

**TAXATION LEGISLATION AMENDMENT BILL (NO. 2) 2014**

*Third Reading*

Resumed from 19 November.

**MR W.J. JOHNSTON (Cunnington)** [10.55 am]: As I was so rudely interrupted yesterday, I will go back to my third reading contribution on the Taxation Legislation Amendment Bill (No. 2) 2014. I note again that for the second time the member for West Swan left me 60 seconds on a tax bill!

**Ms R. Saffioti**: I am going to do that every time!

**Mr W.J. JOHNSTON**: The member will make it a habit!

I will go back over a couple of things. I forgot to ask a question about the pastoral processing. I flagged it in my second reading contribution, but I forgot to have it clarified during consideration in detail. I refer to when a primary product is partly processed on site. I gave the example of grapes being crushed to must, but not to wine, but clearly must is an interim step. Is that primary production or secondary production? The other example I gave was turning milk to whey before it is made into cheese. A milking shed is clearly part of the primary production process and, to use those wonderful words, bodily produce, but the milking shed might also be used for the production of whey. I talked about this in my second reading contribution, but I forgot to ask that question in the consideration in detail stage. The Minister for Finance might think about how he will deal with that.

I will go through a couple of issues that we spoke about. The first is that this legislation has many elements, not only the question of primary production. I particularly draw attention to clause 24 of the bill, which amends section 36 of the Duties Act to insert stronger language to overcome legal arguments regarding the value of transferred mining tenements. The point that I am making here is that the Association of Mining and Exploration Companies was not consulted in that process, yet the bill went to the gatekeeping unit. What is the point of a gatekeeping unit if one of its tasks is not to ensure that industry is made aware of changes to laws? This is clearly a hole in the process. As I have said in the chamber previously—I will say it again now—consultation is not a weakness. Talking to industry and interested parties about legislation or government policy is not a weakness; rather, it should be seen as a strength. I imagine that if members talked to industry players who are trading in their mining tenements and titles, they would probably urge us to have a bill that allows them to reduce the amount of taxation they pay, which is natural; indeed, any taxpayer looks to reduce the amount of his or her tax. The government might have a very good public policy reason to maximise taxation revenue, and these sorts of proper public policy debates are held regarding any taxation matter. But not having the conversation is not a strength; it is a weakness. I think that the government should have consulted the Association of Mining and Exploration Companies and other groups such as the Amalgamated Prospectors and Leaseholders Association so that interested parties had an opportunity to comment on the changes to the legislation. Given that it went to the gatekeeping unit, I do not understand why the gatekeeping unit did not require government to talk to industry about it.

I turn to the main portion of the bill. Clause 6 deletes and inserts a new part 3, division 3, in the Land Tax Assessment Act and provides for the primary production exemptions. As I understand what has happened here, the Commissioner of State Revenue came to a new conclusion on what the legislation provided, and, therefore, the government decided that it needed to amend the legislation. This affects nine taxpayers. Quite rightly, we do not know who they are and we should not. We should make decisions based on policy issues, not on the needs of individuals. We are trying to come up with a scheme that allows land used for primary production purposes to be exempted from land tax, but land used for secondary processing to be subject to land tax.

The Minister for Finance explained how the agency, through the Commissioner of State Revenue, will make that decision. Effectively, the minister said that commonsense will prevail. The problem with commonsense is that it is not very common! I hope that we quickly get some clarity about how we decide which parts of land are exempt. To use the example that everyone is using, I refer to a vineyard with a winery attached. We know which parts of the land are underneath the grapevines, so we can say that is clearly land being used for primary production. We know which part of the land is physically beneath the winery and that that is land for secondary production. However, some parts of the land will be used for multiple purposes and shared between both secondary and primary production. The example I gave was hardstand. A property might have hardstand that is used for consumables for secondary processing, but at other times of the year it may be used for consumables for primary production. For example, it may be used for the crates that bring grapes to the winery—the picking and storing of the grapes is clearly primary production—but that same piece of land may be used at another time of year to store crates for storing wine bottles, or to store the wine bottles themselves, or as parking space for the trucks to take wine away from the secondary processing. It will have to be quite quickly clarified, particularly if

we are talking about only a small number of taxpayers. I urge the Commissioner of State Revenue to make those determinations as quickly as possible so that taxpayers clearly understand their obligations.

Some questions were asked about the exact cost impact of this bill. My understanding of the advice given to the member for West Swan is that it will have a \$3 million cost impact per annum—give or take. Maybe it is \$2.5 million or \$3.5 million, but it is a very small amount of money. That is fine. I am not saying that every time the government brings in legislation it has to massively increase taxes, as with all the other taxation bills we have debated recently. However, if the government implements these changes and is then advised by the Commissioner of State Revenue that the revenue is significantly different from what was expected, that would clearly be a cause for concern in a public policy sense.

