. The issue of the term of contract is very much a matter between the minister, the Government and the Opposition, but it is an issue in which we will find, particularly from now on when we are less than two years away from an election, that we will be looking closely at any contracts for longer than two years.

Hon M.J. Criddle: The minister has the final say.

Hon KIM CHANCE: That is as it should be. The minister is there to answer our concerns if he starts entering into seven-year contracts, which would go through the entire term of the next Government.

Hon M.J. Criddle: A lot of contracts do that. An example is the bus contract.

Hon KIM CHANCE: Yes, I have mentioned it before in a number of other contexts. I do not want to see it happening without that warning being flagged. If a completely unsatisfactory contract had been entered into, the only option open to a new Government, apart from sacking the board for its incompetence, would be to cancel the contract, which might result in litigation by the contractor against the State. A Government has the right to govern and to do all of those things during its term of government that it sees to be within its mandate. However, I have a real question about whether a Government has the right to impose its will on a future Government or to deny a future Government its right to exercise its mandate. It is fair to say that all Governments in Australia are moving in a more corporate direction, although I hope they will not go too much further with it. It is virtually a global concern that the ability of a Government to exercise its mandate is being rapidly eroded by the extent of corporatisation and the extension of contracts for the supply of services. Increasingly the democratically elected Parliament is unable to exert its will because its will is confounded by decisions made maybe years before in respect of service contracts. Perhaps the matter of the possible privatisation of Westrail is a case in point.

Although there appears to be no limit to the tenure of an agreement struck under the provisions of part 4 of the Bill, there is some statutory limitation in clause 28, which is concerned with creating and dealing with interests in vested land. Under that clause a port authority may grant a lease or licence, possibly on exclusive terms, over vested lands, but only for periods up to 50 years. That effectively means that a port authority could enter into a contract to lease the port's land to an individual operator, which could have the effect of granting that operator the exclusive use of the port for the next 50 years. I do not know if that was the Government's intention but certainly it seems to be one possible outcome of the Bill. I will be grateful if the minister might address that, either in his response or at the committee stage, if that is more appropriate.

The more I read the Bill the more uncomfortable I became. There is good cause for members to be more conservative than usual when we deal with issues which relate to the way in which our ports are managed. During the past months we have learnt at huge cost the folly of adopting radical or macho, snake-oil solutions to the problems on the waterfront. The Bill did nothing to convince me that Governments have learnt a great deal from the bitter experience that we had last year.

Hon M.J. Criddle: Did all that happen under the present labour Acts?

Hon KIM CHANCE: Yes indeed.

Hon M.J. Criddle: Why do you relate that to this Bill?

Hon KIM CHANCE: I think I said earlier that I see this Bill as a means of facilitating and in some respects validating what was attempted to be done under the current waterfront law; in other words, the Government failed to do what it wanted to do under the current legislation so it will shift the ground, move the goalposts and have another go.

Hon M.J. Criddle: In reality, to some extent that change has happened and continues to happen.

Hon KIM CHANCE: The minister says "that change". I do not see that change happening.

Hon M.J. Criddle: It is happening.

Hon KIM CHANCE: When we say "that" we might be talking about different things. If the minister is talking about more productive ports, we have seen the movement to much more productive ports over the past 15 years.

Hon M.J. Criddle: That is my point.

Hon KIM CHANCE: That is happening. Why does the minister want us to go over to this other dimension of the way in which ports will be managed, particularly when one port authority chief executive officer, John Durant, said that it had

nothing to do with productivity? Forgive me for being suspicious, but if it has nothing to do with productivity, what the hell has it to do with other than getting rid of the Maritime Union of Australia?

Hon M.J. Criddle: It might be to do with coming into the real commercial world.

Hon KIM CHANCE: Is that not an outcome of productivity? Does not commercial reality and productivity translate to the same bag of beans? I was confused. I am not making the minister responsible for what the CEO of the Geraldton Port Authority said, but it really confused me. John Durant and the Geraldton Port Authority had said that they had done well, and they had - I would never question the quality of Geraldton Port Authority's management because it has done a great job. I am not entirely negative about what it has done.

Hon M.J. Criddle: I do not think that for one moment.

Hon KIM CHANCE: I say that for the record. I have been a great supporter of the port authorities. We have a philosophical difference, that is all. However, I would have been much happier if the Geraldton Port Authority had said, "Yes, we have done okay but we can do better."

Hon M.J. Criddle: I think it can.

