

REVENUE LAWS AMENDMENT BILL 2012

Second Reading

Resumed from 14 August.

Point of Order

Hon NORMAN MOORE: Mr Deputy President, I request that you leave the chair until the ringing of the bells.

Sitting suspended from 12.29 to 12.37 pm

HON KEN TRAVERS (North Metropolitan) [12.37 pm]: Last night we dealt with the Revenue Laws Amendment Bill 2011, and today we are dealing with the Revenue Laws Amendment Bill 2012, which in many respects serves a similar housekeeping purpose as the 2011 bill, but this bill affects fewer pieces of legislation than the one we dealt with last night. I do not think I need go through each and every one of the provisions of this bill; it suffices to say that my understanding is that this bill is relatively revenue neutral or favourable to taxpayers. This bill amends the Duties Act 2008, the First Home Owner Grant Act 2000, the Land Tax Assessment Act 2002, and the Pay-roll Tax Assessment Act.

I may have confused members the other night when we were talking about the payroll tax bills, but this bill will put in place the rebate for employers with employees with a disability, and it will link in with the commonwealth schemes around disability employment services and those who receive support from the Disability Services Commission of Western Australia. I think that is a worthwhile initiative. There are a range of limitations, but it will be an ongoing process that will, hopefully, encourage more people to employ those with a disability. In Western Australia, which has such a tight employment market, it is important that we increase the participation rate, and often that is about getting people a start in employment. As much as we all believe there should be a strong human rights approach to these matters, a financial incentive is often required. It has been my experience that after having employed people with a disability, most employers find them to be some of their best employees. I was speaking to someone the other day who said that they only employ people with a disability in that particular role, and they find them to be absolutely the best employees. That alone should encourage people to employ them, but sometimes financial incentives are needed, and this bill will provide that. I am confident that any employer who takes on a person with a disability and gets the benefit of this legislation will very much find that it was a superb decision; I am not sure they would think it such a good decision if they had to pay extra payroll tax.

The other changes around housekeeping matters were adequately outlined in the minister's second reading speech. There are changes related to the ongoing harmonisation process, and amendments are to be made in advance of or in accordance with similar legislation in other states in anticipation of uniform legislation. We have similar, but not mirror, legislation to other states, and to make sure that we are ahead of the game, amendments will be made as a result of experiences over east.

I have only one issue with this bill. I was reminded by the Leader of the House the other night that we are the house of review, and it is probably fair to say that in recent times, because of the numbers in this house and the way in which the numbers in this house are structured, we probably have not performed the rigorous house of review role that we may have in previous Parliaments in which I have served. But I think one of the key areas we have continually taken a strong position on as a house of review is the question of Henry VIII clauses. When Henry VIII clauses have been moved in the past, this house, as a house of review, has taken a very strong position on them. It is my view that this legislation contains a Henry VIII clause at clause 42, which allows for regulations with a retrospective effect to come into operation. I accept that in terms of legislation there has been a tradition of ministers making announcements—I think the current Minister for Finance has done it—and legislation later being brought in that backdates changes to the date of the announcement. That is not uncommon at a state and commonwealth level in accordance with the Westminster system, but I believe it should not be commonplace for regulations that change the substantive legislation on a retrospective basis—that is, Henry VIII clauses—to be accepted. In the past this house has taken a very strong position on rejecting those clauses, instead requiring governments to make changes using the traditional process of making an announcement at the time they believe the change needs to be made, and then bringing in substantive legislation to make those retrospective changes. It is my view that clause 42—there may be others that I have not noted at this stage—is a Henry VIII clause.

I think it is also fair to say that in the past this house has extensively used the Standing Committee on Legislation to report and provide us with advice on these sorts of matters. It is my view that that procedure has fallen by the wayside during this current Parliament, which is again a product of the numbers. Certainly, when this Parliament was formed, discussions about referring legislation to the legislation committee fell on deaf ears, and we have found that only a few bills have been referred to that committee. I invite my colleague Hon Sally Talbot, who is

a member of that committee, to correct me if I am wrong, but I think only two or three bills have been referred to that committee during the life of this Parliament. I think it would be fair to say that in previous Parliaments we referred at least 10 to 20 per cent of bills that came to this house to that committee. I do not think that is because the quality of the bills arriving from the other place has improved at all; I think it is a product of the way in which this house is structured. But the Leader of the House reminded us the other night that we are a house of review —

Hon Norman Moore: You used to oppose that happening when you were in government.

