

BANK OF WESTERN AUSTRALIA AMENDMENT BILL 2012

Second Reading

Resumed from an earlier stage of the sitting.

MR W.J. JOHNSTON (Cannington) [8.10 pm]: I wish to make some comments on the Bank of Western Australia Amendment Bill 2012. I want to put this legislation in some context. The first thing I want to point out is that we are withdrawing a number of the commitments that were made at the time of privatisation of the bank. In the original Bank of Western Australia Act 1995, which we are amending tonight, there was a series of commitments to protect the Bank of Western Australia as an independent organisation. This was sold to the people of the state as being a guarantee that even though the bank would be privatised, it would continue to operate as a Western Australian bank. This new legislation sets aside all those guarantees. I suppose there is a bit of a lesson in that; that is, when we privatise, naturally enough, we lose control. Although there might be some commitments at the time of privatising state-owned assets, we really have to take those guarantees with a pinch of salt. Prior to the sale of Bankwest, the State Government Insurance Office was also sold. That is now part of a single large national organisation. We are losing Bankwest as an independent organisation.

There was some interchange across the chamber earlier between the Premier and the member for Victoria Park about the need at the time of the privatisation for HBOS to be a cornerstone shareholder. The Premier made the comment at the time that that was viewed as the best way to operate because we wanted to have a large organisation as the cornerstone of the then privatised bank. That was probably true at the time. Although HBOS's investment in Bankwest continued to be a profitable investment, because of the global financial crisis in 2008, HBOS ran out of capital and, like many English banks, had to rely on the support of the United Kingdom government. Naturally, all those banks were expected to dispose of profitable assets outside the UK because the taxpayers of the UK did not see any particular reason to support investments in foreign countries. They needed to dispose of their shareholding, which by then they had taken to full control of Bankwest. At that time and at the height of that crisis, there were very few options about who to sell to. Australia's four major banks were some of the few institutions in the world capable of buying a relatively small bank such as Bankwest. The Commonwealth naturally took over HBOS's shareholding in Bankwest. Unlike HBOS, which did not have any other investments in Australia, obviously the Commonwealth Bank operates everywhere—it operates here in competition to Bankwest—so naturally things had to change.

As is explained in the second reading speech and as has been commented upon by the member for Victoria Park, the regulatory authorities do not allow a bank in Australia to have more than one licence. I understand that 18 months ago the government was approached by the Commonwealth Bank of Australia to seek changes to the act to allow it to amalgamate Bankwest into CBA. It needed to do that because it could not have two banking licences. We might wonder why it is important that it does not have two banking licences. To find the reason for that, we need to look at what happened in the past. Banks often owned finance companies. Westpac was a classic example of this. It owned a range of other institutions, including AGC and Partnership Pacific Ltd, which was a merchant bank. Even AGC had its own merchant bank. I forget the name of that organisation; it does not really matter. When AGC, which was a wholly owned subsidiary of Westpac, got into trouble, unravelling the complex arrangements that AGC had entered into nearly bankrupted Westpac. That is quite famous. It was well reported in the financial media that the Reserve Bank of Australia, which was the regulatory authority at the time, had to supervise Westpac through those problems to ensure it came out as a solid bank, which it indeed is. There was a different approach to regulation of deposit institutions. For example, with the Westpac-AGC thing, AGC might have lent to a particular organisation but Westpac had also lent to the same organisation. When AGC needed to call in its loans, trouble was caused for its parent company, Westpac, because it also loaned to the same business. If the chief executive of Westpac was prepared to have a certain amount of risk with a particular business, he then found that he had all that additional risk through his subsidiary. It was a completely unsatisfactory arrangement. There have been other examples, not just the Westpac one, but that is the most famous.

There is a very good public policy reason why the authorities say that a deposit-taking institution can have only one licence. Years ago the ANZ Bank took out what was then the Town and Country Building Society in Western Australia. It ran as a separate organisation for a number of years and then the RBA required ANZ to return the licence to Town and Country and moved all those branches, all those assets and its operation to the main ANZ operation.

Bankwest was not the only smaller bank to have trouble at the time. St George Bank, a Sydney-based bank of about the same size as Bankwest, was also taken over during the GFC. It was taken over by Westpac. Westpac is going through the same process that the CBA is doing with Bankwest to surrender the second licence. This is clearly an example of taking at face value the guarantees that are provided at the time of privatisation. Back in the 1990s a whole range of privatisations did not deliver the promise that people were given at the time of the

privatisation. Alinta was privatised back in the 1990s. There were serious problems with Alinta delivering gas to individual households in this state at a fair and reasonable price. It has gone through a number of iterations of ownership. It was originally sold as an integrated operator. Now it is basically just a retailer. WA Gas Networks is now owned by a Canadian company called ATCO. It now owns the pipes in the ground that were sold as part of the Alinta transaction. Epic Energy bought the Dampier to Bunbury natural gas pipeline for \$2.3 billion. The regulated fees for the pipeline could never return the investment that Epic Energy had made in that program. It could not invest in expanding capacity, so even though at first blush the government looked like getting a good deal at \$2.3 billion in the 1990s, in the interests of the state, it did not turn out that way because it had a major impact in the most gas-intensive state of the country. We could not get gas to the southern part of the state at a reasonable price and in sufficient volumes to allow for continued development of the state.

