

**LAND LEGISLATION AMENDMENT (TAXING) BILL 2014**

*Second Reading*

Resumed from 18 March.

**HON SUE ELLERY (South Metropolitan — Leader of the Opposition)** [8.14 pm]: The Land Legislation Amendment (Taxing) Bill 2014 amends four acts. It authorises fees prescribed under those acts to exceed the amount they cost to deliver, and where that fee is greater than costs incurred, it deems that fee to be a tax because, of course, if a fee is in excess of the cost of delivering a service, that could lead to all sorts of consequences including the good citizens of Western Australia claiming that they should not be required to pay by way of a fee an amount in excess of the cost of delivering it. We are using a completely artificial device; we are declaring that the fee that until now has been charged by Landgate—we are quite happy to call it a fee—is being deemed and defined to be a tax. The explanatory memorandum tells us that; it reads —

The *Land Legislation Amendment (Taxing) Bill 2014* operates in conjunction with clauses 6, 8, 10 and 12 of the *Land Legislation Amendment Bill 2014* which amend the *Registration of Deeds Act 1856*, *Strata Titles Act 1985*, *Transfer of Land Act 1893* and *Valuation of Land Act 1978* respectively. The amendments to these Acts authorise fees prescribed under those Acts to exceed the amount, or an estimate of the amount, needed to recover the costs incurred in relation to products and services in relation to which the fee relates. Where the fee is greater than the costs incurred or estimate of the costs incurred, the over-recovery is characterised as a tax. Section 46(7) of the *Constitution Acts Amendment Act 1899 (WA)* requires a separate bill to impose the tax. This Bill imposes the tax.

I will not repeat the arguments that I used in my contribution to the debate on the substantive bill, but we should be under no illusion about what we are doing. We are using words to describe something as a tax that hitherto has always been a fee to get around the fact we are going over and above the cost of delivering the service or providing the product. We are deeming the fee to be a tax. We support the bill for the same reason that we supported the Land Legislation Amendment Bill—that is, we think that it is appropriate that Landgate be put on a footing that allows it to retain what it generates from the cost recovery—plus process to make sure it is financially sustainable into the future. Without reflecting on the decisions of the house, the opposition believes that the bill the government has used to do that, which was just passed, does not do that. What has been put in place to deliver that is in fact a series of policy decisions. It is not worth us having a long argument about this particular bill because our argument during the previous debate was about the nonsense that was the previous bill. Having made that erudite contribution, the opposition supports the bill, but members should be under no illusion about what the government is doing. It is using one set of words to define something as a tax that up until now has been defined as a fee for the purposes of getting around the provisions that do not allow us to go over and above cost recovery.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [8.19 pm]: The Land Legislation Amendment (Taxing) Bill 2014 is a taxing bill that will enable Landgate to smooth out the situation referred to in the briefing notes. Obviously, we still have the same level of concern because we are going down a path in this state that was not contemplated by the Westminster system—and, indeed, is abhorred by that system. We acknowledge that Landgate has had to predict fluctuations some 18 months ahead and, as such, we do not have a problem trying to smooth out that marketplace to enable land charges under the Registration of Deeds Act, the Strata Titles Act, the Transfer of Land Act and the Valuation of Land Act to be smoothed out. We understand that principle, as Hon Sue Ellery has so eruditely articulated. But we are not doing that. We are actually creating a tax, and the moneys raised by that tax may, and most probably will, end up in general revenue for the benefit of the state and not for the benefit of those people who will be affected by the Land Legislation Amendment (Taxing) Bill. The amendments in this bill will authorise the prescribed fees in each of these acts to exceed the amount, or an estimate of the amount, needed to recover the costs of the products and services to which the fees relate. Therefore, it is a tax. When the fee is greater than the costs incurred, or an estimate of the costs incurred, the over-recovery is characterised as a tax. To the extent that the fees under the Registration of Deeds Act, the Strata Titles Act, the Transfer of Land Act and the Valuation of Land Act are a tax, this bill imposes a tax.

Section 46(7) of the Western Australian Constitution Acts Amendment Act requires that a separate bill be enacted in order to impose a tax, and that is what this bill is. There is a sunset clause in the bill that enables the minister, following a review that will be completed by the end of 2017, to make a decision based on the review to allow the provisions of the act to carry over for another term of five years. That decision is also disallowable. However, the principle of a taxing regulation is not disallowable.

