

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

DUTIES LEGISLATION AMENDMENT BILL 2013

Point of Order

HON KEN TRAVERS: Mr Deputy President, while we are in between debates, I wish to raise a point of order concerning the Duties Legislation Amendment Bill. At the conclusion of his second reading speech on this bill, the Leader of the House said —

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party ...

It is interesting that all the way through the second reading speech, the Leader of the House indicated that it was a commitment of the government to abolish the duties that are covered by this bill under the commonwealth–state financial arrangements. Therefore, this bill is part of a commonwealth government agreement. Of course the difficulty with this bill is that it does not give effect to that intergovernmental agreement but rather seeks to renege on our obligations under that agreement. Therefore, I am seeking guidance from the Chair as to whether a bill that will have the opposite effect to what is contained in standing order 126 would be required to be referred to the Standing Committee on Uniform Legislation and Statutes Review. That is my first point.

Several members interjected.

Hon KEN TRAVERS: Members might laugh, but I am more than happy to explain the reasoning. If we look at the direct negatives that are contained in this bill, the bill does relate to an intergovernmental agreement. I am suggesting that the bill could potentially be amended—remembering that this bill has a number of provisions—to extend the period when the scheduled abolition of this duty will come into place. If the bill was amended in that way, I think it is more than arguable that this bill is impacted by an intergovernmental agreement. That is the first point. There are then second and third points about what should happen should this bill be considered to be an intergovernmental agreement. So the first point is whether, in the view of the Chair, this bill is captured under standing order 126.

The second issue that I am raising as a point of order is whether, with the construction of new standing order 126, compared with former standing order 230A, there is an opportunity for the Chair to make a ruling that the bill is covered by standing order 126—despite the fact that the Leader of the House has indicated to the house that it is not covered by standing order 126—or whether the only option available to members on this side of the house is to move a motion to refer the bill to the uniform legislation committee under standing order 126. I also seek guidance as to whether, if we were successful in that motion, the terms of reference of the Standing Committee on Uniform Legislation and Statutes Review would enable that committee to look at the matters necessary to protect the state's interests.

I raise these points of order with you, Mr Deputy President, for the simple reason that the clear intent of standing order 126 is to protect the interests of the state. That is the purpose for which the original standing order 230A was included in the standing orders, and that is why standing order 126 is now included in the standing orders. There is a real risk to the state that by passing this bill that reneges on an intergovernmental agreement, other aspects of that intergovernmental agreement may be impacted. That includes the removal of commonwealth grants that will come to the state under that intergovernmental agreement. It is very important that this house has a full understanding of those issues before we move to the debate on this bill.

So I would ask you, Mr Deputy President, to give us a ruling on the matters that I have outlined—I am happy to go through them again if you need me to—before we make a decision about how we might proceed through the consideration of this legislation by the house.

HON MICHAEL MISCHIN: I would like to say a few words in contribution to this debate. Hon Ken Travers underlined the extraordinary nature of his point of order in his opening remarks, when he said that this bill achieves exactly the opposite of what standing order 126 is aimed at. He nevertheless tried by some tortuous process of reasoning to fit this bill into that standing order, but he failed to do so.

Standing order 126(2) states in part —

For the purposes of these Standing Orders, a Uniform Legislation Bill is a Bill that —

- (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or

As Hon Ken Travers has himself recognised and acknowledged, the bill does not do that; it does exactly the opposite.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Hon Ken Travers: I did not acknowledge that. I said there is the potential to extend the life of the current legislation through this bill, which would be giving effect to that agreement.

Hon MICHAEL MISCHIN: But that is not what this bill does. Whether one can introduce some amendment to a bill to enable it to fit into standing order 126 is a totally different issue. The bill in its terms does not do so, and nor does the second reading speech outlining the policy of the bill purport to do so. The other possibility is that the bill, by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the commonwealth. The bill in its terms plainly does not do so, and nor does the second reading speech outlining the policy of the bill do so.

Standing order 126(3) states —

The Council may order that a Bill is a Uniform Legislation Bill notwithstanding contrary advice from the Member in charge of the Bill.

That means, of course, that the Council needs to consider the subject matter of the bill, and, notwithstanding the assurance of the minister who introduced the bill, come to the view that the terms of the bill do achieve one of the two ends that are set out in standing order 126(2). That is not possible by the terms of the bill, and I do not think Hon Ken Travers even purports to suggest that it would be possible.

In considering why bills are referred to the Standing Committee on Uniform Legislation and Statutes Review, we need to turn to section 5 of schedule 1 of the standing orders, which establish the terms of reference for that committee. Section 5.4 states —

In relation to function 5.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and lawmaking powers of the Parliament of Western Australia.

Plainly, there is nothing in this bill that will affect the sovereignty and lawmaking powers of Western Australia. One gets back to the whole rationale of having a Standing Committee on Uniform Legislation and Statutes Review with specific terms of reference to examine bills as a matter of course if they fall within certain categories—that is to ensure that any legislation arising from this Parliament does not, through inadvertence or inattention on the part of this Parliament, compromise the sovereignty of this Parliament and the state of Western Australia by binding it into legislation that is part of some sort of uniform scheme of legislation that takes away its power to attend to legislation and affect parliamentary sovereignty in that fashion. By its very terms, the point of order is flawed and it does not establish any requirement or even any segue into having this legislation referred to that committee at any time.

The PRESIDENT: I have come into this a little bit late and I am seeking advice. If there is anything else on the point of order, I will allow members to make that briefly and then I will probably leave the chair until the ringing of the bells to take some advice.

Hon KEN TRAVERS: I am seeking guidance from the Chair on three issues with respect to the standing orders. The first is whether the bill is captured by standing order 126 under the way it is constructed and, therefore, whether the Leader of the House should have indicated that. The second is, Mr President, whether you have the capacity to now rule in that way under the current construction of standing order 126 or whether the only option available to the house is the question under standing order 126(3) that the house would need to make the order. The third point I am seeking clarification on is the potential financial impacts on Western Australia of the passage of this Duties Legislation Amendment Bill and, even if it is ordered by the house to be referred to the Standing Committee on Uniform Legislation and Statutes Review, whether the committee can consider the bill in light of its current restrictions with respect to sovereignty. I would like your clarification on those three points, Mr President, because this is a new standing order. Depending on your ruling, we can make a decision about how the house proceeds.

Sitting suspended from 2.12 to 2.22 pm

Ruling by President

The PRESIDENT: Members, in response to the point of order raised by Hon Ken Travers I would like to make a few comments.

The Duties Legislation Amendment Bill contains amendments to unwind the scheduled abolition of transfer duty on non-real assets, such as business licences, goodwill and intellectual property. I understand the abolition will be revisited when its costs can be better accommodated in the state's budget. I note that Western Australia previously undertook to abolish this duty from 1 July 2010 as part of the goods and services tax agreement between the commonwealth and all states and territories. This abolition was legislated for in the Duties

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Legislation Amendment Act 2008. However, in 2009 it was amended to defer the abolition date by three years to 1 July 2013. This was given effect in the Revenue Laws Amendment Act 2010.

I note that the Revenue Laws Amendment Bill 2010 was not referred to the Standing Committee on Uniform Legislation and Statutes Review. Members should also read the eighth Procedure and Privileges Committee report, which was adopted by the house in 2006. The report provides some guidance on when a bill should stand referred, and states —

If uniform legislation has been implemented by a previous Act then bills that propose further amendments to that uniform legislation *have not stood referred unless* the particular bill implements additional uniform legislation.

This Duties Legislation Amendment Bill 2013 does not implement additional uniform legislation. A review by the Standing Committee on Uniform Legislation and Statutes Review is very narrow and would not be able to consider the issues the member has raised.

With regard to another point raised, the President is able to make rulings on any standing orders. In my opinion, the bill does not give effect to a bilateral or multilateral intergovernmental agreement, and it does not introduce a uniform scheme or laws, so it is not captured by standing order 126. Standing order 126(2) certainly does allow any member to move to order that a bill is a uniform legislation bill and thus refer that bill to the standing committee. I therefore rule that standing order 126 does not apply.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON KEN TRAVERS (North Metropolitan) [2.25 pm] — without notice: As a result of that guidance, which I appreciate, I move —

That the Duties Legislation Amendment Bill 2013 be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 6 August 2013.

I appreciate the clarification and advice Mr President gave the house that it is not appropriate to send this bill to the Standing Committee on Uniform Legislation and Statutes Review. However, the first paragraph of the minister's second reading speech made it very clear that —

Western Australia previously undertook to abolish this duty from 1 July 2010, as part of the GST agreement between the commonwealth and all states and territories. This abolition was legislated for in the Duties Legislation Amendment Act 2008.