When Wanneroo Hospital was sold, it went through some serious problems, including some deaths in the emergency department. It took years and years for the current management of Joondalup Health Campus to stabilise. In fact, one of the issues for the former Labor government was renegotiating the funding arrangements with Joondalup Health Campus to ensure that it had enough capacity to cope with the demands of the northern suburbs. A series of privatisations in this state have not gone as well as we would have liked. The fact that the commitments that were made at the time of the privatisation of Bankwest have not been able to be delivered is another example of those issues.

I know the member for Victoria Park wants to go into consideration in detail, so I will not ask questions about the way that some of these clauses operate, because we can do that in consideration in detail. But there are a few questions to ask and I will talk about those in a little while.

In preparing for this speech, I read the policy speeches of the then opposition leader, Richard Court, and the then Premier, Carmen Lawrence, for the 1993 election. It was interesting that Richard Court did not talk about privatising the Bank of Western Australia at the time, but Carmen Lawrence did. Carmen Lawrence's proposal was to amalgamate R&I Bank with Challenge Bank, which had been converted from a building society into a bank—back then, building societies were regulated by the state and banks by the commonwealth—to form a new business to be called Bankwest. The government would then, over a period, sell down its holding in that merged entity. It would have been interesting, because the argument that was presented by Dr Lawrence in her policy address was that that merged instrumentality would have had enough bulk to maintain independence. I think, arguably, Bankwest was too small to retain its independence in the four-pillar arrangement we have in Australia. Over the years, not just in Western Australia but in every state in the country, we have seen that no deposit-taking institution has been able to develop enough strength to take on the major banks. In the pre-global financial crisis period, when there was so much cheap money around the world, banks such as St George and Bankwest were able to take market share off the four majors. Indeed, RAMS, Aussie Home Loans and other companies were able to take market share, but that was based on a particular paradigm at that time. When that paradigm stopped, with the collapse of Lehman Brothers Holdings, none of those institutions was able to survive. As an example, Aussie Home Loans is effectively now just a broker and RAMS is part of Westpac. At the bottom of the RAMS television advertisements, the fine print indicates that the finance is provided by Westpac Banking Corporation Ltd. So it is effectively just a brand name. Bankwest is not the only institution that could not get through the GFC.

One of the things we have to look at is that because Bankwest has been taken over by the Commonwealth Bank of Australia, and although there are some limited undertakings in this bill—we will get to the details about why I think they are limited in consideration in detail—we will not see any growth in the bank. The pre-GFC plan of HBOS was to grow Bankwest. It was very aggressive on the east coast; in fact, it was regularly reported in the media that the cheapest home loans available in Sydney and Melbourne were with Bankwest because it was trying to buy market share on the east coast. Clearly, that has all stopped because CBA does not want to cannibalise it. Why would it want to cannibalise its operations on the east coast?

We will have to look at exactly what is being guaranteed here. I make the point that whatever guarantees we have, we cannot guarantee the market. The reason that we are here today is that the private owners of an operation in the free market had to have change. What was the choice of the state government? If the state government had insisted on a separate banking licence for Bankwest, it would have meant higher costs for the customers of Bankwest. If I were the Premier, I would not agree to Western Australian consumers paying higher costs than other consumers. So, naturally, we have to react to change in the market. Even though there are all these detailed commitments in the Bank of Western Australia Act 1995—I think part 3 provides all those guarantees that were sold to the people of Western Australia as being the benefits of the privatisation process—none of those can survive a radical change in the market. Indeed, I would argue—we will get to it in consideration in detail—that the commitment that is being built into this amendment also has to be viewed in terms of what will happen in the market. Even with all the goodwill in the world on behalf of the management of

CBA—I am not suggesting that it has anything but goodwill—if the market changes, so will those commitments. That is the way the free market operates. There is really no other way of the world with these things.

In my last couple of minutes, I will make a couple of comments about the way that banks operate in Australia. We are very lucky in Australia that we have a trade surplus, but of course we have had a current account deficit for 50 years. That means that we either sell assets to foreign countries or borrow money. At the moment, as an overall aggregate, about 50 per cent of banks' deposits are domestic deposits and the other 50 per cent are made up of underlying capital and other borrowings on the money markets et cetera. Short-term debt before the GFC was about 30 per cent of the financing of banks. It is now about 20 per cent. That is the financing of our current account deficit, along with foreign direct investment. If we as a nation want to get away from continually needing to increase our foreign debt, the only way we can do that is to reduce our current account deficit. Back in the 1980s when we started to modernise the Australian economy after, arguably, 80 years of no real change to our economy, we encouraged people to save. Indeed, the compulsory superannuation scheme was part of the answer to that demand. It is interesting that there has been a significant increase in the domestic savings rate over the post-GFC period, and that has led to a range of economic effects, including the fact that the retail sector is suffering. This is another period of adjustment. I think increasing our savings rate is a good idea, even though there is an impact in some sectors. If people are saving money, they are not spending it; if they are not spending it, they are slowing down the sucking in of imports, and that has to be a way of helping our economy bring down the current account deficit. I am a humble state member of Parliament, but to me that is one of the most important issues that confronts our country. On 1 July our superannuation contribution will increase from nine per cent to 9.5 per cent. I think that is a great thing. I would like it to continue to increase even further. If people are in a position to save more money, that is a good thing for our country as well.