Hon KIM CHANCE: That is not what it said. If it had said, "We want to be able to deliver better services to our customers", that would be another matter, but it has never said which customers are unhappy; on the contrary, it has been telling its work force how happy its customers are. It then stabbed its work force in the back. None of that gives me confidence. If the minister wants any single reason for my having a lack of faith in what we have before us, it lies in that request-for-tender document in which it was very clear that it would not take on any more employees unless they had workplace agreements. It is one thing for the Government to be bullying the work force, but when it starts bullying the employers about the kind of work force they will have, it has stepped from an acceptable point for us to have a Bill about to the unacceptable, because the Government is not allowed to bully both sides; it is not part of the rules.

If we have not learnt that the management of ports and of industrial relations in those ports is no place for amateurs who are trying to make a name for themselves, I fear we will be condemned to repeat our mistakes; and mistakes have certainly been made over the past 12 months or so. The issue of industrial relations, particularly on the waterfront, may be seductive for conservative members of Parliament, particularly ambitious ones like Minister Reith. In a sense it is the industrial holy grail and it would be a major coup for a conservative member of Parliament to hang on his belt the scalp of the Maritime Union at Webb dock, Port Botany, Fremantle or Geraldton. That is the seduction and what makes it a kind of industrial holy grail. Minister Reith wants to be the man who took a chunk out of the MUA's armour. The MUA might deserve to be held up as knights in shining armour, and in many respects I see them in that way. However, I see them as knights in shining armour as they have promoted and supported productivity on the Australian waterfront. They might have started from a low productivity base - I will not argue about that. However, by any objective standard, the MUA has delivered world best practice. We operate at world best practice in the area that Australia relies most on as an exporter; that is, the bulk freight export of our minerals and grain. That is a huge chunk of Australia's exports. The mighty ports of Amsterdam, Singapore and San Francisco cannot compete with Australian bulk loading rates and costs. The biggest ports in the world cannot touch us. In ports of comparative size our performance in that much maligned area of container rates per hour is close to or at world best practice. We will never be as good as Amsterdam or Singapore, the two biggest ports in the world, simply because we do not have the equipment or handle the same volume of containers. However, when we are compared with ports of similar yearly outputs, Australia has similar or better rates

Hon Bob Thomas: The industry knows it.

Hon KIM CHANCE: Yes, but importantly the Maritime Union of Australia says it can do better; it can always do better. While anybody is saying that, we should support them not condemn them. Certainly we should not be causing the concern among their ranks that legislation of this kind can cause. I guess conservative ministers will always be conservative ministers. If we have learnt anything from the past 12 months on the Australian waterfront and the Government's ham-fisted attempts to apply what it likes to call waterfront reform, we must have learnt at least that it is no place for an amateur industrial relations practitioner. The fools who were making the decisions which drove the Patrick dispute are now exposed for the amateurs they are. If they want to do that again, they should try to do it professionally next time, because the forces of conservatism were made to look ridiculous.

The Bill permits and, I am afraid, even encourages a continuation of a series of uncoordinated attempts by possibly well-meaning port authority board members to restructure the nature of employment on the Western Australian waterfront. It is hard for me to imagine a more volatile situation, particularly if the board members are not experienced in managing industrial relations and/or believe they are carrying out a stated or implied ministerial purpose. There is room for productivity improvement on the waterfront and there is a real will by all parties - political and industrial - to achieve that improvement. However, we will never get where we all want to be, unless goodwill and mutual trust are restored. Under the previous management, as was typified at the Geraldton port, we went a long way towards reaching that common

objective. The present management has gone a long way towards destroying everything those people worked for so many years to achieve.

The Bill contains a number of pitfalls for both the short and long term operation of our ports and some, but not all, of those pitfalls have been illustrated by the mistakes which have already been made in Geraldton and may well be repeated throughout regional WA and in Fremantle. I hope I am wrong. I acknowledge that if I feel so badly about the Bill, I should vote against it and I should say this is the Government's Bill and the Government has a right to govern. To that extent I will be doing as I am told and will not oppose the Bill. I was encouraged by the current minister's attitude to the Bill in my conversations with him and with his officers. It encourages me even more that it might be possible to reach an accommodation on the industrial relations matter that I mentioned. Perhaps the Government is genuine about wanting to make a more commercially responsive climate for the port authorities to operate in. I sincerely hope so.

HON NORM KELLY (East Metropolitan) [3.07 pm]: The Australian Democrats will support these Bills. We agree with the intent of what the Government is trying to achieve, although we do have a few concerns. I will go into the detail during the committee stage, and I will briefly touch upon them in my speech. Unfortunately, because of other business I was not able to listen to all of the speech made by Hon Kim Chance. However, as we will not go into committee until next week I look forward to reading his speech prior to the committee stage.