As part of my argument this afternoon, the case I will present to the house will be that the passage of this bill in its current form may result in unintended consequences not outlined to us by the government.

The intergovernmental agreement signed by then Premier Richard Court in 1999 is the basis of the current financial arrangements between the commonwealth and the state. Part of that intergovernmental agreement—I will take members to the specifics of it in a little while—required the states to abolish a range of taxes and charges. I want this bill to go to a committee because I do not believe the processes of this house will adequately test the issues I will raise this afternoon. The most practical, efficient and effective way of dealing with the issues that I think need to be looked into and considered by this house before it agrees to the passage of the bill is to send it to one of our committees. Our legislation committee had a history of providing very informative and useful reports to this Parliament; unfortunately, it was not utilised as effectively or as often as it had been in the past by the thirty-eighth Parliament. But if the end result of the passage of this legislation is that the intergovernmental agreement between the state and the commonwealth is thrown out the door because we are renegeing on our obligations under that agreement, does that mean that the commonwealth can renege on its obligations; and, if so, what will the impact of that be? Could it be on specific-purpose payments or the distribution of the GST allocation? We need to know these things before we even enter into the second reading debate on this bill. To do otherwise would be to abdicate our responsibility as a house of review.

No doubt the lower house—the house of government—passed this legislation through to us at the express desire of the government of the day. It will have done as the government asked, because the government needs cash and it needs it quickly. As a house of review, we need to ensure that we are fully informed of the impacts of legislation before we let it go through. For those members who are concerned that referring the bill to a committee may have an adverse impact on the state's revenue in the short term, I assure them that there is a specific provision in the bill should its passage occur after 1 July 2013 to retrospectively apply duties on the transactions that would have been abolished next Monday. In my view, there would be no impact on the short-term cash flow of government by deferring debate on this bill until a later date so that the full impacts of the legislation could be properly considered by Parliament. As members will note, the date I have chosen for the

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

committee to report back to this house is 6 August. That is the date on which we are due to return after we complete today's sitting, when we will adjourn for the winter recess.

The alternative to referring the bill to a committee is to have the committee stage debate today. If we were to do that—I have copious notes with me today and I have copies of the intergovernmental agreement going back to 1999—I could seek to go through each and every one of those with the minister during the committee stage of the bill to fully ascertain the impacts of this legislation. I believe that would not be a productive use of the time of the house or the most effective and efficient way of gaining that information and fully informing the house. If the bill is referred to a committee, the committee would be able to call experts before it to fully explore the potential implications of this legislation. For instance, if a new federal government is elected later this year and it has overcommitted and requires money, as we saw with the Barnett government at the last election, it could say that Western Australia had reneged on its obligations under the agreements it had signed with the federal government, and so it could renege on its obligations in return. I think that in the future people will look at and laugh at this house and ask what the house of review was doing when it considered this bill. We would not be able to say that we did not realise it at the time, because I have put that proposition before the house today. When members vote on this matter, they need to understand that they will be leaving themselves open to being asked in the future why they did not get fully informed. What is the possibility of that occurring? What are the implications of reneging on an intergovernmental agreement? It is clear in the minister's second reading speech that that is what the government is doing.

The history of this matter is very important. The government was kind enough during the briefings on this bill to provide the opposition with a history of the GST agreement. It started with the 9 April 1999 agreement, signed by the then Premier, Richard Court, and included the abolition of stamp duty on non-real business conveyances from 1 July 2001. Members will of course not remember that that was subsequently changed as a result of the passage of the GST legislation through the Senate. A revised agreement was struck in June 1999 between the states and the commonwealth, as food was exempted from the GST and there was no longer the pool of revenue that was required. The other clear aspect of the agreement was to protect the specific-purpose payments and also to ensure that the states were no worse off with revenue as a result of the abolition of their taxes and that the commonwealth would continue to support the states at the same rate as it had done previously. That is the fundamental basis on which the agreement was struck. This is the sort of information that I think a committee could very effectively consider. A submission of the then cabinet headed by Richard Court—of course, the then Minister for Resources, the current Premier, was actively involved in this debate, but that is probably a subject for debate on the substantive motion on the second reading of the bill—on the original 1999 agreement that struck the requirement for the abolition of duties on non-real property outlined a number of key features that were expected to be included in the agreement. As I say, it is important that members understand this because this is the sort of information that the committee would be able to get so that it could make a correct assessment and provide an informed decision for the house before we proceeded to the second reading debate.

The first of the key features of the 1999 intergovernmental agreement was that from 1 July 2000, states would receive all the revenue from the GST to replace a range of taxes. I will not go through all of them, but one of them was obviously business stamp duties. There would be a transition period of not less than three years and a guarantee of additional commonwealth funds so that no state budget would be worse off, taking into account expected savings to state budgets from indirect tax reform. After two years, GST revenues would be distributed among the states solely on the basis of the Commonwealth Grants Commission recommendations. Again, that is an interesting point for later debate in the house. In the first two years, the distribution would be modified from the grants commission's relativities to ensure budget neutrality for each state. This is the key relevant feature that I want the committee to look at. There was a general commitment by the commonwealth not to cut specific-purpose payments as part of this reform process. There is a range of other key features. The agreement was amended in June 1999, it was amended again in November 2008, and it came into effect from 1 January 2009 in the new form of the Intergovernmental Agreement on Federal Financial Relations. The document is informative. In part 2, section 5(e) makes it very clear that one of the objectives is the ongoing provision of goods and services tax payments to the states and territories equivalent to the revenue received from the GST. There is a range of other issues contained in the agreement. There is also a requirement for the equalisation of fiscal capacities between states and territories. Again, this document was signed by Hon Colin Barnett, who often complains about that point that he agreed to.

It is clear that the commonwealth has obligations to provide support to the state of Western Australia through national SPPs. Section 19 of the agreement is headed "Financial support", and states —

The Commonwealth commits to the provision of on-going financial support for the States' and Territories' service delivery efforts, through:

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

- (a) general revenue assistance, including the on-going provision of GST payments, to be used by the States and Territories for any purpose;
- (b) National Specific Purpose Payments ... to be spent in the key service delivery sectors;

As of Monday, this document requires the state to have abolished non-real property. As I said, this is a complex area. I do not think we will adequately understand the implications of the passage of this bill, renegeing on that agreement for the long-term future finances of the state of Western Australia.

We have two options this afternoon: we plough on and try to deal with those matters in the house; or we refer the bill to a committee. A committee can consider those matters and report back to us no later than our first sitting day after the break. If that information provides that there is no impact on the state and if we are confident that even though we have renegeed on our side of the bargain and current or future commonwealth governments will not be able to renege on their side of the bargain, we can debate that bill. I suspect that it might be a far shorter debate than it might otherwise be because a committee would have done that work.

This gives us an opportunity to determine whether we will use our committees for this sort of work in the future. I noted some comments in the addresses of a number of retiring members, including Hon Norman Moore. He said that we probably should have used the committee structure more regularly during the last term of Parliament. If my memory serves me correct, only a couple of items were referred to the Standing Committee on Legislation in the last Parliament. In previous Parliaments during the time that I have been a member, it was a regular occurrence for this chamber to refer bills to the legislation committee. We have established that committee again. I would have thought that it would be perfect for that committee to look at this issue. If it is not the appropriate committee but members agree that it should be referred to a committee, I would be more than happy to entertain suggestions from the government of a more appropriate committee. As we have already determined, the other obvious committee that would have been available to scrutinise this bill is the Standing Committee on Uniform Legislation and Statutes Review. As always, the President's ruling was very good. Even if we were to use the provision under standing order 126 to refer this bill to that committee, that committee would not have been in a position to consider the matters that I am seeking this committee to look at. That is not the appropriate committee.

The other committee that could possibly look at this bill is the Standing Committee on Estimates and Financial Operations because it obviously relates to financial matters.

Hon Nick Goiran: You definitely wouldn't want to send it there.

Hon KEN TRAVERS: I thought that might be the case. If members want to send the bill to that committee, I would be happy to entertain an amendment to my motion from them. If they are nervous about doing that, let us use the legislation committee. We need to ask ourselves: if a matter of this import is not referred to a committee, what will be referred to a committee?