I turn to the provisions regarding retirement villages. I acknowledge that the Minister for Finance is not the relevant minister; I think the minister responsible for consumer protection has carriage of the Retirement Villages Act 1992. However, there is an interaction between what we are doing here and what happens in that legislation. Under the Retirement Villages Act, costs that can be passed from the operator of the village to the residents of the village are limited. I am unsure what the change to land tax will mean. Effectively, we will tax land that is being banked by the developer of a retirement village—in other words, land that is yet to be used for the purpose of the retirement village as further expansion stages or whatever might be involved. The land that was previously untaxed will now be taxed because of a State Administrative Tribunal decision that overturned the commissioner's understanding of the Land Tax Assessment Act that those land tax expenses are not to be passed on to village residents.

I used this example previously in debate about land tax. Westfield pays land tax for Westfield Carousel and although Westfield is quite a significant landholder, the person who ultimately pays the tax is the tenant. This is the same. Someone has to be a significant landholder to pay land tax, but some of my constituents say that they should have to be a much more substantial landholder to pay land tax. They say that the land tax threshold comes in too low. However, leaving that debate aside, one way or another I do not think we intend to tax the residents of a village, but if the land tax costs for the developer of a retirement village is allowed to be passed to the residents, that is the effect of what we are doing here—that is, we will pass on the land tax to residents of the village. Neither the minister nor this legislation changes that, but it is still an important issue in deciding on our support for the bill. I appreciate the minister's undertaking that when the bill is debated in the other chamber, that issue will be clarified. As I said, it is not of itself fatal or otherwise to this bill.

I know that the member for Gosnells wants to say a few words; he also participated in debate. I will make two closing statements. The government's plan is to increase taxes by 77 per cent over the period from when it won office to the end of the current budget out years—the 2017–18 tax year. That is a very significant increase in the tax effort in Western Australia, and by any measure we will continue to be the highest taxed state in the country. Given the problems in the budget elsewhere, I cannot imagine that the government will give us any tax relief.

Finally, I found the minister's behaviour in the debate refreshing. He took us seriously and tried to properly answer our questions. The three members on our side who contributed to the debate—the member for West Swan, the member for Gosnells and I—raised very legitimate questions and the minister responded with answers that respected the questions we asked. I encourage him to take that attitude the next time he comes in here, because it was not his attitude the last time we had a tax debate. With those few words, I note the contents of the bill and look forward to the next time we can debate taxation legislation.

**MR C.J. TALLENTIRE (Gosnells)** [11.10 am]: I rise to make a brief third reading contribution to the Taxation Legislation Amendment Bill (No. 2) 2014. I note that some useful debate has been had on a number of issues. I want to begin by referring to the impact of this legislation on retirement villages and properties that are generically known as retirement villages but may be covered by other legislation. During the consideration in detail stage, I asked if the minister could tell me whether a property that is covered by the Residential Parks (Long-stay Tenants) Act would be dealt with in the same way under this legislation as a retirement village that is covered under the Retirement Villages Act. I am still waiting for that answer, and I look forward to the minister providing me with that answer during his third reading response. It is a fairly straightforward question.

I note that when it comes to the amendment to section 39B of the Land Tax Assessment Act to include the words “dwelling park land”, there is the use of generic terminology. I therefore want to know from the minister whether “retirement village” would also include a property that people may refer to as a retirement village but is covered by another piece of legislation. As the member for Cannington said, the carriage of matters relating to retirement villages and properties covered by the Residential Parks (Long-stay Tenants) Act is the domain of the Minister for Commerce, but clearly there is some interplay with this legislation. People who live in these sorts of retirement villages are always concerned about the possibility of additional charges coming their way. The owners of the various villages of course want to maximise their profits and they do that by passing on costs to residents whenever possible. Therefore, we need some clarity about that matter.

Another issue that I focused on during the debate was clause 6 and the definition of “bodily produce”. I put it to the minister that people who are engaged in livestock stud production in some form are not actually making a profit out of the sale of bodily produce—they would be if they were selling the progeny, and progeny is mentioned in the bill—but that it is actually about genetic material or genetic code. I am still unclear whether that definition is included in what we understand by the term “primary production”. I can think of a number of stud producers, equine and bovine, and other animal producers, whose main centre of business activity would not be seen as the production of bodily produce. The minister asked during the debate whether we are talking about the semen or the eggs involved. It is not about those reproductive materials; it is about the code that is contained within those materials. Therefore, we need to be very specific and accurate when we talk about these things.