Hon KEN TRAVERS: The Leader of the House reminded me that this is a house of review. I guess it is a good test for him to see whether —

Hon Norman Moore: You did not send bills off with great enthusiasm, I can assure you.

Hon KEN TRAVERS: If Mr Moore looks at the history of the matter, he will find that many bills were referred without debate or without a division in this house. That is normally the test by which one can find out whether the government supports the referral. I accept there were often negotiations preceding those debates, but the government did support legislation going off to that committee. In previous Parliaments the Leader of the House was a strong supporter of legislation being referred to committees.

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

HON KEN TRAVERS (North Metropolitan) [12.45 pm] — without notice: I move —

That order of the day 23, Revenue Laws Amendment Bill 2012, be discharged and referred to the Standing Committee on Legislation for the purpose of identifying whether there are any Henry VIII clauses, and to report back to the house by Wednesday, 12 September 2012.

In moving that motion on the Revenue Laws Amendment Bill 2012, the real test now is whether the Leader of the House will be consistent with his past views—firstly, about referring legislation to the Standing Committee on Legislation and, secondly, about whether this chamber should allow Henry VIII clauses to go through. In my opinion, if we are to allow a Henry VIII clause to go through, we should at the very least obtain the advice of the legislation committee to tell us whether it is justified, and to give us a full outline of the implications that it may or may not have, before the house makes that decision. I have moved this motion to give the house the opportunity to refer this bill to the committee.

I note that the house is about to rise for two weeks. It is my view that this inquiry would not require extensive work or take up extensive time of the committee. That is why I have included a reporting date of 12 September, which is the Wednesday of the week we come back. In my view, that provides sufficient time for that committee to go away and look at the bill, and provide advice on the specific question about Henry VIII clauses. I do not think that is an unreasonable request of this house. I do not think it will delay this legislation in any significant way. The government, as always, is keen to get this bill through the house at the first available opportunity. I do not think there will be any material damage to, or impact on, that legislation being passed by delaying it for two weeks.

In terms of the policy of the bill, the opposition is happy to support it, but in terms of its detail, we are keen to obtain the advice and recommendations of the Standing Committee on Legislation before we completely sign off on every last detail.

HON GIZ WATSON (North Metropolitan) [12.49 pm]: The Greens (WA) will support this motion. Hon Ken Travers raised an important issue. We also noted in our briefing that there appeared to be a Henry VIII clause in the Revenue Laws Amendment Bill 2012. I concur with the history that Hon Ken Travers has alluded to in terms of the Legislative Council's attitude to these issues when they occur in legislation. I also concur with his comments about the demise of the role of the Standing Committee on Legislation, which I was a member of for a considerable 12 years. That standing committee did some excellent work and certainly dealt with significantly more pieces of legislation than it does at the moment. It is very important that we make use of the standing committees and the expertise they offer to deliberations when we get back into the chamber. I certainly support this discharge and referral of the bill to the Standing Committee on Legislation.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [12.50 pm]: I want to make a couple of comments on this matter. A few comments have been made by members of the opposition and the Greens (WA) about the Standing Committee on Legislation not being overwhelmed with business. That is probably true, except that one of the bills it dealt with took about 18 months of this term of Parliament to be dealt with. Its report came back to this house and, as a result, the bill is now languishing, so it is not as though the committee has had nothing to do.

The enthusiasm of the opposition for bills being referred to the legislation committee is different from the enthusiasm it had when it was in government. I have a long enough memory to remember many times when we were the opposition and we had the numbers and we thought some bills needed to go to the legislation committee that the then government resisted vigorously. The Labor Party had no great enthusiasm for its legislation to be scrutinised by the legislation committee. It is interesting that it now has a different point of view in opposition. I suspect, when the worm turns, as it will sometime in the next century and the Labor Party is back in office again, it will have the same view about the legislation committee as it had when it was in government last time.

With respect to this amendment moved by Hon Ken Travers, whom I might add required us to adjourn the house for a few minutes in order to allow him to make his speech —

Hon Ken Travers: Fair go! After you closed the house down twice. I've been here all week waiting to do this bill. Don't run that crap.

Withdrawal of Remark

The PRESIDENT: Order! I ask that comment to be withdrawn. It is unparliamentary.

Hon KEN TRAVERS: I withdraw.

Debate Resumed

Hon NORMAN MOORE: I requested the Deputy President to leave the chair until the ringing of the bells in order to allow the honourable member to get here to make his speech. I do not know whether that has ever happened before. It has nothing to do with whether the house got up early last night or the night before. It is to do with what happened today. I would have thought that the member might have said, "Thank you for allowing me to get here in time to make my speech." He does not have to do that but that is what I would expect.

