

**REVENUE LAWS AMENDMENT BILL 2012**

*Second Reading*

Resumed from an earlier stage of the sitting.

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 C.J. TALLENTIRE:** I am acting under instruction from the shadow Treasurer. I have a question on clause 1 relating to the scope of this legislation. I note that this bill amends the Land Tax Assessment Act 2002 and am interested to know how significant the amendments are to the Land Tax Assessment Act.

**Mr T.R. BUSWELL:** They are quite minor, but I thank the member for his question.

**Clause put and passed.**

**Clauses 2 to 4 put and passed.**

**Clause 5: Section 42 amended —**

**Mr B.S. WYATT:** Section 42 of the Duties Act deals with double duty. Can the Treasurer quickly explain what is driving this amendment to section 42 of the Duties Act?

**Mr T.R. BUSWELL:** I understand that it creates a requirement that the agreement and the transfer are subject to the same rate of duty. It may help if I read from the explanatory memorandum. It states —

... a married couple separate and the wife agrees to transfer her interest in their property to the husband. The agreement is a matrimonial instrument under section 129 and is liable for nominal duty only. However, the husband can use section 42 in its current form to substitute his brother as transferee of the wife's interest. The wife has transferred her interest in the property to her husband's brother and only nominal duty has been charged. The exemption under section 129 would not apply nominal duty to this transaction.

**Mr B.S. Wyatt:** That would stop those more distant transfers in a marriage dissolution.

**Mr T.R. BUSWELL:** There are probably other examples. That is one example. It would stop the transfer of the benefit to someone to whom the benefit was not intended to be made available.

**Clause put and passed.**

**Clauses 6 and 7 put and passed.**

**Clause 8: Section 127 replaced —**

**Mr B.S. WYATT:** Clause 8 deletes the current section 127 of the Duties Act and replaces it with the proposed section 127 in the Revenue Laws Amendment Bill 2012 before us tonight. Again, what is the weakness in the current section 127 that has driven its deletion and replacement with a new section 127?

**Mr T.R. BUSWELL:** There is good example, member for Victoria Park: currently, if a person dies and, I assume, they hold that property in their own name, it can be transferred to their beneficiaries at nominal duty. If that asset is held within a superannuation fund and it is transferred to the beneficiaries, there is no provision to apply the nominal duty provision.

**Mr B.S. Wyatt:** For the transfer to beneficiaries?

**Mr T.R. BUSWELL:** Yes. Under the current provision the transfer can only be done while someone is alive; this clause just fixes up an anomaly. The previous clause closed what I will call an unintended loophole; this one deals with an unintended imposition.

**Clause put and passed.**

**Clauses 9 to 13 put and passed.**

**Clause 14: Sections 167 and 168 replaced —**

**Mr B.S. WYATT:** This clause makes significant changes in respect of sections 167 and 168 in that they are being replaced with proposed new sections 167 and 168 regarding the exemption. Proposed new section 167 is headed "Exemption if nominal duty would be chargeable on transfer", and proposed new section 168 is headed

“Exemption if transfer duty would not be chargeable”. Again, what is the weakness in the current law that has driven the change?

**Mr T.R. BUSWELL:** I can assure the member that it seems to be a very complicated and detailed part of the law. The essence is that the intent of sections 167 and 168 are currently not being delivered by the legislation as it stands. I will again use the example of a transfer of land from a husband to a wife as a consequence of a marriage break-up. I think that example is used because it is an obvious example that would normally attract a nominal transfer duty pursuant to section 131. If, however, that land were held by a landholder and the husband held a significant interest and the husband’s interest was transferred to the wife, the exemption from landholder duty would not be available, as section 131 only has application in the context of the parties to the marriage or de facto relationship. So it is attempting to deal with some of those anomalies, and to try to give some consistency between transfer duty and landholder duty.

**Clause put and passed.**

**Clauses 15 to 20 put and passed.**

**Clause 21: Sections 189 to 192 replaced —**

**Mr B.S. WYATT:** Clause 21 seeks to replace sections 189 to 192 with new section 189. Can the minister explain again what is driving this change? Clause 22 seeks to then amend section 189. Will that amend the new section 189 that will be added to the bill? Does the minister understand my curiosity? It seems to be amending the amendment in the original bill. Why not simply fix up section 189 in light of the fact it was all printed at the same time?