**Hon Adele Farina:** No—not on the normal basis.

**Hon ROBIN CHAPPLE:** Yes, exactly. I hope that the minister who is handing this bill will indicate on what basis it can be disallowed, because it certainly cannot be disallowed by the Standing Committee on Delegated Legislation. It may be disallowed by this chamber, but we know that we do not have the numbers in this chamber.

**Hon Adele Farina:** So, on what basis will it be disallowable?

**Hon ROBIN CHAPPLE:** Exactly. Therefore, I would like to know from the minister on what basis this can be disallowed.

During the briefing that we received, we asked a number of questions, and I now want to turn to some of the notes that we got as a result of the questions that we asked. It was identified in the briefing that this was a tax; therefore, under section 46(7) of the Constitution Acts Amendment Act 1899 WA, a separate taxing act was necessary. Only fees prescribed in regulations are impacted by pricing reform. Landgate's commercial fees, and fees for the provision of fundamental land information to government and local government, are not impacted. Landgate has committed not to increase regulated fees by more than the increase in the consumer price index until June 2018. However, as we heard during the previous debate, beyond June 2018, those fees can be increased. So, we have a concern that this is a taxing act, and that beyond June 2018 all sorts of possibilities may arise. One hopes that should another government be in existence after 2018, some amendments will be made to this bill to ensure that the government of the day—which may or may not be the current government—will not use this bill as a cash cow or a methodology by which to generate moneys for the purpose of general government revenue.

Although only Landgate provides and maintains the land titles register and access to information in the register, Landgate's fee setting for regulated products and services will continue to be subject to oversight. We have already seen that that oversight is subject to ministerial discretion. Fees will still be reviewed annually as part of Landgate's annual budget approval process, and any fee increases would still need to be approved by the minister and the Economic and Expenditure Reform Committee, and endorsed by cabinet. However, if a future government were in the situation of this current government, where in essence this state is very close to bankruptcy, I am sure that cabinet would have some very interesting oversight of this process.

Fee regulations will still be published in the *Government Gazette* and be laid before Parliament, although the fee regulations will not be disallowable on the basis that they impose a tax. That is stated in the briefing note. Therefore, why send the bill to the delegated legislation committee in the first place?

**Hon Adele Farina:** Good question!

**Hon ROBIN CHAPPLE:** Yes, thank you. The delegated legislation committee is charged with looking at whether a fee imposes a tax; and, if it does impose a tax, we would rule it out of order.

In addition, the Land Legislation Amendment Bill 2014 contains a sunset clause to provide for the expiration of Landgate's ability to charge regulated fees greater than cost recovery. However, we know that beyond 2018, Landgate will be able to charge whatever it likes. Therefore, I am puzzled as to why we have a sunset clause, when the new power in each of the acts to prescribe fees greater than cost recovery will expire in December 2019. However, we know also that, beyond that period, the Governor, by recommendation of the minister, can move that it be extended to any period of time that he or she sees fit. The expiry of the power to prescribe fees greater than cost recovery can be postponed by proclamation of the Governor on the recommendation of the minister. That is stated in clause 6 at page 5 of the Land Legislation Amendment Bill 2014 and in proposed new section 22AB(2) to be inserted in the Registration of Deeds Act 1856, which we have just tried to deal with, unfortunately unsuccessfully. The minister cannot make a recommendation unless satisfied, after completion of the review of the pricing of Landgate's regulated fees under the Land Information Authority Act 2006, that the power to prescribe fees greater than cost recovery should not expire. That is stated in clause 6 at page 6 of the Land Legislation Amendment Bill 2013 and in proposed new section 22AB(3) to be inserted in the Registration of Deeds Act 1856. Therefore, every time we think we have some sort of control, we do not have, because at every stage it can be overturned. We are setting in place a process over which, to all intents and purposes, we will have no control in the future if the minister vis-a-vis the Governor sees fit.

**Hon Adele Farina:** No scrutiny.

**Hon ROBIN CHAPPLE:** Yes, no scrutiny.

The Land Information Authority Act 2006 is to be amended to require the minister, in carrying out the five-yearly review of the Land Information Authority Act 2006, to have regard to how the fees under the acts have been calculated, and to whether, since the last review, operational efficiencies have been achieved that would allow the fees to be reduced or not increased. We could say that we are doing exactly the opposite. The notes go on to state that the principles and methodologies applied in determining the fees, and the application of those principles and methodologies, must be considered as part of the review. That is relevant to clause 4 at

pages 3 and 4 of the Land Legislation Amendment bill and proposed new section 94A to be inserted in the Land Information Authority Act 2006.