I understand his concerns about workplace relations, and I realise that work is being done on amendments which could resolve some of those issues. No doubt we will meet on those matters between now and Tuesday. The Bills aim to make Western Australia's ports more efficient and effective. They will give port authorities far greater commercial freedom to bring that about. We must be careful in examining the shifts that are occurring in the Statutes. Control of the work of the port authorities will move away from the Public Sector Management Act and the Financial Administration and Audit Act and be more in line with Corporations Law. The freedom that the ports will gain still need to be subject to parliamentary scrutiny given that the Government will be ultimately responsible for the actions of the port authorities.

If a port incurs losses, the Government will have to make good those losses and bail out a port suffering in that way. Although the Bills are intended to increase competition in the ports, most of the work that goes through Western Australia's regional ports is basically in the form of a monopoly supplier. There is a natural port for most of Western Australia's exports.

Hon M.J. Criddle: That may change in the future when the rail goes north and the roads go east west from Geraldton. Therefore, there could be some competition.

Hon NORM KELLY: That is right. It is important that when that competition increases an efficient transport network structure across the various modes of transport is in place. I would not like to see the situation where one port, through various ways, may be able to attract contracts to export material which would necessitate increased road transport to service that port.

Hon M.J. Criddle: If you let Westrail build there, you won't have to worry.

Hon NORM KELLY: Maybe we can do Westrail and ports in one hit and have really good fun!

It is important to have the most efficient method of transporting goods across all modes of transport. It is necessary, especially when we consider the possibility, but hopefully not the eventuality, of exporting iron ore through Kwinana port that there is sufficient government control to ensure that efficient modes of transport are implemented. Although the minister is not involved in the day-to-day operations of the various ports, he is able to exert control over the port authorities by making directions. It is through these directions that once again the Government is liable for the actions of the ports.

A couple of the concerns held by the Australian Democrats, other than those concerning workplace relations, relate to the way in which the port authority boards will be structured and the manner in which members will be appointed. Clause 7 of the Port Authorities Bill specifies the appointment of a board of directors. Subclause (1) states -

> A port authority is to have a board of directors comprising 5 persons appointed in writing by the Minister.

That is the only criteria for appointment to the board. There are two exceptions at Port Hedland and Dampier. Because of the resources going through those ports, naturally the private sector has representation on the boards. The Australian Democrats do not agree that that is a sufficient safeguard to ensure proper appointments to boards. That was highlighted by the Western Australian Auditor General in his report last November. He stated there was a need for more transparency in board appointments. That need does not necessarily eliminate members of political parties from being eligible for such appointments, but we should ensure that the process of appointment is transparent, accountable and fair so that when members of political parties are appointed they are the most suitable and qualified people for those appointments; and sufficient advertising has taken place to ensure that all suitable people have been notified that such vacancies exist.

Hon Derrick Tomlinson: What about Catholics, Jews and Protestants?

Hon NORM KELLY: There is no discrimination there either.

Hon Derrick Tomlinson: You want to discriminate against political party membership but not against religious affiliations?

Hon NORM KELLY: Hon Derrick Tomlinson must not have been listening.

Hon Derrick Tomlinson: I was listening.

Hon NORM KELLY: This is exactly to ensure that there is no discrimination between political party members.

Hon Derrick Tomlinson: You are saying there is discrimination now?

Hon NORM KELLY: Yes. If in some cases there is no discrimination, there is at least a perception of discrimination because of the closed nature of making such appointments. For example, Barry MacKinnon, who is either the chair or head of the Disability Services Commission and who was the former leader of the Opposition when the coalition Government was in opposition, was appointed to a post which earns about $35 000 a year. From my discussions with people in that portfolio area, I believe that Barry MacKinnon is doing an excellent job in that position. If there is a transparent way of making that appointment, he would probably still be regarded as the most suitable appointee to that position. By having transparency the perception that the appointment was based upon political affiliation will be removed. This issue cuts across all parties in government. There have been similar previous appointments under the past Labor Government.

Hon Bob Thomas: Name one?

Hon NORM KELLY: The appointment of Brian Burke to Ireland.

Hon Bob Thomas interjected.

The DEPUTY PRESIDENT: Order! Members should address the Chair.

Hon NORM KELLY: There is at least a perception of political bias. Although the relevant parties on both sides may argue that they are eminently qualified, we must ask whether they are the most suitably qualified for those positions. We must ensure that these appointments are made with openness so that the public can see that the most suitable person is appointed.

