

LEGAL PROFESSION AMENDMENT (LEVY) BILL 2016

Second Reading

Resumed from an earlier stage of the sitting.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Ms M.M. QUIRK: The short title is the Legal Profession Amendment (Levy) Bill 2016. Why is it necessary to have, and what is the rationale for, having a separate piece of legislation?

Mrs L.M. HARVEY: My advice is that bills imposing taxation should deal only with the imposition of taxation. This is a levy. Section 46(7) of the Constitution Acts Amendment Act 1899 requires us to have a separate bill.

Ms M.M. QUIRK: That is a very satisfactory answer, minister, because that is what I was asking before. The reason we need this bill is that it is imposing a tax, and that implies that it is more than cost recovery.

Mrs L.M. HARVEY: My advice is that this bill is required because the contribution from the Legal Practice Board would be considered a tax, so there needs to be a mechanism to collect that contribution and deposit it into the law library fund.

Mr W.J. JOHNSTON: We are just getting it confirmed that there is no process to calculate the costs involved; it is simply a decision of government to impose a particular charge and that is why we need a separate bill. If it were a cost recovery process, there is already a procedure for cost recovery, and that means that the government would have to justify the specifics of the charge. We have debated this issue in other bills. I am sure Mr Acting Speaker (Mr I.M. Britza) would remember that not long after he and I and the minister at the desk were elected, we had the debate on the waste levy and the same thing happened. We had to have a separate piece of legislation, because even though it is called a waste levy, it is actually a taxation amount because the charge for the waste levy has nothing to do with the costs involved; it is simply a charge. That is the same reason that we have to have a taxing power in this bill; it is because the charge has nothing to do with the actual costs involved and there is no way to challenge it, which there would be if it were a levy. If it were a levy, the government would have to prove that the amount was equal to the actual cost, whereas by doing it as a taxation matter, it removes any doubt and there is absolutely no possibility of anyone arguing that the amount is beyond power. That is why we need a tax bill.

Mrs L.M. HARVEY: This is not proposed to be a fee for service. This is to cover a contribution by the Legal Practice Board towards the maintenance of a law library. It is not proposed to be a fee for service provided by the board or to the board; it is to make a law to put into practice a mechanism to collect a contribution from the Legal Practice Board for the maintenance and management of the law library. Cost recovery in this context is somewhat meaningless, because this is not proposed to be a fee for service; it is for the contribution to the maintenance and expansion of a facility for the use of legal practitioners.

Mr W.J. JOHNSTON: The minister seems not to understand what she is doing. The only reason it has to be a tax bill is that, however she wants to describe the charge, it is a tax. If it were a fee for service, as I am sure the minister is aware, the government would only be able to charge a fee that exactly matched the actual costs. That is why the government does not want to do it in that way, and it is doing it deliberately in this bill. I am not criticising the minister for that; I am just making the point that that is what the minister is doing. It is a tax, so there is no requirement for there to be a connection between the actual cost of the service and the charge; they are completely unrelated because it is a tax. I know that the minister understands that taxes are not related to the costs involved; they are simply a levy—a charge that is made for the interests of the Crown. The opposition is not saying that is wrong. We are making the point that that is why the government is doing this. We are not opposing that. It is just a statement of fact. We are trying to get the minister on the record to make sure that she clearly states that she understands why she is doing this. If that was not the reason for doing it this way, she would not do it in this way as a separate bill; it would have been part of the legislation, as is done in other acts. As I say, I am sure the minister will remember that not long after she and I were elected, we dealt with the waste levy. The reason we dealt with the waste levy in that way was that the waste levy is a tax. It is not a charge for the services of waste; it is a tax. In the same way here, it is irrelevant whether these charges are the cost of running the service; the reason for the charge has nothing to do with the cost of the service. It is a tax and the Crown has the right to raise taxes, and that is why the government is doing it as a tax. That is perfectly understandable. No-one is objecting to that, but the opposition is making it clear that that is the only reason it is being done in this way.

Mrs L.M. HARVEY: Perhaps if the member had been here for the debate on the other bill, he might have had a better understanding of what is proposed. What is proposed is that the law library that was previously at the Supreme Court and run by the Legal Practice Board and paid via a contribution from the board to that library is now being amalgamated with another library. We need, via this Legal Profession Amendment (Levy) Bill 2016, a mechanism to have the government-run library still able to collect that contribution that was previously made by the Legal Practice Board for the running of that independent library and to have that flow through in a similar fashion to the running of the new amalgamated and expanded resource. That is what this bill is doing, as the member has made quite clear. I am clear that under the Constitution Acts Amendments Act, we need to have this Legal Profession Amendment (Levy) Bill 2016 to enable us to collect this levy or tax or whatever it is and to have it go towards the law library fund to continue to maintain the integrity of that contribution from the Legal Practice Board towards the maintenance of that library.