It is not just a matter of the financial implications. This legislation is a very complex piece of legislation. I do not know if many members have spent as much time going through it as I have. My fear is that in trying to deal with the legislation in the house, we do not have the same capacities as a Committee of the Whole House working intensely with the support of the fantastic staff we have. As a starting point, the bill has a part 2 that does not operate if the date of assent is 1 July or later and a part 3 that does not operate if the date of assent is before 1 July. That is very unusual. I must admit that I cannot recall the last piece of legislation that came into this house with that sort of structure; that is, if part 1 happens, do part 2 and if part 2 happens, do part 1. I understand why it is being done but I do not know why.

I turn to the next thing that is interesting about this bill. When we go to the website of the State Law Publisher and try to find the Duties Legislation Amendment Act 2008, it is very hard to find, yet we are seeking to amend that act. That act has been incorporated into the Duties Act 2008. We are seeking to amend this act to impact on the way it operates. That is an issue that members need to be able to understand.

It is also really important to understand the simple things in the bill. Clause 7 seeks to delete schedule 3, division 3. Clause 17 seeks to amend schedule 3, division 3, so we have deleted it but we are then going to amend it. There may be a simple explanation for that. That is one area that we might be able to deal with during the committee stage. It gives us an idea of the complexities in this bill that the house has to consider.

It is a fascinating piece of legislation insofar as the way it is constructed. I sense that it is unlikely that this bill will be proclaimed before 1 July 2013. I might be wrong but that is my sense. If that is the case, we have a very interesting construction in the legislation that means as of 1 July, certain things do not happen but when this bill is ultimately passed, certain things will be retrospectively applied to 1 July, including taxation. It might be useful for the house to be informed about the fundamental questions of the policy of this by a committee. These are

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

fundamental issues about whether it is retrospective taxation and, if it is, what are the impacts of it? We can have that debate in the house or we can ask a committee of the Parliament to look at those matters. I think a committee is the better place to do that. If we are to have retrospective legislation, we need to ensure that it is absolutely 100 per cent correct because it is an extraordinary situation. Again, that just says to me that we should not try to consider this bill in the hothouse of this chamber; let us ask the members of the legislation committee to look at this bill. They should take their time to work through it and report back to the house about all the clauses and impacts and ramifications of the passage of this bill.

This is going to have an impact on small businesses and the amount of money they pay to the government. In some cases I expect it will be quite significant amounts of money. I would have thought that we owe it to those people who elected this government in March, who did not know that after 1 July the government intended to continue to apply duties on non-real property, to give them the opportunity to put their views before the Parliament before we pass this legislation. Again, a short, sharp inquiry would allow those people to put their cases. I give an example. A person might have been planning to restructure his business but had delayed that restructure until after 1 July because he thought he would not have to pay stamp duty. That would have been a reasonable assumption. What are the implications? How many businesses will this change in policy affect? Do any members in this chamber know the answer to that? If any member does, I hope they stand up and put it before the Council. I am not aware of it. Have some people entered into options to purchase a business or some intellectual property? If they had entered into a contract, it would be dutiable because they entered into the contract before 1 July. If, however, they entered into an option on the understanding that the duties would cease on 1 July and, to obtain that option, they paid money as a gesture of goodwill to the person they were dealing with, they will now need to make a decision about whether to lose that money or proceed with the contract. Are we, as a chamber and a Parliament, going to give those people the opportunity to put their views before the house of review on whether this is a good piece of legislation? Many members on the other side have said that they are businesspeople, that this is the area in which they deal, and that they are the people who stand up for small business. If we do not send this bill off to a committee today and continue to proceed with the legislation through the normal processes of this house, those members who vote for that will be saying to each and every one of those people whom they profess to stand up for that, "We do not care what you think about this legislation. We do not care about the impacts. We don't care whether you are unhappy about this; we are just going to do it." It is, of course, every member's right in this place to do that. We should take the opportunity, by referring the bill off to a committee, to allow those people, if they so desire, to put their arguments before the Parliament.

One interesting issue, again if the committee is able to deal with the policy of the bill, is that during the recent state election campaign the Liberal Party promised about \$120 million worth of payroll tax relief. It did not at the time tell people that it would be removing \$527 million of stamp duty relief. I am more than happy to provide this information to a committee or, if the house chooses to proceed with the debate today, I will try, to the best of my ability, to provide it to the house during the debate so that members can consider it. There are documents, cabinet submissions and Treasury analysis that go right back to the original 1999 goods and services tax agreement, when we were trying to reform the taxes and charges of the states and commonwealth of Australia. There were clear priorities given in those documents to certain taxes and charges. Financial institutions duty was going to go because it was a nuisance tax. Do members remember the old days of stamp duty on cheques in chequebooks? They were often expensive to collect and were referred to as nuisance taxes.

The next one that was obviously and clearly identified for abolition was duty on non-real property. It was made clear in the documents I have read that payroll tax would be the last tax measure to be removed. Maybe one thing the committee could do would be to revisit the issues that were considered during the original tax reform. That reform led to the parts of the duties legislation that this bill will seek to remove. Perhaps the committee could look at those issues and advise the house on whether the better option would be to maybe defer the abolition of this tax by a couple of years but keep that abolition on the books, and not make those changes to payroll tax. Again, I am sure that there would be many in the business community who would want to have a say and give advice to the Standing Committee on Legislation on whether that is the appropriate pathway. It would be good to hear from those people on what they would prefer—the \$527 million that they will have to pay over the next four years in duty on non-real property, or the payroll tax relief suggested by the government. Let us face it, whichever way the government goes it will be breaking an election commitment. The decent thing to do if it is breaking election commitments would be to consult the community on which election commitment it would prefer to be broken first. Again, a committee of this house would be a good vehicle to consider those matters, to hear from the broader community and to report back to this house and give us guidance on how to proceed with this matter. For the first 12 years I was a member of this place that was often the pathway that was chosen. Members who were here prior to 2008 would have seen bills regularly referred to the committee for it to consider those sorts of issues and to take the advice from the community that I have outlined to the house today.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Of course, it is a question for the government, because it has the numbers in the house, to work out whether that is a practice we are going to entertain or whether it is simply going to take the approach of using its numbers to push legislation through the house.

In summary, there are many good reasons for this legislation to be referred to a committee. The first and fundamental one concerns whether this will have the potential to adversely impact, in the long term, on the state's revenue. It seems to be a benefit to the state, but could we be penalised in the future as a result of the passage of this legislation? The second key point is to have a committee look at the detail and construction of this legislation and provide advice to the house, so that we can have the security of knowing that the legislation will achieve what it is intended to achieve and will not have any adverse consequences or impacts. The third element is whether, in the policy of this bill, this is the right path to take to renege on the decision to abolish the duty—remove that abolition—and re-impose, as of Monday, a tax on non-real property. That is what this bill does; it reimposes a tax. The tax has gone. “L-A-W” law—the tax is gone on Monday; it comes back if we pass the Duties Legislation Amendment Bill 2013. Is that the right decision to make? At the very least, let us allow the public, the business community and others who might have a view on that to express their views to the house of review of the Western Australian Parliament. That is the choice we have this afternoon. That is the choice for all members in this chamber to make a decision as to which way we go with the passage of this legislation. As I say, it is my view that referral to the committee will not materially delay this bill and the legislation is constructed in such a way that it will not in the short-term impact on the revenue for the state, so there are no negative points from that way of thinking.

I do not know whether the Leader of the House is inclined to support my motion; he has been very quiet over there.

Hon Peter Collier: Probably not.

Hon KEN TRAVERS: Probably not. I am wondering what I could say to the Leader of the House! If the Leader of the House is still wavering, I am intrigued to know what it might be that would bring him across the line, whether it is the commitment to a democratic process, a commitment to the bicameral process of Parliament or a commitment to the state's financial risks. I am not sure what else I could say to change the Leader of the House's mind other than to say this —

Hon Adele Farina: Hon Norman Moore said more should be referred to the legislation committee.

Hon KEN TRAVERS: Exactly, Hon Adele Farina! Remember the final parting words of the Leader of the House's predecessor. That is the final thing I can appeal to the Leader of the House with: remember the final parting words of his predecessor. One of his final regrets before he left this place was not that he did not move the bill for Western Australia to secede, but that we probably had not used the committee system, particularly the Standing Committee on Legislation, as effectively or as often as we probably should have.

It is a new dawn; it is a new Parliament. According to the Minister for Mental Health, it is a new government, even! There is definitely a new Leader of the House. So with all those things, the past can be washed away. We no longer have to look back to those dark days when the government used its numbers in this house to refuse to allow bills to go off to the Standing Committee on Legislation. There was a super moon the other night. We can open up to the future to use our committees better and to use our legislation committee as it was so effectively used in the past. I know that Hon Sally Talbot is looking forward to those glory days that she had on the legislation committee when it was used effectively.