When the Auditor General released his report last year, he summed up by saying -

> From an accountability point of view, it is preferable for the process to be more transparent - so the right decision was not only done but seen to be done.

That is at the heart of the matter.

Another area where the Australian Democrats have serious concerns is in the possible withholding of commercially sensitive information from statements of corporate intent to be tabled in Parliament. Clause 64(3) of the Port Authorities Bill 1998 in its current form states -

> A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

It is simply a matter between the minister and the port authority board as to what information will be deleted from that statement of corporate intent. The Australian Democrats believe that it should not be left only to the minister to make such a determination. Potential exists for such decisions to be made on political grounds rather than commercial grounds. Once again, even if there is good reason to do this on commercial grounds, we must ensure there is no perception that deletion of material is based on political grounds. This issue is about strengthening the ability of the Government to show that it is deleting the information for the right reasons. The Democrats do not have any argument that at times it is necessary to delete certain material, but we must ensure an independent assessment is made of the material which is to be deleted.

I refer members to an article that was published in the December edition of the *Australian CPA* journal. The article is headed "Called to account:" and is written by the New South Wales Auditor General, Tony Harris. The article is mainly based on what has happened recently in the New South Wales upper House in the provision of material to the Parliament.

I will quote extensively from it because it is relevant to the process covered by this legislation and the availability of information. The article reads -

> The broad view of accountability has not always been accepted by the government as applying to commercialised activities. The conflict between the parliament and the government on this issue is best evident over the handling of commercialised information.

It is the scenario of opening up ports to a more commercial operation that gives rise to potential conflict. To continue -

> A key example of this conflict concerns the preparedness of ministers to be responsible for the action of commercialised bodies.

Further on he says -

> Notwithstanding the commercialised nature of some statutory bodies, it is difficult to see how accountability to Parliament can be effective unless the minister accepts an accountability obligation for all entities within their portfolio.

He says further -

> The Commonwealth Parliament - through a committee of the Senate - took a robust view about the question of commercial-in-confidence. Its report requires those who assert that information is commercial-in-confidence to argue the case. . . .
>
> There is a legitimate case for some information, when it is sensitive, to be withheld from the public by government for a limited time. Rather less acceptable, however, is the practice for governments to release information which agrees with their position and to withhold information when it goes against their political interests.

During Committee I will go into more detail about what matters are contained in the statements of corporate intent and how they relate to the need to have this independent monitoring of deletions in the tabled statement of corporate intent. Tony Harris also says -

> Those in the private sector who wish to deal with the public sector have to accept that there is a higher degree of accountability in the public sector which will be applied to their arrangements. Secrecy is simply not compatible with democracy, and secrecy should only be involved when those advocating secrecy can prove their case.

That conflict is occurring more and more often as more contracting out and privatisation of government services occur. Sometimes governments try to push the idea that we must conform with the way the private sector does business. However, in reality we should be educating those in the private sector that if they want to do business with the Government they should learn to play by the rules of the Government and the Parliament.

The Democrats will move amendments to this part of the Bill which unfortunately are not on the Supplementary Notice Paper at this stage, but which will be circulated to members involved in the debate as soon as they are finalised.

I have a few other minor matters, but the committee stage of these Bills will be lengthy so it will be more appropriate to go into that detail then. As I said, the Democrats support the commercialisation of ports in this State. It is essential that it does not necessarily mean increased profits for the private sector but represents a far better return for the public of Western Australia in reduced costs throughout not only regional areas but also the whole State.

HON J.A. SCOTT (South Metropolitan) [3.24 pm]: It has been interesting to listen to this debate. When I first read the Bill I found very little about which to be critical. I was under a great deal of pressure as a result of many other things in which I was involved. However, Hon Kim Chance raised some concerns so, even though I listened intently to what he had to say, I will read his comments again before I decide on proposed amendments to the Bill.

The Greens (WA) certainly agree with various thrusts of this Bill. The idea of including the legislation covering all the port authorities in one Bill is eminently sensible. I initially had some concerns that it might reduce some of the flexibility. However, the minister's advisers pointed out that plenty of flexibility would be left within regional authorities to run the ports in accordance with regional needs. I am very happy about that.

At the outset, I should clarify my position on the corporatisation of all of life as it is occurring now. In his second reading speech the Minister said -

> The November 1995 statement clearly identifies that the role of the State's port authorities is to facilitate trade and export opportunities for Western Australia's farmers, miners and manufacturers and that this be undertaken in a commercial and efficient manner.