**Mr T.R. BUSWELL:** The member notes that, essentially, this clause will replace sections 189 to 192.

**Mr B.S. Wyatt:** That is right. The new section 189 in clause 21 will be then printed. Clause 22 seeks to amend that new section 189.

**Mr T.R. BUSWELL:** The advice I have from parliamentary counsel is that clause 22 will insert new clause 189(6), which effectively deals with a matter that is largely non-related to the balance of new section 189. It was felt by parliamentary counsel that it was best dealt with by inclusion of a separate clause. I am sorry I cannot give the member any more advice than that—unusual as that appears. Effectively, he is saying, and I agree with him, that we are getting rid of a range of sections and introducing new section 189, and then amending new section 189 in the very next clause. That is the advice I have.

**Mr B.S. WYATT:** What is the fundamental difference between proposed subclause (6) and proposed subclauses (1) through to (5)?

**Mr T.R. BUSWELL:** I agree; it is moderately technical.

**Mr B.S. Wyatt:** I am sure I won’t understand a word of it.

**Mr T.R. BUSWELL:** Clause 21 effectively deals with the acquisition of significant and further interests and discrepancies between the treatment of the two in the existing legislation. Section 22 deals with issues of prescribed periods and what happens in those prescribed periods. For reasons that I sincerely wish I could answer in more detail, member for Victoria Park, parliamentary counsel deemed it was best dealt with by way of two separate clauses.

**Clause put and passed.**

**Clauses 22 to 28 put and passed.**

**Clause 29: Section 28 amended —**

**Mr B.S. WYATT:** This clause amends section 28 of the FHOG act and sets out amendments to the extension of time for objectors. I am unsure what has driven this. Is this simply aligning with another act? Is that what we are doing here, or is this being driven by a practical situation?

**Mr T.R. BUSWELL:** It is aligning with the Taxation Administration Act.

**Clause put and passed.**

**Clauses 30 to 33 put and passed.**

**Clause 34: Glossary clause 6 amended —**

**Mr B.S. WYATT:** This clause amends the glossary clause 6 regarding the capping provisions applying to the compulsory acquisition of land or the resumption of land. I am interested to know whether this is taking place on a regular basis. I can understand why we are making the amendment, but I would like to know whether the resumption of land has been happening on a regular basis and therefore people have not been able to take advantage of the cap under the Land Tax Assessment Act.

**Mr T.R. BUSWELL:** The advice I have is that we are aware of only one instance.

**Mr B.S. Wyatt:** This was land that was resumed or compulsorily acquired under —

**Mr T.R. BUSWELL:** It was a road widening.

**Clause put and passed.**

**Clauses 35 to 40 put and passed.**

**Clause 41: Section 41C inserted —**

**Mr B.S. WYATT:** This is perhaps one of the more significant amendments contained in the 2012 bill before us tonight. This delivers on the budget commitment that I referred to during my second reading speech regarding new employees with a disability, the trigger again being the linking of the commonwealth wage subsidy scheme in accordance with a disability employment services deed 2010–2012. In light of the significance of this amendment, can the Treasurer confirm that this is an ongoing extension? What happens when the disability employment services deed expires in 2012?

**Mr T.R. BUSWELL:** That is a good question. Firstly, from our point of view and the reason it is an exemption, as we discussed earlier, is it is an ongoing scheme. The advice we have had from the commonwealth is that it is unlikely that the disability employment services deed 2010–12 will not be an ongoing scheme.

I am assuming that the legislation provides the capacity to pick up by way of regulation an alternative scheme, should that be required. In other words, should the commonwealth's disability employment services deed morph into something completely different, we can deal with it by regulation. The intent is not to have this cease if there is some tinkering by the commonwealth, and it will just be a matter of us crafting another linkage to whatever replaces that service at the commonwealth level, or some other mechanism as is deemed necessary.

**Mr B.S. WYATT:** I have a similar question with the Indigenous wages rebate. I do not know whether there has been any change to the rebate or exemption. As we progress through the years, will the Treasury be able to provide information on which size employers are accessing the exemption so that we can get a picture of who is taking advantage of the exemption?

**Mr T.R. BUSWELL:** We most definitely can. It might not be Treasury, because there has been this separation between the Office of State Revenue and Treasury. It has been painful, and I think I can speak on behalf of everyone involved, but we still maintain pretty positive contacts. I am sure that from a whole-of-government point of view it will be possible, providing there is no privacy related exposure, but I cannot imagine there would be. I think it is a good thing to do.