The Governor's proclamation must be published in the *Government Gazette*. That relates to section 41 of the Interpretation Act 1984. To provide parliamentary scrutiny of any renewal of the power to prescribe fees greater than cost recovery, the Governor's proclamation must be laid before Parliament as if the proclamation were a regulation. That refers to clause 6 on page 6 of the Land Legislation Amendment Bill 2014 and proposed new section 22AB(5) to be inserted in the Registration of Deeds Act 1856. We are just going round and round in circles. The proclamation will be subject to disallowance, but not because it is a taxing bill. We can disallow it for all sorts of reasons. I would love to find out from the minister what those reasons are. I would imagine that when those matters come before the chamber, we will see a number of disallowance motions raised, not on the principles of the matters before the Joint Standing Committee on Delegated Legislation but on the principles of fairness and due diligence within this chamber.

Landgate's opinion is that it is within the terms of reference of the delegated legislation committee and its powers under clause 10.6(c) of schedule 1 of the standing orders to inquire into and report on whether the proclamation provides an effective mechanism for the review of the administrative decisions—this is what Landgate says—to postpone the expiration of the power to prescribe fees greater than cost recovery. Those administrative decisions are contained within section 42 of the Interpretation Act and section 10 of the Waterways Conservation Act 1976. We can deal with that but we cannot deal with the fact that it is a taxing regulation.

In relation to a proclamation being subject to section 42 of the Interpretation Act 1984 and subject to disallowance, Parliamentary Counsel has advised that section 26B of the Rights in Water and Irrigation Act 1914 provides an example of this in existing legislation. Because we have done it once and done it badly does not mean that we can do it again equally as badly. The idea that we actually set a precedent and therefore we have to accept that precedent means that it is right that we do it again now. Unfortunately, because we are now passing this piece of legislation, I bet your bottom dollar that we will have another bill before this place that will do exactly the same thing. It is not good policy and good practice to go down this path. Unfortunately, we wait with bated breath for the next bill to come before this chamber that does exactly the same thing.

Examples of subsidiary legislation other than proclamations—for example, orders or instruments—being subject to section 42 of the Interpretation Act also exist. The briefing note states that we should see, for example, the Aboriginal Heritage Act 1972. Fancy that; we will be dealing with some amendments to that act shortly. One wonders whether the same sorts of things will come before us in that act or an expansion of those provisions of that act. Under section 25(2) of that act, an order varying or revoking a declaration of a protected area is subject to section 42 of the Interpretation Act. Again, we should also look at the Waterways Conservation Act 1976.

We went on to try to find out who had been consulted about this legislation because one of the things that we need to do in the delegated legislation committee when dealing with matters sent before us is ensure that there has been consultation. We looked at who was consulted. I will read out the list of stakeholders that were consulted on this legislation. First on the list is the Department of the Premier and Cabinet. I wonder what it had to say about this. That is a good thing. The Public Sector Commission was consulted. The Department of Treasury was consulted—oh, yes! The Department of Mines and Petroleum was consulted. I do not know what it had to do with it. The Department of Planning was consulted. It would have had some interest in this. The Department of Parks and Wildlife was consulted, maybe in relation to the waterways act. The Water Corporation was consulted; well, that was the waterways act. The Department of Regional Development was consulted, which was odd. The Department of Lands was consulted, which I can understand. The Economic Regulation Authority was consulted. The Department of Finance was consulted. It definitely has an interest in this legislation. The Department of Housing was consulted. Yes, it has an interest. The Real Estate Institute of WA and the Australian Institute of Conveyancers were consulted. The Law Society of Western Australia was consulted. I wonder what it had to say about the legislation. SAI Global Property Division Pty Ltd was consulted. That is an odd one. Veda Advantage Information Services and Solutions Limited, InfoTrack Pty Ltd, GlobalX Information Pty Ltd and CITEC were also consulted.

**Hon Adele Farina:** What were their views?

**Hon ROBIN CHAPPLE:** We do not know. It would be really interesting if the minister could provide some of the views that were expressed, especially by the Law Society of WA.