This is largely my concern about moving to a corporate model. I want to know about the need to serve the general community. At the end of the day much of what comes through the ports is to service the needs of the average person in the streets. Most of our imports will go into people's homes, sit outside them or be part of them. The corporate intent should look very much at the end consumer. The very heart of my concern about corporatisation relates to corporatised agencies servicing the needs of big people rather than small people. That balance must be redressed by government when it is considering Bills such as the Port Authorities Bill.

As I said to the minister, I have not seen the amendment from the Labor Party regarding commercial confidentiality. I still have not seen anything on paper at this time.

Hon M.J. Criddle: There is none.

Hon J.A. SCOTT: I do not know whether I agree with that. Members will know that in the past I have been concerned about the use of commercial confidentiality in government and have expressed concern about it in this House many times. The not-so-recent Commission on Government clearly pointed out that Governments were over-using commercial confidentiality as a mechanism to escape proper scrutiny. I follow the Ted Mack model in that I believe that we can have much more openness without affecting companies' commercial viability. I go even further: Why should commercial outcomes be given a higher rating than anything else?

Hon M.J. Criddle: Annual reports will be tabled in Parliament, and the corporate intent will go before the minister and the Treasurer.

Hon J.A. SCOTT: I will look closely at them. I have not seen what the Labor Party has proposed, but I am concerned about reducing the ability of Parliament and the public to scrutinise what is happening.

There has been concern about the push to corporatise. Several ports are not far apart - for example, Fremantle and Kwinana - and other ports are proposed. For example, I am a little concerned that competition between tertiary institutions has caused many disadvantages for ordinary people, because departments are spending a heck of a lot more on trying to attract people to courses rather than on providing better services for students. I have heard stories about huge amounts being spent on promotion and about the reduced availability of less popular courses. The minister needs the ability - I think it exists in the Bill, but I hope that it is strong enough - to have an overview of all port authorities and to have an authority consider the strategic importance of decisions together with the importance of decisions in individual ports. The problem with heavily competing interests is that they sometimes consider their own aims rather than those of the State. For instance, we might need to develop one area more than another because of future proposals for that area. Therefore, the minister might need to ensure that appropriate facilities are provided in certain areas. The second reading speech states -

> The legislation requires port authorities to develop an annual strategic development plan and an annual statement of corporate intent for approval by the minister and the Treasurer.

I assume that those documents will be tabled at some stage.

Hon M.J. Criddle: The financials will be tabled.

Hon J.A. SCOTT: There was concern about clauses which enable the minister to access documentation without approaching the chief executive officers of the various port authorities. In some instances that might have its advantages, but in other instances it might cause problems. I am not sure exactly how it would work and whether a CEO would be notified that the minister was accessing documents. I can imagine cases in which a CEO and the minister - I do not refer to the Minister for Transport - do not see eye to eye and the minister might want to access information to undermine that person. Who would think that anybody in politics would ever do a thing like that? Nevertheless, the ability exists and there should be a transparent process.

My colleague Hon Giz Watson will deal with pollution definitions and controls on pollution. As I have said, I will consider the amendments. I have not made up my mind on them but I can understand why the Government would want to bring port authorities under the one Act of Parliament. Although I am concerned at the extent of corporatisation and privatisation in the State - they are not always in its best interests - I can understand that they bring about improvements in some government departments. In this case a reasonable level of corporate structure and operation is satisfactory.

HON GIZ WATSON (North Metropolitan) [3.38 pm]: I shall deal with environmental considerations relating to shipping and port activities. The second reading speech stated -

> During consideration of this Bill in committee, I will be moving two minor amendments. These amendments will require port authorities to provide for environmental management in their strategic development plans . . .

I wholeheartedly support that measure. I guess I am slightly disappointed that it comes almost as an afterthought that an environmental strategy should be part of a port's consideration, because it should be very much the core business of a port authority. I have spent some time coming to grips with that issue. Work has been done by the Australia and New Zealand Environment and Conservation Council on environmental management in ports.

I thought it was worthwhile spending a little time on raising this matter because many people do not have a deep understanding of the issues associated with shipping, particularly the introduction of ballast water species, which is an ongoing matter and which has not been adequately managed or addressed in Australia, or in any other port for that matter. In fact, Australia is probably at the forefront of international attempts to address the issue of ballast water introductions. The second area concerns waste water management. As members will be aware, ships are floating communities and they generate waste as much as any other community. A huge effort has been made within the conservation movement to address the issue of persistent waste in the marine environment, particularly plastics, oil and other chemicals. The third area

concerns the anti-fouling treatment on hulls of ships which involves chemicals that persist in the marine environment and are highly toxic. I will address those issues in that order.

