Second Reading

Dr JOHN KAYE [11.16 a.m.]: I move:

That this bill be now read a second time.

The Energy Corporations Ownership (Parliamentary Powers) Bill 2008 ensures that the sell-off of retailers, the leasing of generators or the sell-off, lease or disposal of any other of the main undertakings of an energy services corporation cannot proceed without a relevant motion passing through both Houses of Parliament. This bill does not prohibit privatisation of an energy services corporation or any of its main undertakings. I make it absolutely clear also that the Greens are—and I personally am—totally opposed to the privatisation of an energy services corporation or any of its main undertakings. However, that is not the matter that is before the House today. What is before the House today is whether it is appropriate for those things to happen without reference to Parliament.

The Energy Services Corporation Act 1995 sets out seven energy service corporations in New South Wales: three generation corporations, Eraring, Macquarie and Delta; three distribution energy service corporations, Country Energy, EnergyAustralia and Integral Energy; and one transmission energy services corporation, Transgrid. The bill covers the sale, lease or disposal of any assets of those seven corporations.

The bill defines the main undertakings as being the business of an energy service corporation such as a retailer, the generators of a generation energy service corporation, or the distribution network or transmission network of a distribution or transmission energy services corporation. The bill would allow transfers between subsidiaries of energy service corporations of any of those main undertakings. The bill has been very carefully designed by Parliamentary Counsel to not prohibit the sale of relatively minor items and excess items. For example, it was put to us that this bill might stop the sale of excess paperclips. It certainly does not do that. The main undertakings are confined very clearly and would exclude minor matters. There is perhaps an issue associated with a small generation plant, but in order to privatise or sell off a small redundant generation plant it would be entirely possible for the energy services corporation to come to this Parliament with a motion. As members of Parliament we need to trust ourselves that we are going to deal with such matters in a sensible fashion.

Why is this necessary? Section 11 of the Energy Services Corporations Act 1995 is entitled "Prohibition on privatisation of energy services corporations". It provides that it is unlawful to sell an energy services corporation except to an eligible Minister. This is where we get into the realm of equivocation the like of which has not been seen since Hamlet's three witches gave him a foretaste of his future. The Government has indicated that it is interested in escaping this provision, and in escaping its election commitment not to privatise the electricity industry. The Government is arguing that it does not intend to sell the generators; it simply intends to lease them for possibly 50 or 100 years, depending on the leasing arrangements. That is privatisation by another name. If the generators are leased for 50 years, the people of New South Wales will lose complete control over them, the emissions they create and how they are operated and bid into the market for 50 years or longer. It is effectively privatisation.

In the case of the retailers the equivocation runs like this: The retailers themselves are not separate energy services corporations; they are owned within distribution energy services corporations. The argument is that this is not privatisation because the business of an energy services corporation is being sold, not the energy services corporation itself. It is a fine point, but it becomes even finer when one considers the reality of the way in which EnergyAustralia, Integral Energy and Country Energy are operated in the context of the national electricity market and national competition policy. The distribution business units, the units dealing with the wires and poles; and the retail business units, the units that buy energy from the national electricity market and sell it to consumers; are operated as separate entities within each of those three corporations. They are, for all intents and purposes, ring-fenced from each other: financial and administrative walls exist between them. The process is in effect, if not in black-letter law, the privatisation of a business that ought to be called a separate energy services corporation. Accepting the structural constraints and implications of the national electricity markets, it is probably accidental that those two units exist within the one business body. Again, it is equivocation. It is effective privatisation to sell those business units of the energy services corporations.