**Hon Adele Farina:** And REIWA.

**Hon ROBIN CHAPPLE:** Yes, and maybe even Treasury. It would be nice to know what its views were.

I will return to the consultation process. Consumers of Landgate's regulated projects and services, whether the public, business or property industry, are not adversely impacted by Landgate's pricing reform. Landgate has

committed, up to 30 June 2018, that fees for regulated products and services will not increase above CPI. Retained savings may be used to reduce the real cost of services to consumers. We have not heard how it will do that. It would be really important if the minister could give us some idea of how it will do that.

**Hon Adele Farina:** Is this providing certainty?

**Hon ROBIN CHAPPLE:** Yes.

**Hon Adele Farina:** We have canvassed that. The only certainty consumers will have is that the price won't go down.

**Hon ROBIN CHAPPLE:** No, but the briefing note I have in front of me, submitted to me by the department, states —

- Retained savings may be used to reduce the real cost of services to consumers by holding fee increases to the increase in the CPI, increasing fees by less than the increase in the CPI, or may not increase fees at all.

**Hon Adele Farina:** But they are not going to reduce them.

**Hon ROBIN CHAPPLE:** If I may, through the Chair, one wonders how it will do that because it states that it will increase fees by less than the increase in the CPI or it may not increase fees at all, yet the debate we have had so far is that it will not go above the CPI.

**The ACTING PRESIDENT (Hon Liz Behjat):** Honourable member, I know that you are making your remarks through the Chair. I also think that some of the interjections that are coming from Hon Adele Farina are quite helpful but I am not sure that Hansard is able to pick those up. Perhaps if she is going to continue to interject, we could have her microphone switched on and then Hansard will pick those up or we could do it in a different way. I am just drawing it to your attention.

**Hon ROBIN CHAPPLE:** Thank you, Madam Acting President. If there are some interjections that Hansard has not picked up, I might have to repeat those interjections for the benefit of Hansard.

This briefing note was provided after I met with the people from Landgate, whom I thank for coming along; we had a long and fruitful discussion. I am sure that the minister would have got a copy of the briefing note; I am sure that I would not have got a copy without him seeing it. I want to know how Landgate may not increase fees at all, because so far all we have heard is that the increase will not be above CPI. The briefing note continues —

- Retained savings will be used to improve Landgate's systems and deliver better services to customers.

That is a statement. We now know that we can chuck some of this money into general revenue, because obviously the people at the Department of the Premier and Cabinet, the Department of Treasury and the Department of Finance have been consulted. One wonders whether this is a fully kosher response. It continues —

Pricing Reform does not impact on:

- Government or Local Government receiving fundamental land information; or
- customers purchasing land information data as a commercial product.

I think that is good —

Landgate has consulted with a large number of stakeholders in relation to its proposed Pricing Reform.

And we got the list of stakeholders, which I just read out. The briefing note continues —

The 2012 review of the *Land Information Authority Act 2006* identified that pricing of Landgate's products and services was a significant issue giving rise to a number of problems impacting on Landgate's performance, financial sustainability and organisational efficiency. A key recommendation was that Landgate identify and implement reform of its pricing model with the objective of establishing contemporary pricing structures and ensuring Landgate's financial sustainability.

I think that is definitely what we are all about here and that is why we support this legislation. It continues —

Over the period leading up to the next review of the *Land Information Authority Act* in 2017, Landgate will, in conjunction with the Department of Treasury, work to identify reforms to its pricing model to deliver these objectives. Landgate plans to implement any legislative changes to deliver reform before the expiration (at the end of 2019) ...

I do not think we have touched on that, but we will deliver some further legislation as a result of the Department of Treasury and Landgate working through and coming up with some legislative changes before the expiration of the power at the end of 2019.

**Hon Adele Farina** interjected.

**Hon ROBIN CHAPPLE:** For the benefit of Hansard, I had an interjection from Hon Adele Farina, who did not quite understand what I was saying. This briefing note states —

Over the period leading up to the next review of the *Land Information Authority Act* in 2017, Landgate will, in conjunction with the Department of Treasury, work to identify reforms to its pricing model to deliver these objectives. Landgate plans to implement any legislative changes to deliver reform before the expiration (at the end of 2019) of the proposed power to prescribe fees on a basis other than cost recovery.