The issue of marine pests and introduced ballast water was addressed as one of the components in the Australian and New Zealand Environment and Conservation Council's paper for public comment in March 1995 entitled "Maritime Accidents, Pollution, Impacts on the Marine Environment From Shipping Operations." It advised that enormous volumes of water are transported as ballast in ships, particularly large bulk carriers. As a vessel unloads its wheat, iron ore or whatever it may be, the vessel takes on water from that port and in that process inevitably takes in organisms; everything from micro-organisms to live shellfish and all the larvae of those species. It then transports that water to its port of reception and deposits it into that port. Scientists and conservationists have recently realised that the impact of these species can be enormous. The introduced sea star in Tasmania and Victoria has had a major impact not only on the immediate environment of those ports, but also on industry such as the mussel and oyster farms in waters adjacent to ports. Western Australia has a known introduction of at least 25 species of exotic marine organisms which have the potential to be at least a pest organism and at worst have major impacts both on recreational and commercial fishing, as well as spreading into the adjacent marine environment.

I raise this in some detail because ANZECC has pointed out that the absence of land-based facilities to treat ballast water to remove those organisms is one of the impediments to solving a massive quarantine problem. Introduced ballast water species are equivalent to the impact that rabbits have had on our terrestrial environment. I express my concern that a major matter such as the management of ballast water should be enshrined in the Port Authorities Bill as part of its environmental strategy.

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon GIZ WATSON: Before afternoon tea and question time I was referring to the management of ballast water and the organisms found in it. No doubt the minister is aware that the only requirement in Australia to reduce the impact of introduced organisms from ballast water is that vessels should voluntarily exchange their ballast water while in open seas and therefore reduce, if not eliminate, the risk of introductions. It is estimated that compliance with that requirement is about 80 per cent. A number of Department of Environmental Protection officers queried whether the compliance rate is that high. However, I am aware that, I think, on two occasions at the Albany port the harbour master refused entry to a vessel on the grounds that he did not believe the vessel had complied with the request to exchange its ballast water at sea.

Clause 106 is headed "Limit on power to order removal of vessels or dangerous things" and reads in part -

> A harbour master must not direct that a vessel or dangerous thing be moved out of a port unless satisfied that there is no other place in the port where the vessel or dangerous thing can lie without . . .
>
> (d) polluting the waters of the port.

I cannot find a definition of pollution. Does pollution include the introduction of exotic species and radioactive material? How is pollution to be defined in this case? I raise the issue of radioactivity because, as members are no doubt aware, nuclear powered, and in some cases nuclear armed, vessels visit various ports in Western Australia.

Hon Peter Foss: That is certainly not pollution!

Hon GIZ WATSON: Of course not! I would like clarification of how pollution is defined and suggest that a definition is required. I am aware that the DEP has powers also in this area. However, the Greens (WA) believe that environmental management should be enshrined in the powers of the port authority also.

I refer now to waste management and pollution at sea of intractable waste. The Australia and New Zealand Environment and Conservation Council has identified the lack of facilities provided at major ports as a major impediment to complying with international agreements to which Australia is a signatory in relation to persistent materials in the ocean, particularly plastics. I refer to the "Maritime Accidents and Pollution: Impacts on the Marine Environment from Shipping Operations" report of March 1995 which refers to the need to develop port reception facilities. At page 15 it reads -

> The International Convention for the Prevention of Pollution from ships (MARPOL 73/78) regulates operational discharges from ships, sets standards for the construction of ships to minimise the risk of pollution and obliges parties to ensure that ports provide waste reception facilities appropriate to the needs of vessels using the port.
>
> Port waste reception facilities are important for minimising marine debris. The absence of reasonably priced and efficient waste disposal facilities at ports and harbours may contribute to illegal dumping of waste at sea.
>
> In a 1992 survey, the Australian National Maritime Association (now the Australian Shipowners Association), concluded that waste reception facilities in Australian ports were generally inadequate. This, along with other information presented . . .establishes the need for more effort.

Environmental agencies supported by AMSA -

The Australian Marine Safety Authority -

- have acknowledged the need to review the provisions of waste reception facilities in Australian ports and harbours to determine whether they meet international obligations for disposal of oil, oily residues, chemicals and garbage from shipping operations. An attachment to the report explains our obligation under the MARPOL convention. The introduction to the ANZECC Maritime Accidents Pollution Task Force report on the provision of waste reception facilities in ports, dated 2 December 1993, states -

The *International Convention for the Prevention of Pollution from Ships 1973* and its Protocol adopted in 1978 . . . places an obligation on parties to ensure that ports provide waste reception facilities to dispose of ships' waste. Australia is a party to the annexes concerning the disposal of oils and oily residues, chemicals and garbage. This means that regulations relating to the provision of waste reception facilities in ports for these wastes should be complied with.