Several members interjected.

Hon KEN TRAVERS: There were too many interjections to deal with all at the same time! I am more than happy to have one at time, please.

Several members interjected.

The PRESIDENT: Order, members! They are all unparliamentary.

Hon KEN TRAVERS: Yes, interjections are always unparliamentary, but I accept that members in this chamber occasionally slip up and forget that point.

This is an interesting point, as we start the next Parliament —

Hon Michael Mischin: No, it isn't!

Several members interjected.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Hon KEN TRAVERS: Now that he is the Attorney General, the member forgets his past days as the chairman. I suspect you wished you had more bills come before you when you were the chairman, Leader of the House—Attorney General, but probably future Leader of the House! We will see what happens there.

Several members interjected.

The PRESIDENT: Order!

Hon KEN TRAVERS: Now the interjections are starting to distract me!

Several members interjected.

The PRESIDENT: Order, members! I am confident that the member is trying to wind up his remarks and he is getting distracted. Let him focus for the next couple of minutes so he can conclude his remarks and round them all out.

Hon KEN TRAVERS: I assure Hon Jim Chown that I am not running out of things to say—or was it Hon Peter Katsambanis who made that interjection?

Hon Peter Katsambanis: You were right the second time!

Hon KEN TRAVERS: My apologies to Hon Jim Chown. I assure the member that I am not running out of things to say. I can assure the member that I have copious notes with me today. I do not intend to use them during this debate on the referral motion, but I am more than happy to go through them all. I am happy to use my last six minutes, but I was actually trying to finish my comments.

Hon Peter Katsambanis: It's all quantity, no quality!

Hon KEN TRAVERS: I got copies of a cabinet submission. Does the member understand how complex it is to get a cabinet submission from 1999? It is normally 30 years before cabinet submissions are released, but there is a process by which we can get those cabinet submissions early. I went and got them, Hon Peter Katsambanis, because I think that understanding the history of the GST process and the commonwealth–state financial relations is very important. This bill goes to the very heart of those agreements. We need to understand what those agreements were about, how they were arrived at, who was involved and what happened.

I summarised earlier the reasons why I think the Duties Legislation Amendment Bill 2013 should be referred to the Standing Committee on Legislation. I implore the house to consider them. I think that this is the most effective and efficient way of dealing with this matter. As I said, the bill itself has a provision for that to occur and for the taxes to apply retrospectively from 1 July 2013. With those words, I urge the house to support my motion.

HON PETER COLLIER (North Metropolitan — Leader of the House) [3.06 pm]: I will just make a few comments; they will not be lengthy, but they will be quite clear.

Hon Ken Travers: No!

Hon PETER COLLIER: Yes—no, not yes!

I can confirm to Hon Ken Travers that the government will not be supporting the motion and, yes, he did not convince me, unfortunately, so I apologise for that. However, the member did bring up a couple of points.

I will pick up on one of the points that the member raised about the use of committees. When I came into this place I was in opposition and I very much valued the role of committees, I have to say. I would be receptive to an extension of the role of those committees over the next four years, but not in this instance. Hon Ken Travers made another point about the democratic process. I appreciate the democratic process and we will not abuse it, I can assure the member. The fact that we have more numbers on this side of the chamber is a direct result of that democratic process; a significant number of Western Australians, more Western Australians, voted for representatives on this side of the chamber than on the other side of the chamber. That is called the democratic process.

Hon Sue Ellery: They did elect us to do a job and this is part of our job.

Hon PETER COLLIER: I know; I do not have a problem with that. I am saying that there is almost an assumption that because we are moving this bill, it is undemocratic. It is not; we have been elected by the public of Western Australia.

Hon Ken Travers: That's not what I was implying.

Hon PETER COLLIER: I apologise if I got the implication wrong.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

I was on the Standing Committee on Legislation and we did some good things on that committee. If there is a particularly complex or, dare I say it, far-reaching and complicated bill that requires greater scrutiny, I would say in that instance, for some bills, there is the notion of potentially getting the legislation committee to look at them. We will talk about it and I do not mind talking to the opposition about it. But in this case, no, because the policy of the Duties Legislation Amendment Bill 2013 is clear, the intent is clear and it is time-sensitive. I am sure that there will be, dare I say it, forensic scrutiny of the legislation throughout the Committee of the Whole stage, which I look forward to. That will give members of all political parties the opportunity to scrutinise the bill with great intensity. I look forward to the committee stage and to the contribution of members opposite, but the government will not be supporting the motion to send this bill to the Standing Committee on Legislation.

HON SALLY TALBOT (South West) [3.10 pm]: I, too, will not speak for long, because I know it is important that we move on with things in this place. But I want to make a couple of comments, as someone who takes a close and personal interest in the Standing Committee on Legislation, having been a member of that committee since I was elected to this place in 2005.

I listened very closely to what the Leader of the House has just said. For me, he has absolutely captured the problem that we need to grapple with in considering this motion to refer the Duties Legislation Amendment Bill to the Standing Committee on Legislation. What the Leader of the House said, in indicating his general respect and support for the committee system, and, indeed, his experience with the committee system, is that if a bill is particularly complex or has far-reaching consequences, it is appropriate to refer that bill to a committee. In fact, I think the Leader of the House was making the point that it would be very appropriate to refer such a bill to the legislation committee. But what the Leader of the House is missing, I would suggest, with respect, is that the complexity of a bill may not be apparent. A bill may consist of only two or three clauses but may in fact be very complex and have extremely far-reaching consequences. The Leader of the House is asking us to make two assumptions. The first is that it is always immediately apparent whether a bill is complex or has far-reaching implications or consequences. The second is that it is up to him and the government to tell the opposition whether a bill is complex or far reaching. That brings us back, for both those reasons, to an attitude by the government that it can just say, "Trust us. We have made the decision on this bill. We have done the evaluation. We have told you what the case is, and you just have to accept it." We do not accept that that is the case, and Hon Ken Travers has made a very sound and solid case for why we do not accept that.

Hon Ken Travers has raised some very substantive points. The first point is that this bill will have extremely far-reaching consequences, because it will impact on every small business in this state. When we are talking about small businesses, we are not talking just about a corner store or a newsagent or a small to medium enterprise. We are talking also about companies in the mining and resource sector. Those companies are an essential part of our economy—I am not saying those other businesses that I have mentioned are not essential—and they have a major impact on the future economic development of this state.

As Hon Ken Travers has pointed out, this bill will have a major impact on businesses in this state. It will also have major consequences for the state's revenue and for the state's relationship with the commonwealth down the track. That alone should be enough to persuade Hon Peter Collier, the Leader of the House, that this is indeed a bill with far-reaching consequences, and that, by his own definition, this bill ticks all the boxes for what constitutes a bill that should be referred to the Standing Committee on Legislation.

The other point raised by Hon Ken Travers that I think is directly related to the point made by the Leader of the House about the complexity or far-reaching nature of the bill is that it has become obvious, even at this early stage in the debate, that the house needs proper advice about what those consequences are likely to be and where we might stand in four years' time if the negative effects that speakers in this debate so far have alluded to come to pass. So, by the Leader of the House's own criteria, the government should support this motion.

The Leader of the House, and certainly those members opposite who have been in this place for the same length of time as I have, will remember that a few years ago—I think it may have been when Labor was in government—there was a serious multiparty move to at least raise the possibility that most bills should be referred to a committee. I guess the reality is that those bills would be referred to the legislation committee, because that is the committee that has a broad brief to look at legislation.

I remember that Hon Giz Watson was a particularly vocal proponent of that idea. Her view was that we would save a lot of time if the chamber had a committee report to go along with its consideration of a bill. Hon Giz Watson argued, both in public and in private, on many, many occasions, that we should look seriously at that proposition. Indeed, I can tell from some of the body language —

Hon Peter Collier interjected.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Hon SALLY TALBOT: I am not allowed to refer to body language. But I can tell, because I am reading the notice paper in this place, that time is of the essence as far as the government is concerned.

Hon Peter Collier interjected.

Hon SALLY TALBOT: The Leader of the House was not here this morning. We had a long discussion about body language, Hon Peter Collier. I think it was about body language, anyway. It was about smiling and that sort of thing.