The question is whether the Government will seek to use the loophole that is created by those structural issues under section 11 of the Energy Services Corporations Act 1995. I direct the House to the media statements made by both the Treasurer and the Premier on 29 December 2007. In the *Daily Telegraph* and on the ABC a spokesperson for the Premier is reported as confirming that the Government does not need special legislation for the sale to go ahead, but some bills may be required at the back end of the process. We take the back end of the process to be those things that the Premier and the Treasurer promised in their 10 December media release, such as extending the period of retail price protection for consumers and providing additional funds for environmental purposes. Those are not the substantive issues. The Premier said in his media statement, and the Treasurer reiterated, that it is possible for them to privatise the industry without changing legislation and without reference to Parliament. It is certainly true from our reading of the legislation that the raw version of the Premier's

media statement on 10 December 2007 could be implemented without reference to Parliament. That means that a carefully designed privatisation process could escape the need for parliamentary scrutiny. That is a bad outcome. It is important that Parliament has an opportunity to scrutinise this privatisation for three key reasons: First, the privatisation is controversial and there is great public interest in the outcome; secondly, the impacts of privatisation are massive and long lasting and the privatisation itself is completely irreversible; and, thirdly, to privatise these activities of public enterprises without reference to Parliament is a violation of a very basic understanding of democracy.

I will address each of those issues. A number of opinion polls have been published and there has been extensive debate in the media about what they mean. Of course, pollsters can ask questions and shape the information given to those surveyed to get whatever answer they want. Interestingly, when one looks carefully at the data presented one sees that all the polls showed that, of those people who held an opinion, 63.4 per cent or more oppose privatisation. The Infrastructure Partnerships Australia poll released on 21 February 2008 indicated that, of the 70 per cent of those surveyed who knew about the issue and had an opinion, a massive 63.4 per cent opposed increased private sector control of the electricity industry. The Unions New South Wales poll had a far higher figure. Perhaps the least biased and most independent was the Herald-Nielsen poll published yesterday, which showed that 64 per cent of those surveyed opposed and 25 per cent support privatisation. Whatever one makes of those numbers—and they are just numbers—they indicate massive public interest in privatisation. A huge debate is also raging among those who are concerned about the environmental, social and economic consequences of privatisation. That debate has dragged in a number of economists, engineers and environmentalists with a range of opinions, but most oppose privatisation. Nonetheless, privatisation has created huge controversy and Parliament should adjudicate on it.

The second issue of concern is the impact of privatisation. Whichever way one looks at it, there will be substantial and long-lasting effects. The Government is proposing an irreversible step. Once the retailers are sold to the private sector the sales will be completely irreversible. Once the generators are leased it will extremely expensive to recall the leases and to bring the generators back under full public control. The Greens believe that the impacts of privatisation will be bad, but others have a different view. Either way, it is important that those views are tested in the people's Parliament so that everyone has an opportunity to have their views heard.

The third concern involves democratic principle. The proposed move will result in a massive change in the way the energy system in New South Wales will operate. Energy and electricity in particular are essential services. It is a matter of democratic principle that the issue be debated by Parliament and approved or rejected according to the will of the people. In particular, the Government has no mandate for privatisation. Before the election the Government made it clear that it was opposed to privatisation. In fact, I recall the Government saying that if electors voted for Peter Debnam's Opposition 30,000 public sector jobs would be lost. The Government fought the election on the basis that it would protect public sector jobs and the public sector, but it has made a 180-degree turn and intends to decimate the public sector.
This program of privatisation proposed by the Government has massive economic implications, social implications, environmental implications and human implications. Any way one looks at it, no matter what one's opinion on privatisation is, one ought to adopt the principle that the bill comes before both Houses of Parliament and is approved by both Houses of Parliament before it becomes a fact.

The bill does not stop privatisation. Passage of this bill through both Houses of Parliament and assent by the Governor are not moves to stop privatisation. They are moves to make sure that the sale of retailers and the long-term leasing of generators, and any other transfer of ownership of main undertakings of energy services corporations do not proceed without reference to Parliament and without parliamentary approval. It is not inconsistent to vote for this legislation and then, if the Government wishes to proceed and puts motions before both Houses of Parliament for the sale of retailers and the long-term leasing of generators or any other ownership change, to vote for those motions as they arise. It is not signalling opposition to privatisation. It is signalling a concern that it should not proceed without parliamentary approval.

Having said that, we do not attempt in any way to disguise the fact that we are opposed to privatisation. We join with the trade union movement, with the vast majority of the environment movement, with the vast majority of the community and with the vast majority of those who are looking at these issues and say that we should not have privatisation. Nonetheless, I commend the bill to the House and urge members to support this legislation, which is nothing more than a statement of democratic principle about who has the right to determine the future of this important infrastructure.