The opposition will not oppose this legislation. There are some things that we want to look at in consideration in detail, and I look forward to having that opportunity very soon.

MR E.S. RIPPER (Belmont) [8.30 pm]: We have learnt over the last three and a half years that strong and profitable banks are absolutely essential for the health of our economy and the needs of our citizens. We have also learnt that we cannot take a strong banking system for granted. The big four Australian banks compare very well with their international colleagues. The Australian banking regulatory system also compares very well with international sister organisations. Nevertheless, Australian banks needed support from the government during the global financial crisis. The federal government offered a guarantee on deposits up to a value of \$1 million a deposit. That was important for the banks in the immediate aftermath of the global financial crisis. Although the big four banks were in a good position relatively speaking, second-tier banks were in a more challenging position. That was particularly the case with Bankwest due to the difficulties of its British parent. I am sure that the Commonwealth Bank got a good deal when it bought Bankwest. Nevertheless, that deal was strongly in the interests of Western Australian depositors and the Western Australian economy. I do not think there is sufficient recognition in the Western Australian community of the degree of challenge and risk that Bankwest faced in the immediate aftermath of the global financial crisis.

Those observations lead me to the decision that we have to take tonight on whether to waive some of the obligations that were placed on Bankwest in the process of privatisation. I think the choice is absolutely clear. We have to act in favour of strength and security in our banking system over and above the obligations that the Parliament might have imposed back in the 1990s on the privatisation of that bank. We cannot take for granted the strength of our banking system. If we do not pass this bill, we say to Bankwest that it has to go out and raise billions of dollars of finance in fragile global financial markets. I think there is a risk there for Bankwest in having to undertake that particular strategy. I think there is a risk in terms of cost for customers. There is also a risk to the stability of the organisation. It is not reasonable or sensible for the Parliament to insist on the privatisation obligations and force Bankwest into that challenging position. We have to, in effect, put the strength and security of Bankwest ahead of those privatisation obligations. The choice is absolutely clear, and that is why the opposition has decided to support the bill.

I want to make one other set of observations and that is that it is clear we cannot rely on the sustainability of conditions placed on privatisations. As my colleague the member for Cannington has pointed out, the ruthless logic of the market will from time to time overturn those privatisation conditions. This is not the only privatisation in which the assurances, guarantees and conditions placed by the government on the privatisation have failed to be sustained. We saw the now Premier privatise AlintaGas. Did we end up with an organisation in the long run that was identified with and supportive of the Western Australian community? No, we did not. We ended up with an organisation that had a terrible reputation, through the Varanus Island gas explosion and consequent issues, and an organisation that was not as supportive of the Western Australian business community, in particular the small to medium business community, as it should have been.

The now Premier also privatised the Dampier to Bunbury natural gas pipeline. The new owners of that pipeline were unwilling and unable to fund the expansion that the state required for the security of its electricity supply, and their unwillingness or incapacity to expand the pipeline added very substantially to the level of risk in our electricity system. That privatisation did not result in the circumstances that the now Premier thought it would result in. We saw no expansion of the pipeline, and we saw significant risk to our electricity system. It was only when the pipeline was put into the hands of new owners that we actually got the expansion that the state needed. We should be very cautious in this house —

Mr F.M. Logan: Tell us about the railway privatisation by the Nationals.

Mr E.S. RIPPER: We could go into that disastrous privatisation of the freight rail network and the idea that the freight rail privatisation would result in significant investment in the rail system and the maintenance of all those rail lines. We are now seeing the loss of many of those rail lines and a consequent massive increase in truck traffic on under-resourced roads both in the country and in the city. As a Parliament we should be very careful when privatisation proposals are put to us. Usually privatisation proposals come with all sorts of guarantees and conditions designed to ameliorate community anxiety about the future. What we see with this bill is a concrete example that we cannot, because of the logic of the market, rely on those privatisation conditions. Is this likely to be an issue in the near future? I think the government's substantial increase in debt means that inevitably this Parliament will face demands for further privatisation. The only way the government will be able to control the debt and to maintain a reasonable infrastructure investment program will be to institute a new round of privatisations.