We all know how the legislative program is going. We all know that we all want to get out of this place at some time. My point is simply that time is of the essence today. I am noting that we would have been able to get through this bill much more efficiently if we had referred it to a committee and if we were sitting here today with a committee report to consider as well as the second reading speech and the explanatory memorandum. So I for one was not averse to that discussion that was held at that time. As the new members go through their first six to 12 months in this place, and as they have their first experiences of committees, they might like to consider whether in future we should look at a default position whereby most bills are referred to a committee, and it is only if the house decides that a bill does not require referral, or the debate in this place would not benefit from a committee report, that a bill would come straight into this chamber.

I am afraid that all these comments will fall on deaf ears. I say that simply because the Leader of the House has indicated that he is not inclined to recommend that the government support this motion. Over the eight years that I have been a member of this place, I have watched the way in which the Labor Party, the Liberal Party and the National Party have used the legislation committee. For the benefit of the newcomers in this place, I remind members that the legislation committee is a relatively new committee. It came into existence only in 2005. That was when Hon George Cash—I am pretty sure it was Hon George Cash—did his review of the entire committee system. I was fortunate as a new member of this place to have Hon George Cash conduct the induction session for new members about the committee system in the Legislative Council. We knew when we listened to Hon George Cash that we were listening to a person who had vast experience of the committee system. I then had the privilege of serving on the legislation committee with Hon George Cash, who had substituted himself onto that committee, and it was a valuable lesson for me to watch Hon George Cash function in that committee.

The legislation committee as it exists now, with its current terms of reference, came into existence in 2005, as I have said. I will not go into the details, but so that members are clear about the way in which the Standing Committee on Legislation operates, the current structure of the committee is unusual in Parliaments around Australia, because it shares functions with the Standing Committee on Uniform Legislation and Statutes Review and the Standing Committee on Delegated Legislation. I reassure those government members who have not had experience with those three committees that a referral of a bill to the legislation committee does not mean open slather. It has narrowly defined terms of reference. I believe that the motion of Hon Ken Travers will not allow consideration of the policy.

Hon Ken Travers: No; it will, because it was before the second reading.

Hon SALLY TALBOT: It does allow that. That is another option of the house, because the legislation committee can consider only the policy of a bill when that is included in the referral motion. Those other functions of scrutiny of legislation, with which honourable members will be familiar, are shared with the two committees that I have referred to.

Since I have been in this place and served on the legislation committee, I calculate that the legislation committee has looked at 15 different bills and inquiries. They were as follows: the Acts Amendment (Consent to Medical Treatment) Bill—the living wills bill; the Biosecurity and Agriculture Management Bill; the Criminal Investigation Amendment Bill; the Criminal Investigation Bill 2005, which came as a cognate bill with some others; the Criminal Law and Evidence Amendment Bill; a review of the State Administrative Tribunal; the Limitation Bill 2005; the Local Government Amendment (Regional Subsidiaries) Bill 2010; the Parental Support and Responsibility Bill; the Revenue Laws Amendment Bill; the Standardisation of Formatting Bill; the Surrogacy Bill; the Taxi Amendment Bill; the taxidriver's legislation; and, finally, the Trans-Tasman Mutual Recognition (Western Australia) Bill.

The PRESIDENT: Order! The history of the legislation committee is interesting and important, but I am not sure it is totally relevant to the motion before the house that this particular bill should be referred to that committee.

Hon SALLY TALBOT: Thank you for reminding of that, Mr President. I know we talk about drawing a line, and I will endeavour not to cross that line. I come right now to the point I make about this specific referral. I ask

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

the Leader of the House, through you, Mr President, for an assurance that the motive I am about to impute to him is not actually his motive, because I am very suspicious about this.

I just read out 15—only 15; it could have been worse—different inquiries. Of those, only four were referred by the Liberal government since it came to power in 2008. Five inquiries were completed, but there was one, the State Administrative Tribunal review, which was a statutory review under the act, that was so lengthy that it straddled the two Parliaments and a huge number of people's names ended up in the report because the inquiry went across two Parliaments, with people resigning and that sort of thing. So that is only four government referrals for 15 inquiries since 2008. That is a very big mistake.

I have already outlined the reasons, and I cannot speak for any other member, but my recollection of the informal discussions that have been held during my time in this place about referring more bills to the committee seem to make a lot of sense. If this motion of Hon Ken Travers will not be supported by the government, once again this house is failing to use the resources it has at its disposal. It is entirely counterproductive to go down that path. Use of this committee makes for a more efficient Parliament. It makes the process for which this house is established, which is as a house of review, more efficient.

At the risk once again of straying close to that line, Mr President, I make one point, and it does involve the history of the committee, but I do that to illustrate my general point about the way that over the past 12 years the use of this committee has gone steadily downwards, dramatically so since September 2008.

The previous committee—I have already said that this legislation committee is a new construct—was called the Legislative Council Standing Committee on Legislation. It is a subtle difference in title. That committee, by my calculation, considered 24 bills. I remind members that the 15 bills that I referred to were since 2005—that is, over two Parliaments. Between 2001 and 2005 the former committee produced 24 reports. One cannot accuse the legislation committee of being inefficient. Indeed, I believe Hon Kevin Travers has been generous in his reporting date, which I understand is the first week of August.

Hon Ken Travers: I am always a generous person.

Hon SALLY TALBOT: I will not take that interjection!

Hon Ken Travers: It is the first sitting day we come back.

Hon SALLY TALBOT: So that allows for five and a half weeks for this inquiry. The legislation committee is so motivated—I am making an assumption here because it was the legislation committee as it finished in the previous Parliament, when it was chaired briefly by Hon Donna Faragher—and committee members so committed to their task that I can remember an occasion when they met outside this chamber, during the afternoon tea break, to get some business done. It is a good committee. I am being nice!

Hon Donna Faragher: Sorry. I am not used to that.

Hon SALLY TALBOT: I could tell the honourable member could not quite believe it. I was commending the honourable member on her chairing of the legislation committee for that brief period.

Point of Order

Hon COL HOLT: I think the President made a ruling about the history of the committee, and although this is interesting, I do not think it is adding any value to the debate, which is about promoting why this particular bill should be sent to that committee. I am happy to take advice, but that is how I see it.

The PRESIDENT: I did refer to that just a short time ago, and I was certainly about to do it again. The history of the legislation committee has been canvassed and discussed well. I think the point has been made about how it is relevant to the job it does in this chamber. The member needs to now clarify her remarks and, hopefully, conclude why this bill should go to the legislation committee.

Debate Resumed

Hon SALLY TALBOT: I can assure you, Mr President, I will not read out the 24 references to the 2001–2005 standing committee.

The PRESIDENT: I can assure you that you will not, either.

Hon SALLY TALBOT: I am making the general point about this specific referral. The point I was making when Hon Col Holt took the point of order was that the legislation committee is efficient. I was talking specifically, if the honourable member were listening, about the generosity of Hon Ken Travers to give the committee five and a half weeks to prepare its report. This is not a lengthy bill, and I think it can be done in less

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

time. If that is a problem for the government—Hon Ken Travers and I have not conferred on this—but perhaps the referral date is open to some negotiation.

Hon Ken Travers: If the government wanted to bring us back early to consider this legislation after a short referral to the legislation committee, I would be more than comfortable with that.

Hon SALLY TALBOT: Thank you, Hon Ken Travers. I thought that would probably be the case.

Several members interjected.

The PRESIDENT: Order, members! I am sure the member is trying to wind up her remarks.

Hon SALLY TALBOT: I thought that would be the case, and I am gratified to hear it.

I have promised not to spend too much time on the history, but I did want to say that there is no problem, to go back to the point the Leader of the House made, with a referral of a bill that the Leader of the House does not regard as being complex or far-reaching. The legislation committee has a history of considering such bills, and indeed the electoral redistribution legislation was considered by that committee between 2001 and 2005, as was the anti-fortification legislation, the original SAT legislation and the huge rewrite of the Environmental Protection Act.

The PRESIDENT: Order! I think the member is drifting over history.

Hon SALLY TALBOT: I am sorry; I am drifting. Thank you, Mr President, for hauling me back on track. I will conclude my remarks by reiterating and underscoring the points made by Hon Ken Travers of the three reasons we need this referral.

This bill, contrary to the government's view, which I assume was summarised by the Leader of the Government in this place, will have an impact on the state. That is our belief. We have not been assured; we have neither read nor heard anything. We have been told nothing in any of the briefings that alleviates that concern. The impact on the state for small businesses and the long-term financial relationship with the commonwealth must be clarified. The second point is that the house needs to consider the detailed advice about that impact on both small business and the state's financial relationships with the commonwealth when it makes its decision on the bill. Only by referring it to the Standing Committee on Legislation can the house be in possession of that evidence, because that committee will call witnesses and present those witnesses' statements as part of its report.