Hon Ken Travers: This is outrageous. Do you know where I was?

Hon NORMAN MOORE: No, I have no idea. I do not have the faintest clue where the member was.

Hon Ken Travers: I was here on Tuesday night and I was here on Wednesday night ready to deal with this legislation when you adjourned the house, Mr Moore.

Hon NORMAN MOORE: Does the member think we should organise our time to fit in with his plans?

Hon Ken Travers: It was on the list for Tuesday and it was on the list for Wednesday.

Hon NORMAN MOORE: It is first on the list today. Having been here a long time, the member should know that this bill was the first order of the day, which comes on after we have dealt with private members' business. If there was a reason why the member could not be here, his Whip should have asked me to delay the bill until such time as the member got here, and that would have been perfectly okay by me. The member has now made a big deal of the fact that this bill needs to go somewhere else to be considered, having not given us any notice of the fact that he was going to be late. He can treat the house exactly how he wishes; that is entirely up to him.

It is the government's view that this clause that the member refers to is probably not a Henry VIII clause, but that is something that can be argued. I will indicate to the house that we will agree to this proposition. I would not want the member to think that some sort of precedent will be set here so that whenever he thinks there might be a Henry VIII clause in a bill, we send the whole bill off to be trawled through by a committee to see whether it can find any others. The member has identified one that he thinks is a Henry VIII clause, which the government does not necessarily agree with. I do not know whether he thinks there is any other Henry VIII clause, as he has not identified any. The motion states that the committee should go through the bill from start to finish to see whether it contains any other Henry VIII clause. However, I would not want to see that become some sort of a precedent for what the opposition might do with legislation in the future. The member has identified one, and I have no doubt that the committee will look at that, but to suggest that the committee needs to go through every clause to find out whether the bill contains any Henry VIII clause is a step too far in my view. We will therefore agree to this particular proposition and look forward to the legislation being returned on 12 September so that we can then deal with it and take into account the recommendations the committee might provide to the house.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [12.55 pm]: I listened with interest to the remarks of the member on the motion without notice, and I want to address my remarks to him now. The Leader of the Government has indicated that we will support this motion for referral of the bill to the Standing Committee on Legislation, though it is not to be taken as a precedent. We do that in recognition of the points that have been raised, despite not being of the view that clause 42 is a Henry VIII clause. Incidentally, it is my view, and I think this government's view, that we do not put Henry VIII clauses into our legislation. This is something we are concerned about and it is therefore worth a look.

I will just say quickly that, having looked at this matter overnight and this morning, I do not believe clause 42, which is the one the member is concerned about, is a Henry VIII clause. I believe we could have dealt with it satisfactorily in a committee stage of the bill—that is, a Committee of the Whole House. However, we have decided we will refer this bill to a committee and the Leader of the House has explained why. Given the member's other remarks about the policy in the bill and that there seems to be no disagreement in the house about the measures in the bill, just about the mechanics, I ask him whether he would be prepared to see this bill pass its second reading before we entertain this motion to refer it to a committee.

Hon Ken Travers: I am happy to do that. I am happy to withdraw the motion and then move it before we go into committee.

Hon SIMON O'BRIEN: On that understanding then and looking at the time, I will now quickly sit down.

Motion, by leave, withdrawn.

Second Reading Resumed

HON GIZ WATSON (North Metropolitan) [12.57 pm]: I think I am keeping up with this, Mr President! I think we are now dealing with the substantive bill. I indicate that the Greens (WA) will support the bill. We appreciate the comprehensive briefing that we received and note that we had a similar question about the Henry VIII clause, if it is such. Other than that, we are happy with the bill as it reads and we will support it.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [12.58 pm] — in reply: I thank members for their support for the bill. The active parts, particularly contained in clause 42, have already been set in train by the mechanism; therefore, members can be confident that their support for the bill will result in the measures being delivered. We will deal with the other matter, obviously, in the next couple of weeks when the committee reports, and hopefully then we will be able to take on board its report in the Committee of the Whole House. However, for now I thank members for their support for the second reading.

Question put and passed.

Bill read a second time.

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

On motion without notice by **Hon Ken Travers**, resolved —

That order of the day 23, Revenue Laws Amendment Bill 2012, be discharged and referred to the Standing Committee on Legislation for the purpose of identifying whether there are any Henry VIII clauses, and to report back to the house by Wednesday, 12 September 2012.

Sitting suspended from 1.00 to 2.00 pm