Despite the government's declaration, I foresee this government, if re-elected, coming into the Parliament and proposing privatisation of the Fremantle port. There are two reasons for that: firstly, such a privatisation would enable the government to reduce some of the debt; and, secondly, Fremantle port requires an enormous expansion to meet the demands of container traffic, and funding that expansion would be entirely impossible, I think, within the government's debt constraints. My understanding is that such an expansion would cost at least \$1.5 billion and probably closer to \$2 billion today and I just cannot see the government fitting that into the debt envelope. Eventually, whatever the government says now, if re-elected, it will come to the house and will propose the privatisation of the Fremantle port. Naturally, as it will probably be in some sort of alliance with the National Party, which has a definite interest in the performance of the port, it will come to the house with all sorts of provisions and guarantees about how the port will perform with regard to our export industries. We should be very sceptical if that happens, because this bill before us today shows that in the end it is the logic of the market that determines what will happen, and the capacity of this house to influence the operations of a commercial entity, once it has been privatised, is extremely limited.

I might conclude by saying that I am very strongly convinced of the need for all governments to act to support the strength and security of our banking system in very fragile global economic and financial circumstances. The only responsible course of action for this house is to support this bill. It gives us caution for the future should we again have a government come to us with a privatisation sugar-coated with all sorts of protective conditions. In the long run those protective conditions are simply not sustainable and not enforceable by this Parliament.

MR C.J. BARNETT (Cottesloe — Treasurer) [8.39 pm] — in reply: I thank members opposite for their contributions and for their support for the Bank of Western Australia Amendment Bill 2012. I will make a couple of comments. If we look at the conditions that were put in place at the time—I think I may have made a couple of speeches in Parliament myself—they amounted to what was commonly referred to at the time as a golden share. Privatisation had taken place in the United Kingdom and other parts of the world, and provisions were put in place to, in a sense, preserve the entity and pick up some public interest issues. I know that in the lead-up to the privatisation of this bank, I argued within cabinet for the golden share provisions. I think I probably spoke in this Parliament. The member for Cannington mentioned the lead-up to the 1993 election, which was a long time ago. It may not have been spoken of in the election campaign, but I think that in a document called "Fight Back WA" there may well have been reference to privatising Bankwest. I should know because I wrote that document.

Mr W.J. Johnston interjected.

Mr C.J. BARNETT: Yes. It may not have been then, but there was certainly a discussion.

The government came in in 1993. There were a number of reasons for the privatisation, and they have basically been spelt out in the second reading speech. The principle was a philosophical position that governments did not need to be in the banking business. I know that the member for Victoria Park detailed some of the history of the R&I Bank and then Bankwest. No doubt in the formative years of the state it played an important role, and it was probably only government that could establish a financial institution of any significance. It was successful and it was a policy that suited the time, but I think that by the early 1990s the case for government being in banking

had gone. Indeed, it presented a number of potential conflicts of interest. I think also, as I said by way of interjection during the second reading contributions, that this was fairly hard on the heels of the share market crash of 1987 in which we saw the State Bank of South Australia and other regional banks basically collapse. Bankwest was not without its problems at that time, and it also had become embroiled in some of the WA Inc scandals, if I can use that term. It was in a vulnerable position and that was also part of the decision. It needed to be tied up with a major institution; hence the decision to have a cornerstone investor involved in it. There was a lot of debate about how that would be done, but a sale to the Bank of Scotland was, I think, successful. Of course, ironically, the Bank of Scotland then got caught up in the more recent 2008 financial crisis and became weakened, and it was lucky that there was a saviour there in the Commonwealth Bank of Australia to take it over. I guess that has been the nature of banking for a while.

The member for Belmont said that these conditions do not last. I agree with him. Eventually they will run out of steam. But I have to say that they have survived for 17 years, and Bankwest has survived through a turbulent financial period. Therefore, I would claim that, on the balance, those golden share provisions that were built into the privatisation act have preserved Bankwest. Challenge Bank has disappeared; Perth Building Society has disappeared. A lot of the other financial institutions that were prominent have all gone. Bankwest is still there; and, yes, it now becomes more formally part of the CBA group, but it will continue under these provisions as its own identity. A second round, if you like, of golden share provisions have been put into this bill that preserve it as a Western Australia-based bank, albeit under the umbrella of the CBA group but still continuing.

Recently, the CBA board visited Perth, and obviously the issue of Bankwest came up in the discussions. I do not think I am telling anything out of school, but in chatting to the chairman of the CBA board, I raised concerns. I said that we want to see Bankwest continue as a Western Australia-based bank and we accept that it will be part of the CBA group, for the reasons set out in the bill and in the debate. The comment back was, “Yes, Bankwest will continue if for no other reason than it is the most profitable part of the CBA group.” That was an interesting comment. It is outperforming the Commonwealth Bank at large within the group.

Mr D.T. Redman: It must be making too much out of me.

Mr C.J. Barnett: Yes, it could be. I think it has strong support, and obviously the economy in this state is stronger than the economy in other states. I felt reassured by that. I think the provisions that have been put in this bill keep its identity and keep its size, and it will continue to grow. Indeed, it is growing as a bank. Yes, golden share provisions will eventually, in a sense, run out, but they have worked because, unlike other states, we still have a state-based bank that is a significant part of the financial share. It has survived through a difficult period. In fact, it has survived through several difficult periods. It is strong and I expect it will continue to grow.