The final point is that we have to be sure that it is the right path for the state to take if we pass this bill and reimpose a tax that will lapse, presumably, at midnight on Sunday, 30 June. I commend the motion and urge members to support the referral of the bill to the Standing Committee on Legislation.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.31 pm]: I rise to support the motion moved by Hon Ken Travers. I want to set out the reasons I think this is something the house should seriously give consideration to—notwithstanding the comments of the Leader of the House so far. Any bill can be referred to a committee if the standing orders of the respective committees are met. Indeed, there are no restrictions on what bills the Legislation Committee can consider. An argument often used against referring a bill to a committee is that the committee has so much work to do, it does not have time to take on an additional referral. That has not been the case for this committee for some time, and it is not the case right now. No other bill is before the committee for consideration. Hon Ken Travers has proposed a relatively quick turnaround of 6 August. While many members of the house and, indeed, of that particular committee, might have made some alternative arrangements for at least parts of the next five weeks that might perhaps see them in sunnier climes, a range of mechanisms can be put in place, such as substitution and subcommittees to handle inquiries.

Hon Ken Travers has identified challenging questions about what this bill means for us. If we signed an agreement, which we did in 1999 and got certain considerations as a result of doing so, and we changed our mind and said that we will not honour that agreement, what would that mean for the rest of our financial arrangements that were cemented as a result of that 1999 commitment? I think it is important to note that this bill will indeed renege on that commitment. Someone, I think it might have been even you, Mr President, in the earlier ruling, noted it was their understanding that the government intends to revisit this abolition. That is not reflected in the bill, but it is certainly reflected in the second reading speech and the words used are as follows —

The abolition will be revisited when its cost can be better accommodated in the state's budget.

That is a promise from the government, the same government that has broken its promise by bringing in this bill in the first place. The government had a range of options available to it when it considered what it wanted to do with this transfer duty on non-real business assets. It could have done what it did last time, which was bring a bill before the Parliament that deferred lifting the transfer duty on non-real business assets. It knows how to do that because it did that last time, but it very consciously drafted another bill that abolished it—so the government has

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

given consideration to bringing in, and knows how to bring in, a bill before the house that would further defer unwinding this transfer duty. But I suggest it has very deliberately chosen a bill that does not defer but abolishes. If the government is to be taken at its word and it revisits this issue, it will set itself up for a much more complicated process to address it, because it will have to bring back to the house a brand-new piece of legislation and everything that goes with that, rather than put in place a bill now that gives a time line within which it can revisit before applying the implementation. The government has made a very conscious decision here to not set itself up to revisit within a time frame—it is abolishing.

The role of committees in this house is really important. Their job is to consider, to seek expert advice, to seek stakeholder advice on the impacts of what is before them, to make recommendations and to provide advice to the house. That is what they do for us. They filter the complicated issues and the different expert opinions and the stakeholders' points of view. They do all that work for the house and then they make recommendations about what the house ought to do about the bill's provisions. If clauses need to be amended, they make recommendations and provide advice to us about that. In the Westminster tradition, the sorts of bills that go before committees, particularly committees such as the Legislation Committee, tend to meet two tests—are they controversial and are they complex or complicated? It is to enable the committee to untangle the issues rather than take up the more cumbersome debate of untangling those issues on the floor of the house when we go into Committee of the Whole.

The question of the amount of time it will otherwise take to untangle those issues is important because today is our last scheduled sitting day. We are prepared to examine this bill for as long as it takes us to satisfy ourselves on all those issues that are within the bill. I bought my overnight bag with me, so I have a change of clothes.

Hon Kate Doust: Your onesie?

Hon SUE ELLERY: I do not have a onesie; I would not submit anyone to the prospect of seeing me in a onesie. I could not think of anything more hideous.

The PRESIDENT: Order! Now we are straying from the motion.

Hon SUE ELLERY: We certainly are. It is a frightening thought, Mr President!

Do we want to stay here for days on end when there is a better way to do it? If the government says it wants to do that because it has to get this through by 30 June, how will it do that? How will it do that, because we are going to keep talking about this bill?

Hon Peter Collier: That is what we agreed.

Hon SUE ELLERY: I never gave any agreement that we would pass the bill by 30 June—never.

Hon Peter Collier: We'll sit here all night then.

Hon SUE ELLERY: Exactly. That is the point I am making.

Several members interjected.

The PRESIDENT: Order! Now we are definitely straying from the subject matter. In terms of the agreement made previously, I think on Tuesday in this house, I refer members to the debate on the motion to extend sitting hours, and it might provide some clarity. Let us get to this motion, which is to refer a bill to a committee.

Hon SUE ELLERY: Thank you, Mr President.

I welcome the minister's comments during his contribution about a better and extended use of committees, but I am concerned that right now, if we judge this government's management or mismanagement, depending on one's point of view, of the legislation we have had to deal with so far, then in fact the minister might be setting us all up to fail on the commitment he gave. Because if his colleagues in the other place continue to get what they say is time-sensitive legislation to us in such an untimely fashion, we are not going to be able to refer bills off to committees in a reasonable amount of time and return legislation to this house. Although I acknowledge the efforts this week of the Leader of the House in standing and saying we would not deal with other legislation outside of our standing orders, which specify that it has to lie on the table for a week—I respect him for doing that—there are certain things he cannot control. To date, it would appear that his colleagues in the other place do not understand our standing orders or the conventions and traditions of this place. I hope the Leader of the House is able to implement the commitments he gave us earlier in this debate about extending the use of committees, but I fear, on the basis of the track record so far, that that is probably not going to happen.

I do not want to talk for much longer on this motion, but what tests need to be met? They are: is it in standing orders that this committee can deal with this bill? Yes, it is. Is the Standing Committee on Legislation free to take on the work? Tick; yes, it is; there are no other matters before it. Is it an unreasonable delay? I say no; it is

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

actually a quick turnaround—6 August—and that is negotiable. Are there complex and controversial matters to be considered? Yes, there are. This is a broken promise, and that makes it controversial. It affects business and it affects commercial interests operating in Western Australia. Questions arise as to our financial agreements with the commonwealth and whether they will be compromised by refusing to abolish this duty; that goes to the complexity test. The controversy test, as I have said, is that this is a broken promise, which is not a reason of itself to send a bill to a committee, but it will impact on a wide range of commercial activities across WA. Commercial operators and their principals and owners did not know about this change and the impact it would have on their commercial arrangements before the most recent state election, and they should have. So, have we met the tests as to complexity and controversy? Yes, we have. Is this something that the legislation committee can deal with? Yes, it can, because it is free to deal with it and it is within its standing orders. For all those reasons, I urge members opposite to reconsider the position put to us already by the Leader of the House and consider supporting the referral of this bill to the legislation committee.

HON SIMON O'BRIEN (South Metropolitan) [3.43 pm]: Seeing as there is a determination by some members in this place to talk this out ad infinitum, which is somewhere beyond ad nauseam, I will take this opportunity to introduce a couple of facts into this debate, which I have been following with some bemusement.

Firstly, a cult of brainwashing seems to be in train that has been established by the constant repetition of a mantra from certain members of the opposition that this government should have this article of legislation frustrated, whatever the cost, because it is alleged that promises were made during the course of the recent election campaign—which, I might add, was won by the Liberal–National government in very convincing fashion—and that all these promises have now been thrown out the window. I am sure government members look forward to debunking those myths in detail in due course, but I am becoming fed up with hearing them repeated without proof, as if to be accepted as some sort of fact. The opposition has leapt forward in the course of today to go beyond that and say that having established that—which it has not—the opposition therefore has licence to frustrate whatever needs to be done in this house today, and that it can feel good about that because that is somehow what an opposition is meant to do.

On the question that this matter be referred to a committee, I have had a bit of experience with committees. On the eve of the winter break, it is not true to say that this is a rapid turnaround and to say that from now until the next day's sitting is a large chunk of available time for a committee to do a job. That is rubbish. All those committee members will have other arrangements set in train, and the committee itself has not programmed an inquiry on this or, apparently, any other matter at this time.