There was another area of the debate that I found disappointing. I note the member for Cannington’s comment that the tenor of the debate was one of cooperation and a willingness by the minister to engage and discuss and get into issues. But I found the minister’s approach to one issue that I raised somewhat disappointing. That was around the definition of “fungi” and the rewriting or the denial of science that the minister engaged in when he suggested that fungi are plants. I think the minister accepts and understands that fungi are not plants, but he was not prepared to amend the legislation to reflect what we know. That is disappointing. When we go through consideration in detail, the opposition brings up issues and seeks to improve legislation. Surely that is a perfect opportunity for the minister to accept an amendment to the bill, or at least to indicate that in the passage of the legislation from this place to the other place, an amendment can be made. I note that ministers who are confident with their portfolios are always prepared to accept that amendments can be put forward during the transition of a bill from one place to the other. However, I am afraid the minister appeared unwilling to do that. That means that we have something in our legislation that is factually incorrect, and that is disappointing.

**Mr J.R. Quigley:** That is a very good point that you make, because a minister as confident as the former Attorney General, Christian Porter, did exactly what you said on the mandatory sentencing legislation, when he said, “Between this place and the other place, I will have that corrected, member for Mindarie.”

**Mr C.J. TALLENTIRE:** It is interesting that the member for Butler should mention the former Attorney General, Christian Porter, now the federal member for Pearce. I recall that when we were debating the bikie legislation, which contained a provision that the police could hold the firearms of people who were part of a recognised criminal gang for as long as it took to name that criminal gang, Christian Porter said that was a ridiculous impost on the state, and he would see that that provision was amended before the bill went to the other place. Therefore, it is clear that ministers who are confident with their portfolios are prepared to make amendments, and those who are not confident seem to be timid about doing so. The fungi example says a lot as well about the Liberal Party’s attitude to science. There are plenty of examples to show that the Liberal Party does not want to engage in modern science at all.

I know that I am a couple of years older than the minister, but I am sure that if the minister did any biology in lower secondary or upper secondary school, it would have been made plain to him that fungi are not plants. I am sure that when the minister had his high school education—30 years ago, or perhaps 40 years ago; I am not sure how many years ago it would have been for him—that would have been made plain to him, but he has obviously not bothered to keep up with it since.

**Mr D.A. Templeman:** The member for South Perth studies mould! He is a cheesemaker from way back!

**Mr C.J. TALLENTIRE:** I could not resist one comment that came through to me following the debate, and that was what did one mushroom say about the other mushroom, and that was that he was a fun guy! I do not know that that applies to the minister necessarily.

Several members interjected.

**The ACTING SPEAKER (Mr N.W. Morton):** I suggest that we stick to the bill and not to comedy, member.

**Mr C.J. TALLENTIRE:** Taxation legislation should contain accurate terminology, and eukaryotic organisms should be correctly defined in this legislation.

There have been some estimates around the cost of this measure to the state budget. It is not an extraordinarily large amount of money, but it has never been explained to us whether this measure will provide financial benefits and act as a stimulus to primary producers to go further. I think that is part of a cost–benefit analysis that the government should be undertaking. If the government is making this sort of taxation change, it should be aware of what the benefits to the state might be, not just the costs. That is something we might hear from the minister in his third reading response. Otherwise, I support the legislation. I look forward to hearing from those engaged in primary production, where they are seeking to engage in some form of downstream processing that they feel more confident to undertake without the impost of land tax on secondary production operations on their properties. That will be a good thing for the state and a benefit to all.

**MR D.C. NALDER (Alfred Cove — Minister for Finance)** [11.20 am] — in reply: I thank members opposite and all those involved in the debate on this bill. I think we all concur that this is a good outcome, particularly for primary producers in areas such as the Swan Valley. I thank all those involved who way back in mid-last year gave their contributions in bringing this forward.

I have reviewed *Hansard* on the questions about what brought about the committee amendment to the bill to extend the operation of the secondary processing exemption back to 2012–13. The member for West Swan asked a question and was keen for me to rule out anyone from my office or the Treasurer's office having a role in initiating the committee amendment. I can confirm that the amendment was initiated by the Office of State Revenue. There was concern that taxpayers who had not yet been investigated by the commissioner would be subject to the unexpected impost of having their primary production exemption removed for the past two years prior to the bill coming into effect. Much was made in the questioning about whether this matter had been brought to my attention by the Treasurer or the Treasurer's office. I can confirm that this matter was not brought to my attention or the attention of the Office of State Revenue by the Treasurer or the Treasurer's office. However, the Office of State Revenue consulted with the Department of Treasury, but not the Treasurer or the Treasurer's office. There was also an initial question about whether there had been discussions with taxpayers or people lobbying on the issue of making the secondary processing amendments retrospective.