The new provisions that have been put in place were detailed in the second reading speech. To some extent it can be seen as an update of the golden share provisions—a more contemporary version that suits this time. As members opposite have agreed, if Bankwest was required to operate as an authorised deposit-taking institution through the Australian Prudential Regulation Authority, it would have a high cost of borrowing. Indeed, in the international markets today, it would probably find it difficult to borrow. It would probably lose its credit rating and, therefore, pay a premium on borrowing, which would be to the direct cost of both depositors and borrowers of Bankwest. I think everyone agrees that the public interest is clearly to go down this path.

Some comments were made about privatisation. That is a philosophical difference across this house. This was a real privatisation. I know that there are all sorts of forms of privatisation in the literature. To me, a privatisation is when something is actually sold. This is a clear privatisation. It was not contracting out; it was not using private sector players in various ways. Of the privatisations that have happened in Western Australia, I think that the privatisation of Bankwest along with the SGIO privatisation that preceded it have been as clean as we can get. The member for Belmont raised the privatisation of the pipeline, and I think the privatisation of Alinta came into the debate. I was the minister who conducted those privatisations. I think they were the right decision, but I think that one lesson that comes out of it in terms of public policy is that in government, when we privatise something, we never lose responsibility for it. It is like trying to get a child to leave home; they come back to haunt us.

Mr E.S. Ripper: You lose your power but you don't lose responsibility.

Mr C.J. BARNETT: Yes, we do not lose responsibility. To some extent here we are again talking about a bank that has been privatised since 1995 accepting some responsibility for its future. A child never leaves. In the case of the pipeline, I will not re-enter the debate. I thought that the pipeline privatisation was almost the perfect privatisation until the regulator came in with what I regard as a wildcard regulatory decision that was way out of whack with what everyone, including the owner of the pipeline, expected. I think it is fair to say that when Epic Energy purchased the pipeline, it paid too much for it. But what do we do? When we put something out for sale, we do not reject the highest bidder. I have never lost a sense of responsibility, good or bad. The Alinta privatisation was also in a sense, from a government point of view at the time, a near-perfect privatisation. It was

sold to the mums and dads. One hundred thousand Western Australian family investors bought shares in Alinta. They did well out of the share price and all was going well. Whether it was government owned or privately owned, it still would have faced issues of rising gas prices. That was going to happen in any case. However, all was going well until a management group decided that it would do a buyout. I have said before that I thought it was appalling behaviour. I said so at the time. But, again, it was private, as all other parts of the gas industry in this state are. But you are the father, the parent, of this child you have sent away who comes back to haunt you, and that is one of the problems of privatisation. It is a sort of irony. We could get all the best financial analysts, lawyers and all the rest of them, and they would give us so many scenarios—a price, cornerstone, retail sales and all the rest of it —

Mr E.S. Ripper: You pay them a fortune.

Mr C.J. BARNETT: Yes, they are paid an absolute fortune, and they can never handle the ultimate public issue, and that is the public responsibility that goes with it. I do not think anyone can write that into a textbook. I do not know how many advisers there were on those two privatisations. At the end of the day, the responsibility falls upon and stays with the minister. As I learnt also, when we are no longer the minister, in opposition we still wear the responsibility. I was pleased with the execution of the sale of SGIO, BankWest and the pipeline, although the pipeline was not quite perfect in the sense there was always a sense that the price was too high by about \$400 million. It was out of whack with what anyone would have expected. The purchaser had a very ambitious over-the-top expectation of what would happen. But, as I said, what killed that, in a sense, was the regulatory decision, which was completely out of any market expectation on any side. I have learnt—again I am a bit of an economic rationalist so it sounds a bit out of court—that one of the problems we also see in public policy in this area is deferral of responsibility to the so-called regulator, and the regulator is meant to be independent and some all-knowing being. They are not. Again, when a regulator gets a decision wrong or is out of whack with public opinion, who wears it? The politician does. It happens time and again to a greater or lesser extent. Various examples have been debated over the past couple of years. I do not know that the model of the regulator is quite right. It might be right in economic theory; in practical terms, it is not right.

I think we can also look at government trading enterprises generally. When I was Minister for Energy during Richard Court's government, we corporatised the government trading enterprises. The member for Belmont continued with that, I think, and I am sure we would all agree that it was right. But if something goes wrong, who is responsible? It is not the board. We do not see the board. We might see the CEO. Occasionally the CEO pops up—or they go to ground.

Mr B.S. Wyatt: They are all overseas at the time.

Mr C.J. BARNETT: The board all get paid \$70 000 or \$80 000 a year. The poor bunny who is left is the minister to explain why the powerlines fell over, why the fire started or whatever it might be.

Mr F.M. Logan: The chairman who gets \$200 000 says, "Don't worry; I'll face the media."

Mr E.S. Ripper: I wish you had adopted this position when you were Leader of the Opposition!

Mr C.J. BARNETT: For all those academics and financiers who write books and articles on how to privatise, someone needs to write the story about who ultimately bears the responsibility in facing the public and answering the questions. It does not matter which side of politics we are on, we all experience that, so maybe there is a point.