**Hon Adele Farina:** The minister couldn't tell us that when Hon Sue Ellery asked what laws will impact on the price.

**Hon ROBIN CHAPPLE:** Maybe he will be able to tell us when we go into committee.

There is more in the briefing note on financial information. It states —

Information relating to Landgate's financial position is included in Landgate's Annual Report which is presented to Parliament annually ...

Landgate's profit (before payment of income tax equivalent) in the financial year ending:

- 30 June 2014 was \$40 614 000; and
- 30 June 2013 was \$38 017 000.

It certainly seems to have a fair bit of profit, which will end up in general revenue by all accounts. It continues —

Landgate pays a dividend to the State based on an increasing scale struck when Landgate became a statutory authority in 2006. No dividend was payable in the first 5 years of Landgate's operations. The first dividend calculated on the 2012/13 financial year at 15% of net profit was paid in the 2013/14 financial year and amounted to \$3 956 000. The second dividend calculated on the 2013/14 financial year at 20% of net profit was paid in the 2014/15 financial year and amounted to \$5 597 000.

Landgate also pays a National Tax Equivalent Regime income tax equivalent payment to the State. In the 2013/14 financial year the NTER cost was \$12 632 000. In addition, for 2013/14 Landgate also paid \$3 622 000 in Payroll Tax to the State.

One wonders why we need some taxing powers. It seems that the state is doing fairly well. The briefing note continues —

Landgate's total return to the State resulting from the 2013/14 financial year was \$21 851 000.

It is not a bad earner. I would like some responses from the minister to some of the questions I have asked.

**Hon Adele Farina:** I just want some clarification about the Joint Standing Committee on Delegated Legislation, because you mentioned earlier that the department mentioned that you could review —

*Point of Order*

**Hon COL HOLT:** I am just wondering whether these guys want to have a conversation or whether they want me to respond to the second reading. I am not sure.

**Hon Adele Farina:** It is a question by interjection, which the member has indicated he is happy to take.

**The ACTING PRESIDENT (Hon Liz Behjat):** It is an interjection. Thank you for that ruling!

*Debate Resumed*

**Hon ROBIN CHAPPLE:** The briefing note indicates —

On publication of the proclamation, Landgate's understanding is that it will stand referred to the Joint Standing Committee on Delegated Legislation ("Committee"), under clause 10.5 of Schedule 1 of the Legislative Council Standing Orders ...

I will read clause 10.5 for the edification of the house. It states —

Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.

The matters that the committee can look at under clause 10.6 include whether it is within power. In essence, it will be within power because it is in the act, but normally it would not be because it would be a taxing bill, so we would have ruled it out immediately under clause 10.6(a).

**Hon Adele Farina:** You no longer can, though.

**Hon ROBIN CHAPPLE:** The member has pointed out by interjection that we no longer can.

**The ACTING PRESIDENT:** Members of the public, you are very welcome in the gallery, but I ask that you take a seat while you are in the gallery; we cannot have you standing and looking down on proceedings.

**Hon ROBIN CHAPPLE:** Under clause 10.6(a), the committee must look at whether it is within power. We just discussed that. Under clause 10.6(b), the committee must look at whether it has no unintended effect on any person's existing rights or interests. That does not apply. Under clause 10.6(c), the committee must look at whether it provides an effective mechanism for the review of administrative decisions.

**Hon Adele Farina:** That doesn't apply either.

**Hon ROBIN CHAPPLE:** That does not apply either. Under clause 10.6(d), the committee must look at whether it contains only matter that is appropriate for subsidiary legislation. That does not really apply either. So, it will get referred to our committee but we will not be able to do anything with it. Great! On the strength of that bit of interaction, I would love to hear the response from the minister.

**HON ADELE FARINA (South West) [8.50 pm]:** I will keep my contribution to this debate on the Land Legislation Amendment (Taxing) Bill 2014 very short because we have established the fact that all we are doing here is allowing Landgate to impose taxes on the use of its services. I would just like to emphasise for all members of Parliament that there has always historically been a very clear distinction between a fee and a tax. If we pass this legislation, we will blur that distinction, which will create problems for the interpretation of legislation in the future, and not just in relation to this legislation; it will have an impact that reaches well beyond this legislation. It would concern me even more greatly if Landgate imposed this tax and still referred to it as a fee. I seek clarification from the minister about whether, through the passage of this bill, when Landgate charges fees above recovery cost, it will refer to that as a tax and not a fee. If Landgate continues to refer to it as a fee, it will even further blur that distinction we have had until now and that is really dangerous territory to be heading into.