In addition Agenda 21 has imposed on all United Nations agencies an obligation to implement Agenda 21. A number of topics listed in Chapter 17 relate to International Maritime Organisation activities. In particular:

"17.30 States . . . should assess the need for additional measures to address the degradation of the marine environment:

(d) From ports, by facilitating establishment of port reception facilities for the collection of oily and chemical residues and garbage from ships, especially in MARPOL 73/78 special areas, and promoting the establishment of smaller scale facilities in marinas and fishing harbours".

That task force report goes on to state that 43 ports were surveyed - all major ports and some smaller and special-purpose ports. The findings were that 58 per cent of the ports surveyed had no port authority facility for the disposal of oil and oily residues, and in 21 per cent of the ports surveyed those facilities were not provided by port authorities or private operators. The survey showed that 70 per cent of Australian ships have restricted privately provided facilities for the disposal of oil and oily residues. The disposal of garbage is also of concern, as 67 per cent of all ports surveyed had either no facilities or restricted facilities provided by the port authority. The Port Authorities Bill is an appropriate vehicle to address the matters that are raised in the ANZECC report. As yet, I do not see them spelt out in any detail in the Bill.

I raise the concerns that ANZECC has identified. Again, members will be aware that the persistence of plastic in the marine environment is a major issue, not just because of the entanglement of marine species and the ingestion of plastic by various mammals, such as dolphins and whales, and also by turtles. Plastics in the marine environment also provide a means of transport between countries for exotic species. It has been identified that species can attach to plastic which can last at least 500 years in the marine environment and be transported enormous distances in the ocean currents. Plastic provides a vector for the transfer of organisms between countries which, as members will be aware, can become problematic when they are introduced into a foreign environment. That matter should be taken seriously when we are considering a Bill for port authority management and management considerations.

Oil and oily waste are of major concern to many Western Australians. Only recently when I visited Albany I found a large amount of oil on the beach, together with dead mutton birds smothered in oil. When I took up the matter with the Department of Transport I was told that it had the capability to fingerprint the oil back to the vessel that discharged it, but it was unwilling to follow it up because it had to be sure that it would get a conviction to be bothered to spend the money to test the oil and to identify the ship. It was a catch-22 situation. It was obvious to me that the oil had come from a commercial vessel - one could still smell the diesel in it. It was obvious also that it had come from a vessel that had recently gone through those waters. Nobody disagreed with that, but nobody was willing to seek a prosecution, even though there was dead wildlife on the beach.

Often with shipping there is unwillingness to press the point. Indeed, oil biodegrades relatively quickly, especially on a beach. However, the provision of facilities to receive oily waste and to separate it are essential for a port. I have raised the issue in respect of the design of the proposed port at Oakajee and I have been told that it will not necessarily be part of that port design. We need to address the infrastructure requirements in those ports as a matter not only of honouring our obligations in the international agreements to which Australia is a signatory, but also of minimising pollution on the Western Australian coastline. The discharge of oil and oily waste and the presence of persistent plastics on our coastline are probably two of the most significant marine wastes from ships.

Anti-fouling and anti-fouling chemicals are a serious issue in the environmental management of ports. Members might be aware that vessels over 25 metres are still allowed to coat their hulls with anti-foulants that contain tributyltin. Tributyltin is an exceedingly persistent and bio-accumulating chemical which is toxic in the marine environment in a concentration of one part per trillion. We have a problem in ports that handle vessels of more than 25 metres, because the levels of tributyltin are unacceptably high and they are impacting on the immediate environment as well as transferring out into associated areas.

Around Kwinana and certainly around the ports of Fremantle and Hedland the level of tributyltin in the sediment is well above accepted levels.

Ports are also used for the sandblasting and recoating of vessels. Although I am aware that the Department of Environmental Protection licenses all facilities that deal with abrasive blasting and recoating, the provisions for containment of the sandblasting residue and associated chemicals and paint residue are inadequate. The sandblasting of structural components in a port usually results in the bulk of the material ending up in the ocean, where it continues to release chemicals that are toxic to the marine environment. I would like provisions that acknowledge the need for a uniform approach to the management of sandblasting and repairs at all port facilities, whether they be the port facilities themselves or vessels in dry dock.