**Mr B.S. WYATT:** Under proposed section 41C(2), wages paid or payable to a new employee are exempt from payroll tax if, as stated under paragraph (a), the employer received or was entitled to receive a disability wages subsidy or, under paragraph (b), the employee was eligible for some form of disability support. It seems quite a broad catchment of people with a disability, because I would have thought that “some form of DSC disability support” is broader than a disability wages subsidy; hence, the extra cost to the state compared with the Indigenous wages subsidy. Are the Disability Services Commission's disability support criteria defined? It is a very broad catchment, and I think it is a good broad catchment of people who employers are able to employ and then capture that exemption benefit.

**Mr T.R. BUSWELL:** In drafting the legislation it became apparent from advice received from the Disability Services Commission that simply applying the commonwealth criteria in its purest form would mean a number of people would fall out of scope, so including the DSC disability support criteria would enable us, effectively, to broaden the scope to pick up those people. It would be grossly unfair if the application of the commonwealth definition excluded someone we would like to encourage into employment. I suppose it can be called a broadening of the strict commonwealth definitions.

**Mr B.S. WYATT:** This is a very good and sensible amendment. Section 41(3), the next one down, deals with employers who, I assume, seek to remove current employees or reduce the hours of current employees and to employ someone to take advantage of the exemption. Is this up to the commissioner? What triggers this? Is it necessary to have an unfair dismissal action succeed, or is the commissioner simply able to conduct his own investigation and come to his own conclusion about when the circumstances outlined in subsection (3) occurred?

**Mr T.R. BUSWELL:** It is a good question. This clearly is designed to stop employers putting somebody off to put somebody else on, to take advantage of the exemption. I imagine—this is a bit of a voyage of discovery—that it would be either at the instigation of the Commissioner of State Revenue or by complaint. I cannot give the member any historic evidence around that because we do not have any, but I suppose it is trying to provide a broad provision by which action can be taken, irrespective of the source of the complaint, if it is shown that that

is indeed what the person did. I have just been reliably informed that, firstly, it is a deterrent and, secondly, it will discourage.

**Mr B.S. WYATT:** That makes sense to me, Treasurer. Out of interest, why was a similar clause to deter not put in for the Indigenous wages subsidy? Was it simply because it is a smaller program?

**Mr T.R. BUSWELL:** My advice is that the commonwealth captures that in the administration of the program.

**Clause put and passed.**

**Clause 42 put and passed.**

**Clause 43: Glossary clause 1 amended —**

**Mr B.S. WYATT:** Obviously, this clause will change the definition of “business”. I just want to ask why. What is the difference that is driving this change?

**Mr T.R. BUSWELL:** My understanding is that our definition of “business” is not in line with that used in other jurisdictions. It will really just give some consistency to the definition of the term “business” across different jurisdictions.

**Clause put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR T.R. BUSWELL (Vasse — Treasurer)** [9.52 pm]: I move —

That the bill be now read a third time.

**MR B.S. WYATT (Victoria Park)** [9.52 pm]: I will be very brief. I want to again emphasise the opposition’s support, particularly for the payroll tax exemption regarding new employees with a disability and for the payroll tax rebate for Indigenous wages. I think they are creative ways to get into the workforce people whom governments across Australia are trying to encourage into the workforce. We all know that we have a shortage of labour around the country, particularly in Western Australia, so unique, innovative ways to get people into the workforce are certainly supported by the opposition. I think these two initiatives will certainly do that. I commend the government for the initiatives in both areas. Although they are small, I think they are important and certainly may set a precedent for other governments around Australia that may look to do something similar as they implement their own policies to encourage into the workforce people with disabilities and Indigenous people who have not been in the workforce for a significant period of time. I again emphasise the opposition’s support for the bills.

**MR T.R. BUSWELL (Vasse — Treasurer)** [9.53 pm] — in reply: I rise to very quickly thank the member for Victoria Park for his contribution to the debate, the opposition for its support of the bill and, importantly, the four advisers from both the Department of Finance and from Treasury who have assisted us. They enabled us to work through some quite complicated areas of taxation law in Western Australia. Having listened to some of the excellent quality advice given, it has simply confirmed in my mind, as it has for the member for Victoria Park, that there are some aspects of that law that are very complicated. It is not for us to go there, because I am sure that the best we could do is to make complicated laws even more complicated! I thank them very much for their professional advice, as always.

Question put and passed.

Bill read a third time and transmitted to the Council.