On Tuesday, with other members in this place, I participated in the question of the business of the house being varied this week. When I looked at the uncorrected *Hansard* from Tuesday, 25 June to refresh my memory, I noticed that the honourable Leader of the House moved without notice —

That so much of the standing orders be suspended as to enable the following variations to the order of business and sitting times for next Wednesday and Thursday —

That was to create generally more government business sitting time. He said —

By way of explanation, this is the last week of the current sitting session before the winter break and the government would like to pass three pieces of legislation. Passing this motion will provide what we would regard as sufficient government time to pass that legislation. I have had discussions with the Leader of the Opposition behind the Chair and we have collectively come up with what we regard as the most viable avenue to ensure that that legislation is passed before the house rises on Thursday before the winter break.

Now, that is something that is familiar to those of us who have been around for a while! They are the same words that are recited at about this time every parliamentary session, as opposition and government liaise away from the plenary session to make sure there is an ordered conclusion to the business of the house before we rise for an extended break. In response, the honourable Leader of the Opposition rose and said —

I rise to indicate that what the Leader of the House has said reflects the conversations and the agreement that has been reached between us. The three bills that the government advised us are their priority bills—that are on the notice paper—are the Supply Bill 2013, the Duties Legislation Amendment Bill 2013 —

Which of course is the subject of this motion —

and the Rates and Charges (Rebates and Deferments) Amendment Bill 2013. The basis of the understanding is that we will try to create more time to deal with government business this week.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Then the question was put and passed with an absolute majority. I recall that the result of that vote was reported to the house by the President in the terms, “Members, this motion requires an absolute majority to pass. I have counted the members and confirmed that an absolute majority is present. There being no dissenting voice”—no dissenting voice!—“I declare the motion passed with the requisite absolute majority.” So, let us not have any nonsense now from the Leader of the Opposition and her colleagues about broken promises. Quite clearly, a gentleman’s arrangement was reached—the sort that has been reached every session, and in the course of every session, since way back when.

It appears that that counts for nothing for members of the Australian Labor Party. If they can sniff what seems to them to be some sort of political opportunity to give the government a pain in the neck or whatever it is that so delights them at this time that they want to treat their own undertakings with such contempt and publicly display their contempt for such agreements, I think they need to be called on it. For anybody who tries to interject to say that now I am using up time, they have made it quite clear that they have got their pyjamas with them and that they are going to sit here not to complete business, but to frustrate the house bringing its program of business to a conclusion.

Hon Ken Travers pointed out to members on this side that we should take some advice from Hon Norman Moore. I can tell members, and I have reminded the house of this before, that one of the dictums that Hon Norman Moore was capable of espousing so profoundly—generally, he would espouse it when there were questions of tactics and so on in relation to how the house operates—was that first and foremost this house of Parliament has to work; whatever else happens, the house has to function. I think there are one or two people who are losing sight of that. That leads to the other main dictum that I remember from Hon Norman Moore, and he told it to me and to others during the long, hard years of opposition from 2001 to 2008. He told us when he was last in government and he told us over the past four and a half years, particularly at times such as these, that the only thing that oppositions can sometimes do—I will not use the exact words that he said, but it is about giving something to the government and it is not nice—is frustrate the government.

Hon Ken Travers: You know we’ve never been an opposition that does that.

Hon SIMON O’BRIEN: The opposition has done it; I have sat here through very many late nights and seen it do it. And I suspect that we are in danger of doing it again. Hopefully, now that the house has been reminded of the agreement that was reached without dissent just last Tuesday, members might want to have a little think about how they are conducting themselves and the point of what they seem determined to do. In case you have not guessed by now, Madam Deputy President, I am actually opposed to the proposal of Hon Ken Travers! I think everyone has already made it quite clear where they sit on this question. Let us get on with the several bills that need to be done so that we can all go back to doing whatever we were doing.

Extended Sitting Hours — Personal Explanation

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.53 pm] — by leave: I rise to make this personal explanation because Hon Simon O’Brien raised a point, and by way of interjection the Leader of the House reinforced that that was his understanding of what had been agreed. Hon Simon O’Brien said that the Leader of the Opposition stood in this place on Tuesday and gave the government a commitment that we would finish this business within the extended hours that were in the motion that we agreed to. I have just had a conversation with the Leader of the House behind the Chair. From my point of view, it is fair to say that we have agreed to disagree. I agreed with the Leader of the House to add additional hours for the purpose of debating the three bills that the government has identified it wants to deal with. My recollection of that conversation, which happened in the corridor outside, is that I said that we would agree to the additional hours, and we talked about getting rid of motions on notice et cetera, but I could not give a commitment that we would finish the bills within those additional hours. I said that we would debate the bills in the additional hours, but I would not give a commitment that we would complete the bills within the additional hours that we had been given. The opposition’s expectation from the motion we passed as it relates to today is that we will continue to sit beyond our normal finishing time this evening. I certainly have learnt a lesson from this. The Leader of the House and I have to have a pretty good relationship about the things that we understand we are agreeing to. In this case, I believe him when he says that he thought I was giving him a commitment to absolutely complete the debate within the extended hours.

Hon Simon O’Brien: Why else would we have extended hours at this time?

Hon SUE ELLERY: There is no end to it. I have dealt with Hon Norman Moore for the last four years, and at some point in a situation like this, he and I would have another conversation about how we would manage it. That has been my experience for the past four years.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

The point I was making is that I believe the Leader of the House when he says that he genuinely thought he had that commitment from me. I have asked him to believe me when I say that I was agreeing to additional hours and I was basically saying that we would use all the hours we had. The motion that we passed in the house on Tuesday does not put an end on those debating hours. That is where we find ourselves. I want members in the house to be well aware of what that means. The Leader of the House and I have just agreed that we will have another conversation at some point later today about how we are going to manage that from here on in. But the point I made to the Leader of the House is that it is important that he and I have a good working relationship. That is why I have stood to make it clear to him, because I believe him when he says that he thought I was agreeing to X. The problem is that I thought I was agreeing to Y. So that is our problem. I do not think there is malicious intent from either one of us. I think we both thought we were doing what we had agreed to do; it is just that we both thought we were doing different things. That is the problem that we have found ourselves in.

Extended Sitting Hours — Personal Explanation

HON PETER COLLIER (North Metropolitan — Leader of the House) [3.57 pm] — by leave: In response to the comments made by the Leader of the Opposition, I was firmly of the opinion that we had made an agreement that those three pieces of legislation would get through this week. That is genuinely what I thought, and I feel that that is reflected in both my comments and those of the Leader of the Opposition in the *Hansard* from Tuesday. The Leader of the Opposition is correct in her comments that the motion states that we will sit after 7.30 pm on Thursday, but that of course will mean a very long night for all of us, and potentially an early morning, and we all acknowledge that.

I acknowledge the comments of the Leader of the Opposition and I believe her when she says that that genuinely was her interpretation of our conversation. Having said that, I think it is now quite clear that we need to get those three pieces of legislation through, so we are in for a long night. I would like to think that in a very cooperative fashion we can move to those pieces of legislation so that we can pass them before the house rises for the winter break. I also agree with the Leader of the Opposition that we have a cooperative relationship; it certainly has been to this point, and I will continue to cooperate. Whether we need any more clarity than what was provided, I was absolutely adamant that we had that clarity and so was the Leader of the Opposition. From now on, perhaps we will need to ensure that it is completely watertight.

Debate Resumed

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [4.00 pm]: I also rise to make some comments in support of the motion moved by Hon Ken Travers to refer this legislation to the Standing Committee on Legislation. I was very interested to hear Hon Simon O'Brien comment on why we were moving down this path. I gave myself cause to go through the *Hansard* from 2002 to 2007. During that time in opposition, Hon Simon O'Brien was a great champion of referring matters to the legislation committee. On at least 10 separate occasions he stood in this place and spoke of the benefits of referring legislation to the legislation committee. It is always interesting to see how members change their view, depending on which side of the chamber they sit. I encourage members of the National Party in particular, who sit here silently from time to time not adding their voice to where they sit on anything, to look at the comments made by Hon Simon O'Brien. On each of those occasions he articulated the value and importance of the work done by that committee as it inquired into a range of diverse matters during that period. It is a real shame that he did not pursue those same matters when he was in government.

I also encourage Hon Rick Mazza—I am sure he would be excited at the opportunity—to speak on behalf of his constituency about their concerns with this legislation. It would be a good opportunity for him to rise to his feet, perhaps not during this part of the debate but certainly during the debate on the legislation. Unfortunately, we have not had these opportunities very often over the past four years. Members alluded to Hon Norman Moore and his final comments about the need to refer more matters to committees. Whenever we tried to refer matters to any committee whilst in opposition during the last Parliament, he was always a staunch opponent. Maybe in hindsight he realised that it might have been more expeditious and of greater value to the Parliament if committees had been utilised better and more frequently. That would have enabled the Western Australian community to have a greater input into the detail of legislation that we were dealing with.