The other concern I have is about the statements that the Governor's proclamation to extend the expiry period or even the imposition of fees might be disallowable instruments. That concerns me greatly when in reality the Joint Standing Committee on Delegated Legislation will not have any grounds on which to consider the instrument once it is referred. That makes a mockery of the whole process, so we are paying lip-service—it is a con—when it is said there is that capacity because it is a disallowable instrument. It is not a disallowable instrument if the terms of the Joint Standing Committee on Delegated Legislation are so restricted that once the instrument comes to it, all it can do is say that it does not tick one box and does not meet this or that, and shoot it back. That is a real concern. In reality, it may be a disallowable instrument, but there will be no real ability to disallow it. We need an explanation from the minister about why it is a disallowable instrument if there is in effect no capacity to disallow it, because all the considerations that can be made by the delegated legislation committee are not applicable in these circumstances. What is the government's intent in referring it as a disallowable instrument to the Joint Standing Committee on Delegated Legislation if the committee's terms of reference mean that it cannot scrutinise that instrument at all? I would be interested to know on what sort of grounds the minister envisages a disallowance on the Governor's proclamation by a member of this house would be acceptable, because, again, it will run into the same problems, by the fact that not only do we not have the numbers in the house, but also there needs to be grounds for disallowance. This legislation, if it is passed, neatly ensures that there will be no grounds for disallowance. It cannot be suggested that Parliament has the capacity to scrutinise these decisions when they are made when it will not. I also have very real concerns that this will set a precedent and it will become the norm of at least this government when it needs to deal with state debt to use this avenue to turn fees into taxes. It is not only the Westminster system of government that has that very clear distinction between taxes and fees, most systems of government do. The distinction is very critical and it provides some restraint on the exercise of power by the executive. With this bill that power will be blurred and I think it is a very, very dangerous path we are heading down.

**HON COL HOLT (South West — Minister for Housing) [8.55 pm] — in reply:** Thank you, Madam Acting Deputy President —

**Hon Adele Farina:** Madam Acting President!

**Hon COL HOLT:** Madam Acting President, I apologise. I will get it right.

I thank members for their contributions to the debate on the Land Legislation Amendment (Taxing) Bill 2014 and for their indications of support. I reiterate again that the offer of briefings on the bill should have made their

way to members before the debate and we will get better at that. I have listened to a fair bit of the contributions and we probably should have debated these bills cognately because all the points that Hon Robin Chapple made really pertained to the Land Legislation Amendment Bill 2014, which we just debated and passed. I would really like to be able to help him out, but he should have raised all those issues that he wanted to raise in the debate on the previous bill when there was the opportunity. We have moved on to the next bill, which is a much narrower bill that rides on the back of the previous bill we debated.

**Hon Robin Chapple:** This is the bill that does the taxing.

**Hon COL HOLT:** I understand that, but most of Hon Robin Chapple's points were about policy and the implementation of the first bill. If we want to go into committee, we can try to address some of those points; otherwise, I can make an offer to the honourable member to find some other way of addressing his needs and concerns. However, it is a narrow bill with a narrow debate and we will try our hardest to answer the questions he has asked. I appreciate the support. If the honourable member wants to go into committee, we can attempt to answer some of his questions and I am more than happy to do that. I commend the bill to the house.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Liz Behjat) in the chair; Hon Col Holt (Minister for Housing) in charge of the bill.

**Clauses 1 and 2 put and passed.**

**Clause 3: Act amended —**

**The DEPUTY CHAIR (Hon Liz Behjat):** The question is that clause 3 do stand as printed. Hon Robin Chapple.

**Hon ROBIN CHAPPLE:** Thank you, Madam Deputy —

**The DEPUTY CHAIR:** Chair!

**Hon ROBIN CHAPPLE:** — Chair.

**The DEPUTY CHAIR:** Well done!

**Hon ROBIN CHAPPLE:** It is hard going!

I basically want to deal with clauses 3 and 4 because this is fundamental. Under clause 4, proposed section 22AA(2A) states —

To the extent that regulations to which subsection (1) applies prescribe a fee that includes an amount that is a tax, the regulations may impose the tax.