Getting back to the bill before the Chair, I think it is a success story in that Bankwest has survived as a private entity. I think everyone feels more comfortable that it is back in Australian ownership. It is a successful bank, and, as I said, it has been described to me as the most successful part of the Commonwealth Bank of Australia group, and that reflects this state and probably the good management that has been in place.

Mr E.S. Ripper: Before you sit down, do you want to comment on my Fremantle Ports scenario?

Mr C.J. BARNETT: Yes. What a foolish comment I thought that was! This is a display of the honesty of a retiring member—a sort of purification that comes with that!

Several members interjected.

Mr F.M. Logan: Please tell me I was wrong!

Mr C.J. BARNETT: Somewhat ironic is that Anthony Albanese's discussion paper advocated privatisation. Can I categorically say that if this government is re-elected, there will not be privatisation of Fremantle Ports. Would we encourage more private investment in the expansion of ports generally? Yes—and I think the Minister for Transport made that point, not with respect to Fremantle or anywhere else. Indeed, if we look at some of the regional ports around the state, including Fremantle, a lot of the investment in more recent years has been private

investment in the facilities on the ports. That is probably a better way to go. There will be no privatisation of Fremantle Ports.

I thank members for the support of this bill. I think it is important to Bankwest and its customers and staff that this bill is passed. I hope we can achieve that.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr B.S. WYATT: Some comments have been made, which the Premier did not respond to in his reply to the second reading debate, on the requirements of the Australian Prudential Regulation Authority. I thought it might be useful for that comment to be part of the debate. I read the second reading debate in 1995 on the establishing bill, and I would like to have seen some questions addressed. Can the Premier quickly let the chamber know? APRA has been driving these changes as a result of the purchase of Bankwest by the CBA. The briefing suggested that this legislation needs to pass through state Parliament by 30 June this year, which obviously it will. Is that indeed the case? Was APRA putting significant pressure on the government to have this passed?

Mr C.J. BARNETT: I think it is highly desirable that it is passed. Certainly the Commonwealth Bank and APRA would want that. In the early stages, interestingly, the approach and request to deal with it came from Bankwest and the Commonwealth Bank—quite properly. We went to some lengths to get APRA to write to us as a state government to say that this legislation was necessary. I do not know whether we got that. I am informed that we did get that correspondence. I kept on saying to the then Treasurer, the member for Bateman, that I wanted to see a letter from APRA saying that this must happen. I found it strange that it was so reluctant to do that, but I am advised that APRA eventually did send that letter confirming that this needed to happen. It would be highly desirable for security reasons within the bank that, if there is agreement, it goes through cleanly. That is what we are attempting to do. If we get it through this house, I hope we will get it through the upper house next week.

The ACTING SPEAKER (Mr P.B. Watson): This is the title of the bill. If you have another question, can you try —

Mr B.S. Wyatt: I am quite happy with that; I just wanted some follow-up information.

Mr C.J. BARNETT: Sorry, Mr Acting Speaker; the bill has been through the upper house. I was not aware that it had been.

Mr B.S. Wyatt: Yes—unless my memory gets up, Premier!

Mr C.J. BARNETT: This is the problem with being a part-time Treasurer.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 26A inserted —

Mr W.J. JOHNSTON: This provision negates the obligations provided for by the original privatisation bill in 1995. Is it intended to remove them? I understand the structure; the obligation ceases at the start of the day and the transfer takes place, so it is quite sensibly structured. Can we go back and eliminate that division at some time in the future?

Mr C.J. BARNETT: I am advised it is an option but probably not worth the effort. Unless there is some reason for doing so, we will leave it as it is.

Mr B.S. WYATT: Out of interest, why is it an expiry? Why were those sections not just deleted? Is this just a matter of format? I am curious about whether it will have any other impact, because ultimately, when the amendment is passed, will the act still contain all these provisions, because they are not deleted, and we could be reading them all and then we reach section 26A, which says that division 3 no longer applies. I am curious why it is not deleted out of the bill.

Mr C.J. BARNETT: The advice I have is that it was a drafting decision to have an expiry and bring in the new provisions. It is probably cleaner from a drafting point of view.

Clause put and passed.

Clause 7: Part 5A inserted —

Mr B.S. WYATT: Proposed section 42A, “Terms used”, provides the following definition —

transfer day means the day on which the certificate of transfer relating to the transfer of the BWA business to CBA comes into force ...

That is, comes into force under the commonwealth legislation. When is the transfer day likely to be? Is it something that is looming? What time frame can we look for?

Mr C.J. BARNETT: I think the answer to that, member for Victoria Park, is that it would happen as quickly as possible. It is probably largely a mechanical process in terms of documents and legal procedure. If it does not make 1 July, it would not be far after that. The intention is to proceed immediately and tidy it up. Who knows what complications might arise—the member for Victoria Park as a lawyer would know that better than I—and there would no doubt be a fair bit of paperwork involved.