Hon Simon O'Brien interjected.

Hon KATE DOUST: I know that somebody is trying to yell at me, but I will address my remarks through you, Madam Deputy President, because I know that is appropriate.

Hon Simon O'Brien: Because you haven't got an answer to the question.

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Hon KATE DOUST: I have. This was one of nine bills deemed to be extremely urgent in the other place by the government. The bills were rushed through, not giving members the opportunity to look at them intensely and for an intense inquiry to be made into the detail and implications of them. This bill was not referred to any committee in the other place; it raced through that chamber and raced over here. During our last couple of sitting days we now have to deal with this bill. As we all know, the commitments made in this legislation go back to the Duties Bill 2002. Those who were here at the time would recall that it was quite a substantial piece of legislation. I gave myself another reminder of that time when I read *Hansard* today and reviewed the comments made Hon George Cash, Hon Paul Llewellyn and Hon Ray Halligan. As we all know, they certainly used to give legislation a good once-over by scrutinising it in detail. The origins of what we are dealing with now come from that legislation. The commitments that were made to abolish this duty were made back then. The government made an announcement in May that it would not abolish that duty.

I turn to one of the reasons we need to send this bill to a committee and advertise and promote an inquiry amongst the community. Picking up on the comments of Hon Ken Travers, this bill is a significant impost upon our business community. I welcome those people in small business in particular to provide an insight on the implications of this legislation upon their business. I do not think they have been afforded that opportunity; they have just had the carpet pulled out from under their feet. About two weeks ago I had the opportunity to speak to a large group of members from the Regional Chambers of Commerce & Industries WA. When I canvassed what was happening with this legislation, there was quite a lot of disappointment and anger in that room about the way the government had handled the announcement of this proposal. There were some mutterings about the difficulty it would cause small business.

We have a committee that can look at this bill. It has been a bit quiet in some ways because we have not made the most of the opportunity to refer work to it. We are about to have a break in sittings. When I was a member of the legislation committee between 2001 and 2005, it was not uncommon for a bill or many bills to be referred to that committee at a later stage of the cycle and for members of that committee to spend their July break working on one or more bills so they could report back to the house with a report. The legislation could then be dealt with in its entirety with a proper piece of work attached to it outlining the concerns, amendments or recommendations of the committee so that this chamber could review it and make its decisions about how it would manage that legislation. In times gone by, that was seen as a fairly standard practice and a good use of members' time. Just because we are on a break does not mean that we are on holidays; it is working time. That is a very good opportunity for committees to utilise that time and spend more time on some of these more significant pieces of legislation or issues. Given the degree of urgency of this bill and given the long-term implications of this bill—we do not know whether this government will ever seek to abolish these duties—those questions need to be canvassed in a committee inquiry.

The Leader of the House has said that he wants to expand the work of committees, which I know he is a supporter of, but not on this occasion. That is a trap that we fall into. We see the same thing happen every time a bill is referred to a committee by way of a motion. We have all done it. We have sat on the other side and put the same sort of arguments, and when we are on this side, we hear them flung back at us. Those opposite say that it is a really significant issue but we are really sure we can work through the nitty-gritty of this bill in committee in the chamber and we do not need to send it to a committee. What is the government afraid of? Why is it worried about opening it up? Why can the stakeholders—the beneficiaries punished by these changes—not have proper feedback into this legislation? Why are we denying them that opportunity? They certainly will not have that opportunity if we proceed with this bill today and just deal with it in this chamber. They do not know what we are doing here today and they do not have an opportunity to have their say. If we send it off to a committee, we will advertise the inquiry and invite submissions. If people want a say on what is happening with this legislation or what could happen with it and if they want to outline any proposed changes to this bill, they are afforded that opportunity. By not referring this bill to a committee, we are denying them that opportunity. I think that is unfair.

I return to the comments of the Leader of the House. Part of the difficulty is that whilst he may genuinely want to do the right thing and have committees operating in a more effective way, if we take a piece by piece approach, every single time a bill is referred to a committee, we will get the same response. In the future we will say we will do X and ensure the committees are operating and that they are managing inquiries. As it stands, we do not know whether that is ever going to happen. We are going to be cornered in here where we do not have the opportunity to either have feedback from stakeholders or access expert advice on the detail or implications of the bill. We are really missing an opportunity to do those things by not having this bill sent off to that committee. I come back to Hon Simon O'Brien. There are some comments of his in *Hansard*. There was a taxi amendment bill about which he was so enthusiastic that, in the last minutes of a sitting period, he volunteered to substitute himself onto a committee if the referral was successful. That is real enthusiasm for the job. I would hope that he would come over and support us, because he is obviously a man who knows the value of the work of parliamentary committees in this place. He has demonstrated that time and again with his enthusiasm for the

Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

numerous opportunities to refer bills to committees. It would be very disappointing today if the government denies this chamber the opportunity to refer this bill to a committee for a full and frank inquiry. Such a committee might provide a report back to this chamber that might very well say that we should pass the bill as it is or, based on advice and recommendations from stakeholders or experts, that recommends a number of changes. That would then give us food for thought on how to deal with this bill. That is all we are asking for. We will not be able to have that same opportunity if we simply proceed with the bill today and remain in the chamber.

With those few words I fully support the motion moved by Hon Ken Travers. I hope our colleagues in the National Party will rise to their feet—that would be very pleasant to see—and support us on this occasion. I also hope Hon Rick Mazza will take into account the implications of this legislation for his constituency and the need for his constituency to have a say in an open inquiry into this bill. I hope he will think that way and will support this referral motion.

HON KEN TRAVERS (North Metropolitan) [4.11 pm] — in reply: Is Hon Col Holt sure that he does not want the call?

Hon Col Holt: No.

Hon KEN TRAVERS: I wanted to make sure that the National Party will be voting just as part of the government, of which it is a member; I just wanted to confirm that.

There are a couple of things I want to say in reply to the comments that have been made on this motion to refer the Duties Legislation Amendment Bill to the Standing Committee on Legislation. I raised a range of substantial issues about the potential implications of this bill. I do not think the Leader of the House addressed those matters in any substantial way in his response. So be it. I guess it is the right of the government to plough on through like we are the lower house. It is sad that we were not even given that in the responses from members on the other side. Hon Simon O'Brien tried to suggest that somehow a conspiracy was being developed that the Liberal Party had broken election promises. When a government goes to an election and it has written, in law, that on 1 July 2013 it will be providing tax relief to small business in Western Australia and it chooses, within weeks of that election, to bring legislation into the house to remove that abolition, then that is a broken promise. The government even went so far as to suggest in a press release during the election campaign —

Hon Alyssa Hayden: Is this relevant to the motion?

Hon KEN TRAVERS: I am responding to the comments made by Hon Simon O'Brien in the debate.

Hon Simon O'Brien: And taking a great deal of licence with the point I was making.

The DEPUTY PRESIDENT (Hon Adele Farina): Order, members! Hon Ken Travers has the call.

Hon KEN TRAVERS: No, I am responding directly to the point Hon Simon O'Brien made; that is, that the opposition was somehow perpetrating a conspiracy that this bill was a broken promise.

Hon Simon O'Brien: No, I was pointing out —

Hon KEN TRAVERS: Does Hon Simon O'Brien accept it is a broken promise?

Hon Simon O'Brien: I was pointing out your disingenuousness in trying to develop this theme that we are given to broken promises whilst at the same time pursuing this course of action which breaks a promise, an undertaking, given to and adopted by the house on Tuesday. That was my point. Talk about that. Why didn't you bring this up on Tuesday?

The DEPUTY PRESIDENT: Order, members! Hon Simon O'Brien does not have the call. Hon Ken Travers has the call.

Hon KEN TRAVERS: I want to be clear about this. Is Hon Simon O'Brien saying that he accepts that this bill is a broken promise?

The DEPUTY PRESIDENT: Members, given the time I will leave the chair until the ringing of the bells.

Hon Simon O'Brien: Now you will never know what happens! It's a cliffhanger!

Debate interrupted, pursuant to standing orders.

[Continued on page 2291.]

Extract from *Hansard*

[COUNCIL — Thursday, 27 June 2013]

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Hon Ken Travers; Hon Michael Mischin; Hon Peter Collier; Hon Dr Sally Talbot; Hon Col Holt; President; Hon Sue Ellery; Hon Simon O'Brien; Hon Kate Doust; Deputy President

Sitting suspended from 4.15 to 4.30 pm