I conclude at this point by saying I shall seek reassurance that the environmental management issues associated with ports are firmly enshrined in this Bill. They should be enshrined in a way that ensures some of these recommendations, which are long overdue, will result in ports being better managed in environmental terms and shipping using those ports being provided with facilities that minimise impact on the marine environment on the coastline.

I seek leave of the House to table a document that might be of interest to members when considering this Bill: It is the results of an inquiry by the Australian and New Zealand Environment and Conservation Council into ship-based sources of pollution. This document is an extract from a document entitled "Working Together to Reduce Impacts from Shipping Operations: ANZECC Strategy to Protect the Marine Environment", volume 1 of the strategy action plan of 1996. It would be of interest to members because it indicates what is required to bring ports up to an acceptable level.

Leave granted. [See paper No 868.]

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [4.52 pm]: I thank members for their overall support of the Bill. There was across-the-board support with some reservations.

Hon Kim Chance: Overall, but begrudging.

Hon M.J. CRIDDLE: Hon Kim Chance referred to a few ports and dwelt for some time on the labour force at the Geraldton port and the ramifications for those people. I live in that area and I certainly would not want the port in that area to be jeopardised in any way whatsoever. It is in the interests of everyone in that area to have an efficient and reliable service, and certainly a continuing service. I think we have that now and will have it well into the future.

Hon Kim Chance also raised the question of liability to the State for the actions of a port authority. He properly pointed out that provisions in the Bill require the port authority to comply with directions from the minister, and its statement of corporate intent must be approved by the minister. The Government accepts that the removal of the shield of the Crown - the Financial Administration and Audit Act - will not necessarily remove its exposure to any actions against a port authority.

Hon Kim Chance made much of the industrial relations on the waterfront. I can only reiterate that this Bill is about corporate governance, and not industrial relations. They are matters which are properly the province of other state and federal legislation. We have spoken about that and I think the member understands where I come from on that issue. This Bill is about providing a management regime to take ports into the next century and there is some vision involved with this Bill.

Hon Kim Chance commented on section 58C of the Financial Administration and Audit Act, and I may be prepared to consider some of the amendments he suggested. Of course, I must look at them before we come to any arrangement. It should be remembered that much of the Financial Administration and Audit Act is based on the commercial law requirements. However, the Act has not kept pace with developments in this area. The Bill simply applies to port authorities the current law relating to private corporations. The port authorities will be subject to audit by the Auditor General and the approval of the Treasurer before they can establish subsidiary arrangements.

With regard to the comments about the terms of contract, many of the projects require high capital cost and some time is needed to allow people to get a return on their investment. Without the longer term requirement in the contracts, there is a chance that some developments would come to a standstill. That time frame is needed to allow the developments to occur.

Hon Kim Chance: I appreciate the problem.

Hon M.J. CRIDDLE: I appreciate what the member said, but I also gave the example of the bus contract which will run for many years hence. Some decisions must be made for the benefit of investment into a certain project so that it can be paid for over a period of time. Hon Kim Chance raised other issues but pointed out that they could be dealt with in committee.

Hon Norm Kelly raised concerns about competition between port authorities. It must be remembered that port charges account for a small portion of overall transportation costs. The principal determinants of which port an exporter uses are matters outside the control of port authorities.

With respect to board appointments, the Government advertises such appointments and the process works well at this time to my knowledge. I see no reason to interfere with a process which has delivered good management in our ports to this time.

With regard to commercially sensitive information, a simple request from a board will not be sufficient to remove information on the basis that it is commercially sensitive. The board must first satisfy the minister, who quite properly has the responsibility for deciding whether information should be included in the statement of corporate intent. As drafted, the Bill provides a fair balance between accountability and the need for port authorities to act commercially.

Hon Jim Scott touched on the question of commercial responsibility. It is very much about servicing all Western Australians and it leads to lower costs for both importers and exporters. Hon Jim Scott referred to local people having an advantage as well as exporters and importers. That would obviously be reflected in the effectiveness and efficiency of the ports themselves. A competitive commercial sector will provide an opportunity for a better private sector and more jobs in the areas. That will be demonstrated as commercial reality comes into being.

The member will note from the Notice Paper that I will move some amendments to ensure that ports have due regard for environmental issues. I am sure that question was raised in the other place. That will be taken into consideration. I will have further dialogue with Hon Giz Watson before the committee stage so that we reach a clear understanding of what she requires. It is the first time I have heard some of the information she supplied, so I will be interested in developing that some time in the future.

As indicated by most members, much of the detail will be discussed in committee when we deal with the amendments.

Questions put and passed.

Bills read a second time.