Mr W.J. JOHNSTON: That is not true. I am sorry; the minister does not seem to understand what she is doing. Look at the second reading speech. If the government simply wanted to collect a fee, it would not be a tax. That is why the government is doing a tax bill. It is a tax. It happens to be —

Mrs L.M. Harvey: I did not say it was a fee. The fee would be prescribed by regulations as opposed to the other bill that the member was not here for the debate on.

Mr W.J. JOHNSTON: Minister, I do not have to be here for the debate. That is right; it is not a fee; it is a tax.

Mrs L.M. Harvey: We are in furious agreement that it is a tax or a levy.

Mr W.J. JOHNSTON: Okay, but the minister seems to be confusing us because she kept saying that it related to the charges that were made by some library that will no longer exist. We are very happy; we are not criticising the procedure. We just want to make sure that the minister is on the record saying that it is a tax. She said it in her opening remarks in answer to the member for Girrawheen, but then she has gone away from her opening remarks. Why does the minister not get up and read the paper that she was given because that is the clear bit? That is when the minister was saying it is a tax. We do not have a problem with it being a tax, but that is what it is. We just want to hear the minister say that it is a tax.

A whole series of tables in budget paper No 3 show the different areas of income for the government. The income from this will be in the section called “tax”. I will give the minister an example. When Rio Tinto and BHP made payments towards the changes to their state agreements, a \$450 million payment was made by those two companies, and that money was then used to build Perth Children’s Hospital. I asked the Under Treasurer, the year that payment was made, how that money is included in the accounts of the state. He explained to me that he had advice that it should be included as a tax. Lo and behold, I went to the budget papers and there it was. That is exactly the same here. It does not matter why we are collecting it or the purpose we are using it for; it will still be shown in the budget papers of the state of Western Australia as taxation revenue. It will not be shown as fees and charges or dividends. It will be shown as a tax. That is the point we are getting to. We are not trying to make this overly complex. I am staggered that the minister somehow or other is arguing that I am not correct when she has already said it is a tax. I am just trying to get it cleared up. I want to ensure that the minister is aware of what she is doing. We are aware of what the minister is doing. We hope she can get up and say very simply, yes, it is a tax.

Mrs L.M. Harvey: I previously said that, member.

Ms M.M. QUIRK: Given that concession, does the minister not think that it would be more appropriate for the title to be “Legal Profession Amendment Taxing Bill 2016”?

Mrs L.M. HARVEY: No, I do not, because it is standard to refer to these sorts of things as levies.

Mr W.J. JOHNSTON: When the minister says that it is standard to refer to taxation revenue as levies, could she give me an example of when taxation revenue has been referred to as a levy?

Mrs L.M. HARVEY: Member, “tax” and “levy” mean the same thing.

Mr W.J. JOHNSTON: With due respect, minister, that is not true. A levy means a charge for a particular activity. Taxation, as the minister knows, is money that is collected by the Crown through the legislative action of Parliament. They are not the same thing at all. We can collect a levy that is not taxation. So it is not correct to say that a levy and a tax are the same thing.

Mrs L.M. Harvey: It was not a question; it was a statement, so.

Clause put and passed.

Clause 2: Commencement —

Ms M.M. QUIRK: Clause 2 deals with the commencement. When does the minister anticipate it will commence?

Mrs L.M. HARVEY: That is dependent on when it passes through Parliament and when the regulations have been finalised. I do not have an anticipated time on that.

Ms M.M. QUIRK: There seems to be some urgency in getting this bill through the house. For example, bills already on the notice paper have been set aside so that this can get through this house this week. I think we were advised that there was a desire to have the scheme in operation by 1 July, but from what the minister has said there is no apparent urgency.

Mrs L.M. HARVEY: Obviously, we would like to get this through expeditiously because when the new David Malcolm Justice Centre opens, it would be desirable to have a functioning law library in place. The sooner we can get this legislation through, the sooner we can enable that to occur and that is my understanding of why this was made a priority by the Attorney General.

Ms M.M. QUIRK: On what day is the David Malcolm Justice Centre opening?

Mrs L.M. HARVEY: My advice is that it is proposed that the courts will move in around mid-July and that other entities within that complex will move in a staggered session between June and July as the centre develops. My advice is that it was deemed desirable to have the library functioning for the opening date of the court.

Ms M.M. QUIRK: Just on that point, presumably money in the legal practice fund can be used until the time that this legislation comes through. Is provision being made in the forthcoming budget papers for these changes and that is the reason that we need the legislation?

Mrs L.M. Harvey: I do not believe so, member.

Clause put and passed.

Clauses 3 and 4 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mrs L.M. Harvey (Minister for Police)**, and transmitted to the Council.