A question was also asked whether it was raised in any of the submissions during the public consultation process. I can confirm that I am not aware of any discussions with taxpayers or lobbyists on this issue. I would like to make the Assembly aware that while the committee amendment was being considered by my department, a written inquiry was forwarded to my office by the member for Swan Hills on behalf of a constituent seeking assurance that the act would allow the secondary processing exemption for the two years prior to the legislation coming into effect. This reaffirmed the concerns already raised by the department, and hence the amendments.

I would like to thank the member for Swan Hills for bringing this matter to my attention. Overnight, the Office of State Revenue has also reviewed the public consultation submissions and found that one respondent indirectly raised the issue by querying whether the secondary processing amendments could be made retrospective.

I will respond now to further issues raised during this third reading debate, particularly on partial production such as grapes to must or milk to whey. Primary production ceases at the first stage of any processing, so the exemption will apply to primary production but not to any stage of secondary processing. With regard to the broader consultation, I reaffirm that this is clarification of an existing law and taking back. That is why there was no consultation with the Association of Mining and Exploration Companies and why the regulatory gatekeeping unit was consulted to ensure that it was in line with the original intent of the law.

We reaffirm the practical approach, consistent with assessments prior to 2012. Although we talk about those hard stands, those issues have existed all the way through. It is a pragmatic approach that involves undertaking the assessments and they will continue. We will continue to monitor the practical application of this to ensure that it continues with the intent of what we all believe is appropriate.

The same applies to retirement villages, which we will continue to monitor as we implement the legislation. We have always been consistent in our approach. The original intent of the law was that the land and the surrounds involved in the process of a retirement village are, for all intents and purposes, for retirement villages. We are trying to capture situations in which there are large tracts of land that might be used for development of other purposes, not penalise retirement villages per se. We have amended the legislation to return it to its original intent to ensure that the policy is encapsulated. We will need to continue to monitor the position to ensure it unfolds, practically, in the way it is intended.

I have additional advice from the Department of Commerce, whose officers are present in the Speaker's gallery, with confirmation that for long-stay residential parks, the Residential Tenancies Act 1987 specifically excludes retirement villages. Current land tax issues around retirement villages will not extend to parks, if that makes sense. I think that is the query from the member for Gosnells.

**Mr C.J. Tallentire:** It is a query. I am not sure that is the answer.

**Mr D.C. NALDER:** We will take that up offline, but that is the advice I have received at this point.

Semen obviously carries the genetic code of bloodstock, irrespective of whether it is from sheep, cattle or horses. This legislation is designed to pick up that bodily fluid transfer. Whether it goes far enough or should be defined further we are prepared to discuss further. However, we believe it is picked up enough in the current legislation to ensure it is covered as part of primary production.

As I outlined during the debate, the Commissioner of State Revenue will adopt a pragmatic approach to the determinant of the land use for primary and secondary production, as I explained. Taxpayers will be consulted and rights of objection and appeal will apply if taxpayers do not agree.

With regard to the advice that fungi is not a plant, I concur with the member's position, but the advice I received from the department was that it encapsulated fungi to the extent that it will be treated as primary produce; therefore, the advice I received was that it is not necessary to further clarify. I am taking that on advice.

**Mr C.J. Tallentire:** It will make us look silly.

**Mr D.C. NALDER:** As I said to the member for Cannington, we are happy to explore the other issues he raised. I am happy to look at that further. The advice I have received from the department is that it is appropriately picked up. That is the basis on which I have supported this amendment. I am more than happy to consider it on the way through. As I have told the house, that is the best advice I have received to date.

In conclusion, I would like to thank the members who supported this legislation. It was first raised in 2013 as a grievance by Andrea Mitchell, the member for Kingsley. I thank her for raising this in the house, which was where this issue was kickstarted.

**Ms R. Saffioti** interjected.

**The ACTING SPEAKER:** Member!

**Mr D.C. NALDER:** Although the funding amount on the returns may not be large in the context of an overall state budget, I can assure the members of this house that it is considerable for the nine taxpayers who have been affected and it means a lot to them.

**Ms R. Saffioti** interjected.

**The ACTING SPEAKER:** Member!

**Mr D.C. NALDER:** It restores the original intent of the law and I think it is a fantastic outcome for them.

In addition to the member for Kingsley, I thank also the member for Swan Hills for his contributions and the part he has played in pushing this outcome for his constituents.

Several members interjected.

**The ACTING SPEAKER:** Members!

**Mr D.C. NALDER:** I believe this is a great outcome for the areas of Swan Hills and West Swan, and I look forward to the bill receiving royal assent eventually after it has passed through the upper house.

Question put and passed.

Bill read a third time and transmitted to the Council.