Mr W.J. JOHNSTON: This is really the main provision of the bill, so I will ask a couple of questions now so that I will not have to keep getting up. My first question is about proposed section 42E, “Type and scale of Bankwest business”. I have had the briefing and I understand that, but it is probably worth getting on the record how that will be judged. Also, in respect of proposed section 42J, “Minimum points of presence”, could CBA rebrand an existing CBA point of presence as a Bankwest point of presence to meet the obligation under proposed sections 42J and 42K? In respect of proposed section 42M, “Local sponsorship and community development initiatives”, in the briefing with Treasury we asked how much local sponsorship and community development is CBA, through Bankwest, involved in, and they said they did not know, which is perfectly understandable; and when CBA came to brief the opposition, we asked them, and they said that is a commercial matter that is sensitive. So, we are being asked to pass a provision when we are not quite sure how we can judge that as an opposition. I know that the member for Victoria Park probably has a similar type of question. I therefore seek some clarification of proposed sections 42E, 42J, 42K and 42M.

Mr C.J. BARNETT: I guess what the member is saying is that there is going to be a sleight of hand whereby the bank can rebadge a CBA branch and say it is a Bankwest branch and it has maintained the scale. That would not be an honest approach, and I have no doubt that neither Bankwest nor CBA would go down that path. CBA and Bankwest will be required to produce an annual declaration. It is pretty obvious where the branches are today, and it is a far bigger Bankwest today than when it was privatised back in 1995. So although it might be technically possible for the bank to do that, it is not going to happen. If, for example, CBA decided that in a particular country town in which it had a branch it would be better off having a Bankwest branch, and it rebadged that site, that would be fine; there would be no objection to that. But that would not be taken into account in maintaining the scale of Bankwest.

Mr W.J. Johnston: What is the provision that makes that clear?

Mr C.J. BARNETT: I think that will be in the declaration that comes through, and Treasury will know. We know where the branches are—there is no mystery about that—and they would maintain that. I doubt that that would happen, although it would be technically possible. But they could not pretend to maintain the scale of Bankwest by simply repainting Commonwealth Bank branches and putting up different logos. That would not be accepted.

Mr W.J. Johnston: I also asked a question about the sponsorship.

Mr C.J. BARNETT: The sponsorship I understand would also be part of the declaration, and maintaining that level of scale of sponsorship is what is required. But, again, in any sponsorship deal there might be changes of sponsorship and the like, and there is that sort of five-year period. The member is right to raise it. There are ways of getting around things. But from the discussions that have been held, there is clearly no intent or likelihood that those things will happen. Probably the thing that reassured me most, as I said recently, was the comment that Bankwest is actually a higher performer than the CBA group, and the brand is strong here in this state, and indeed the brand has had some success on the east coast as well.

Mr B.S. WYATT: Just to follow on from some of the questions asked by the member for Cannington, Premier, proposed section 42J, “Minimum points of presence”, states —

- (1) The Bankwest owner must ensure that, at all times during the relevant period, the number of points of presence in Western Australia is equal to or greater than the points of presence threshold ...
- (2) The Minister must not give approval for the purposes of subsection (1) unless the Minister is satisfied that any proposed reduction below the points of presence threshold is consistent with market trends in the financial services industry.

In the event that such an application is made by Bankwest to the minister of the day, is it anticipated that the minister will publicly declare that he or she has allowed effectively noncompliance with proposed section 42J(1)? The second question is in respect of proposed section 42K, “Points of presence in regional Western Australia”. We know that the threshold is 88 branches statewide. Do we know how many branches there are in regional WA; that is, not in the metropolitan region and not in the Mandurah local government district?

Mr C.J. BARNETT: The total number of, I guess, branches, to keep it simple, is 93, of which 54 are currently in the urban area of Perth and 39 are in regional areas. An example is a wheatbelt town in which the population declines and the service is no longer viable. Those sorts of scenarios will no doubt happen in some communities. My expectation would be that not only will the current level and scale be maintained, but it is likely to slowly grow in future years, simply because of economic and population growth in the state.

Mr B.S. WYATT: I will be moving an amendment to proposed section 42N, “Certificate as to compliance”. This is an interesting part of the bill, as I mentioned during the second reading debate, and I think it is a good part. It states —

- (1) The Bankwest owner must, within 90 days after the end of each financial year of the Bankwest business, give the Minister a certificate to the effect that it has complied with the obligations imposed by this Part.
- (2) The certificate must be —
 - (a) signed by the managing officer of the Bankwest business and the chief financial officer of the Bankwest owner; and
 - (b) verified by each of those persons by statutory declaration.

I move the following amendment —

Page 9, line 12 — To delete “declaration.” and substitute —

- declaration; and
- (c) laid before each House of Parliament by the Minister or dealt with in accordance with subsection (3) within 30 days after receipt of the certificate referred to in subsection (1).
- (3) If—
 - (a) a House of Parliament is not sitting at the commencement of the period referred to in subsection 2(c) in respect of a certificate; and
 - (b) the Minister is of the opinion that that House will not sit during that period, the Minister is to transmit a copy of the certificate to the Clerk of that House.
- (4) A copy of a certificate transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (5) The laying of a copy of a certificate that is regarded as having occurred under subsection (4) is to be recorded in the Votes and Proceedings, or Minutes, of the House on the first sitting day of the House after the Clerk received the copy.