The briefing notes I got earlier come back to this whole issue of the regulations being able to impose a tax and those regulations will come before the Joint Standing Committee on Delegated Legislation. I would really like to know what function—this is mirrored by what Hon Adele Farina asked—the committee or anyone may have in evaluating or opposing those regulations in terms of delegated legislation and the functions of its committee, or indeed this house, by wishing to disallow those regulations. It is all well and good to refer these regulations to the Joint Standing Committee on Delegated Legislation, but if there is no function of that committee to review them, what is the purpose?

**Hon COL HOLT:** The fee regulations are not disallowable or reviewable because they are a tax. The proclamation can be disallowed by both houses of Parliament.

**Hon Robin Chapple:** The minister has missed the point completely.

**Hon Adele Farina:** Can you repeat that, please?

**Hon COL HOLT:** The fee regulations can be referred to the delegated legislation committee, but they are not disallowable because they are a tax as defined in the act. We have a taxing act that applies that structure. The proclamation to roll over the regulations in 2019, as discussed in the previous bill, is disallowable by both houses of Parliament.

**Hon ROBIN CHAPPLE:** I might be getting old and senile, but I missed the point. Why refer a tax regulation to the delegated legislation committee, when it cannot deal with it? It cannot disallow it because it is not ultra vires the principal act, because the act allows for it. It is a taxing act, but the regulation that the minister referred to will be disallowable through the process of regulation. It is laid before the chamber and automatically goes to the delegated legislation committee for review, yet that committee has no review capability of that because the standing orders that relate to the Joint Standing Committee on Delegated Legislation basically preclude that it

can look at it. Under our standing orders, the only area by which the committee could have looked at it to determine whether it was in power, had it not been in the principal act, is section 10.6 of schedule 1. The only time we can look at a bill to find out whether it is within power and make any deliberation is if it is not allowed for in the principal act and, therefore, raising a tax would have been ultra vires the principal act. However, because the act states that it allows a taxing power that removes our ability under section 10.6 (a) to look at it. We have no role under 10.6 (b), (c) or (d); in fact, the delegated legislation committee will have no ability to have any purview of that. It will most probably make some statement that it does not like it because it is a taxing bill, but that is about all the committee can do.

**Hon COL HOLT:** The member is correct, but the standing orders still say that on the printing of regulations, they are referred to the Joint Standing Committee on Delegated Legislation.

**Hon ADELE FARINA:** The Parliament has passed legislation that does not allow for that referral when it has been a pointless exercise, so it is always possible to exclude provisions of the Interpretation Act applying; therefore, the regulations would not need to be referred. The point that Hon Robin Chapple makes is a valid one: there is little point in having that process if the delegated legislation committee cannot review the instrument at all. It is a pointless process. What we are trying to make clear here is that although we are going through a process, there is no scrutiny of that decision; there is no capacity for this Parliament to scrutinise the decision that has been made. That is the critical point we are trying to drive home and that at least some members of this chamber find completely unacceptable.

**Hon ROBIN CHAPPLE:** By way of fundamental explanation, the idea of attendant delegation legislation committees is to review those matters that the house does not want to deal with. Delegated legislation committees are set up so that instead of Parliaments having to deal with every taxing fee, fee charge, local government amendment or whatever, delegated legislation committees, joint house committees, are set up in most jurisdictions as a check and balance on the taxing powers, to a large degree, of any government. The principle is that we do not have regulations that raise tax, and if the committee came across a regulation that was over-recovering and generating income or doing anything that might cross-subsidise between various elements, it has no alternative but to rule it out. Every time the committee has done that and it comes before this chamber, this chamber has understood quite clearly that that is the role of the committee and has accepted the committee's recommendations. Even former ministers who have caught the wrath of the delegated legislation committee for trying to do that have said that the committee was right and have allowed for those things to be disallowed. That is where I have a fundamental problem, because this proposal takes away from a committee of this Parliament the ability to review a regulation. The minister has rightly said that the delegated legislation committee can look at the regulation, but to what effect? None. I think it is sleight of hand, a process that might appease the general public: do not worry about it; we will send it off to the delegated legislation committee to look at.

**Hon Adele Farina:** It's an illusion.

**Hon ROBIN CHAPPLE:** Yes, it is a classic case of smoke and mirrors, and that is what gives me a great deal of concern. If the committee has no function to review this bill, why refer it? It is a pointless exercise, which is the point I was making. Why send it to the delegated legislation committee?