The reason the opposition has moved this amendment comes under the issue of accountability, which occupied some significant parts of the second reading debate in 1995. I think it is reasonable that the certificate be tabled in Parliament. The certificate itself will not be disclosing commercially confidential information. Proposed section 42O deals with how business information will be dealt with. A process is provided there, and I certainly am not seeking to contradict that process or to require Bankwest to disclose any information that it would rather keep away from its competitors.

But I think for the purposes of Parliament and public debate on this—the Premier has already outlined that 17 years later we still have a Bankwest—there is a real interest for Western Australians in maintaining Bankwest. The member for Cannington raised issues with Bankwest’s certificate of compliance, including local sponsorship and community development, head office personnel and points of presence. Some of those will be easy to judge—for example, on number of points of presence, we can see how many branches there are. However, local sponsorship and community development and those sorts of figures will not necessarily be available to members of Parliament, let alone members of the public. A certificate of compliance, which does not disclose confidential information, will be tabled in Parliament so that members of Parliament can be assured that when they speak to their constituents, they can say that we had to change the bill with the changing market conditions and ownership structure of Bankwest, but at least we know that the certificate of compliance and the two statutory declarations have been tabled by the minister. I think that is not an unreasonable request, bearing in mind that we do not expect Bankwest to disclose information that it would rather keep confidential.

Mr C.J. BARNETT: In discussing that amendment moved by the member for Victoria Park, my immediate concern would be confidential information. The member for Victoria Park answered that as he went along. I am advised that the certificate would not include that confidential information. Therefore, indeed, the certificate might be quite a bland document in many respects.

Mr B.S. Wyatt: I expect it probably would be.

Mr C.J. BARNETT: If it is tabled, I think there should be a confirmation from probably the Treasurer or Under Treasurer that that has been verified and the requirements have been satisfied—for example, the number of branches requirement has been complied with. We will accept that amendment. I do not think that poses any problem. The only practical difficulty is that I would hope that opposition members in the upper house would cooperate with this amendment and get it through quickly. It is an accountability measure. I do not see any downside to it, so we accept that amendment.

Amendment put and passed.

Mr C.J. BARNETT: I think there might be a minor drafting issue, not in the amendment. The amendment states page 9, line 12. I do not think it is line 12. I am just clarifying whether it is line 12 or line 15.

Mr B.S. Wyatt: Line 12.

Mr C.J. BARNETT: It is line 15 on the one in front of me.

Mr B.S. Wyatt: Line 12 for me is “business information”.

Mr C.J. BARNETT: As long as the Clerk is working off line 12, that is fine.

Mr E.S. RIPPER: Is the Premier giving the house and, through the house, Bankwest a commitment that his acceptance of this amendment will not delay the passage of the legislation and that it will still pass in this session of Parliament?

Mr C.J. Barnett: I am trusting that in the upper house the opposition will support this amendment and support it going through quickly so that it can be dealt with.

Mr E.S. RIPPER: Can we trust that the government will bring it on expeditiously in the upper house?

Mr C.J. Barnett: Yes, you can.

Mr B.S. WYATT: I refer to proposed section 42R(6) and monetary penalties —

- (6) When lodged, the penalty notice is to be taken to be a judgment of the Supreme Court for a debt payable by the Bankwest owner to the Minister of an amount equal to the aggregate amount fixed in the penalty notice, and may be enforced accordingly.

I have some concerns about whether it is possible for the bill to simply state that when the notice is lodged with the Supreme Court, it is taken to be a judgement of the Supreme Court. Would the Supreme Court see that as enforceable? It assumes that the Supreme Court would make a judgement a particular way. I am curious about whether the Supreme Court would see that as a legal mechanism. We are trying to say that it is a legally enforceable debt with the power of a judgement made by the Supreme Court, without the Supreme Court making the decision accordingly.

Mr C.J. BARNETT: That is obviously a technical point within the legal system. I have been advised that this has been cleared by the State Solicitor and indeed the State Solicitor’s Office has also had this cleared through the Supreme Court.

Clause, as amended, put and passed.

Clause 8 put and passed.

Clause 9: Schedule 1 amended —

Mr W.J. JOHNSTON: I have a quick question. I do not have a copy of the provision that is being amended here. Can the Premier tell us what is changing? I have the Bank of Western Australia Act, but this amends the Freedom of Information Act. What is the effect of the provision?

Mr C.J. BARNETT: I am not sure that I fully comprehend the answer I have been given, but it brings in the freedom of information requirement to make sure that it is consistent with what is done here. I guess that is the passage of time. It expands it to cover the freedom of information law.

Mr W.J. Johnston: I am not sure what that means either.

Mr C.J. BARNETT: Do not ask me to go beyond that.

Clause put and passed.

Title put and passed.

Extract from *Hansard*

[ASSEMBLY — Wednesday, 20 June 2012]

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Mr Bill Johnston; Mr Eric Ripper; Mr Colin Barnett; Mr Ben Wyatt; Acting Speaker