**Hon COL HOLT:** I have taken on board the comments made by Hon Robin Chapple and Hon Adele Farina. I understand exactly what they are saying. When the proclamation rolls around for disallowance and if this chamber decides that will be the case, then we will go back to the fee structure that can be looked at through the delegated legislation committee.

**The DEPUTY CHAIR (Hon Liz Behjat):** I have to remind Hon Robin Chapple that this is fairly narrow and I think he has canvassed the whole idea of delegated legislation quite well and that he will not go over something he has already canvassed.

**Hon ROBIN CHAPPLE:** I am not going to go back. I take your point and I will be brief. The issue is then when we do the Governor's proclamation, and that in turn goes to the delegated legislation committee, what impact does the minister see that the committee can have over that part of the proposal?

**Hon COL HOLT:** This should have been dealt with in the previous bill, because that is where we are at. However, the Joint Standing Committee on Delegated Legislation can review it in terms of how it provides an effective mechanism for the review of an administrative decision.

**Hon Adele Farina:** Really?

**Hon COL HOLT:** That is my advice here. Hold on a tick.

**Hon Robin Chapple:** By way of interjection, may I get the minister to refer to section 10.6 of the standing orders on delegated legislation, and how we would deal with it. It is page 126 of the standing orders: (a), (b), (c) and (d).

**The DEPUTY CHAIR:** On advice, minister, it is up to a committee itself to determine how it operates under the standing orders. I do not think it is up to the minister at this stage of a bill to be making those determinations as to how the committee would conduct itself.

**Hon Robin Chapple:** If I may, we are dealing with a matter of referral to that committee and I can see nothing —

**The DEPUTY CHAIR:** The member asked for guidance under section 10.6 as to how a committee would deal with something. It would be for that committee to determine how it would deal with something, not for the minister to determine how the committee would deal with something.

**Hon Adele Farina:** The question is not “how”; it is “if”.

**The DEPUTY CHAIR:** I think the minister said “how”.

**Hon Robin Chapple:** I will change my words —

**The DEPUTY CHAIR:** Which is why I jumped in.

**Hon Col Holt:** We need to rephrase the question with an “if”.

**Hon ROBIN CHAPPLE:** The minister is proposing to refer the Governor’s proclamation to the delegated legislation committee. The committee deals with a number of things: is it within power; has it no unintended effect on any person’s existing rights or interests; provides an effective mechanism of review of administrative decisions and contains only matters that are appropriate for subsidiary legislation? Given these points, what of those points would the minister consider that delegated legislation might be able to address by such a referral?

**The DEPUTY CHAIR:** Again, the minister is asking the minister to determine how a committee will carry out its own business. I do not think the minister can do that.

**Hon ROBIN CHAPPLE:** What are the reasons for referring that Governor’s decision to the delegated legislation committee?

**Hon COL HOLT:** The bill that we just passed, on page 6, proposed subsection (5), states “a proclamation made under subsection (2)” is treated “as if the proclamation were a regulation” for the purposes of the Interpretation Act 1984, section 42. It gets to the delegated legislation committee through that.

**Hon Adele Farina:** Perhaps I can assist here.

**Hon Robin Chapple:** Thank you.

**Hon ADELE FARINA:** I think we understand the process by which it is going to get to the delegated legislation committee. I think that is clear and we do not need to pursue that. I think the point that Hon Robin Chapple is making is similar to the one he made previously. Once it gets to the delegated legislation committee, and we look to applying its functions to its consideration of the instrument, we find that we cannot actually consider the instrument because none of its functions are going to impact on that decision because it will be within power, it has no unintended effect on any person’s existing rights or interests because they are already outlined in the legislation. It will be in line with legislation so that will not impact it. It contains only matters that are appropriate for subsidiary legislation—the head of power is in the legislation, so that ticks that square. Paragraph (c) I really do not understand, because it says “provides an effective mechanism for the review of administrative decisions.” I do not think that the instrument can be assessed as doing that. The question is the same: it gets referred, what we are dealing with here is an illusion. There is no scrutiny over either the fee setting or the Governor’s proclamation to extend the expiry date. I think that is the point Hon Robin Chapple is making. While there appears on paper to be a process for parliamentary scrutiny, the reality is that there are no grounds for disallowance, and therefore there is no parliamentary scrutiny.

**The DEPUTY CHAIR:** I think that the member has made that point.

**Clause put and passed.**

**Clauses 4 to 10 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Col Holt (Minister for Housing)**, and passed.