

ELECTRONIC TRANSACTIONS BILL 2011

Second Reading

Resumed from 23 June.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [12.55 pm] — in reply: On the last occasion I spoke to this bill, I was about to address the concerns expressed by Hon Lynn MacLaren regarding the failure of the Standing Committee on Uniform Legislation and Statutes Review to address the merits of the bill that had been referred to it in accordance with standing orders.

By way of context, the bill was introduced into this chamber on 23 February 2011 and stood automatically referred to that standing committee pursuant to standing order 230A, with a direction that the committee report by 5 April 2011. The committee, in fact, tabled its report on 22 March, which was well before the time it was required to report. I refer the house to paragraphs 2.1 and 2.2 of that report, which read as follows —

- 2.1 The Committee advises that due to circumstances beyond its control it is unable to report on the Bill within the 30 calendar days required by Standing Order 230A of the Legislative Council.

I mention at this point that, by my calculations, there were in fact more than 30 days between 23 February and 5 April, but be that as it may, paragraph 2.2 reads —

- 2.2 The Committee's ability to scrutinise and report on bills within 30 days relies upon the timely provision of supporting documentation. This did not occur. Two weeks elapsed before the supporting documentation (in particular, the document recording the inter-governmental agreement giving rise to the Bill) was supplied.

There is no mention made in the report that, at the same time that the bill was introduced, there was, in addition to the second reading speech, a comprehensive explanatory memorandum provided. It was not until the afternoon of Tuesday, 8 March that the committee sent, by fax, a request for more specific items of material relating to the bill to be provided. That fax was followed by a telephone call from the committee clerk, apologising for the committee's delay—or, at least, the clerical staff's delay—and asking for the specific items and information as soon as possible. The items and information requested were, in fact, provided the very next day—within 24 hours of the request. It is not strictly true, therefore, to say that there was not a timely response. I do not know how much more quickly a minister's office can respond to a request than within 24 hours of it being made.

Hon Sue Ellery: I think the point the committee made before that was that the default position is that the government should provide that information automatically. They do ask for it, to follow up, but the default is that the government should provide that automatically.

Hon MICHAEL MISCHIN: That is an argument, and I will get to that in a moment. The 24-hour response time seems hardly to be untimely or dilatory. If it were fatal for the material to not have been provided any earlier than 9 March, one wonders why the request was made in the first place, because, as I understand it, by 9 March the committee had the bulk, if not all, of the material it requested that was relevant to the question it was required to consider, which was the bill itself. Nevertheless, the committee reported on 22 March to say that it could not do any more. The 22 March date was already something like 10 or 12 days after —

Hon Liz Behjat interjected.

Hon MICHAEL MISCHIN: I am stating a fact that emerges from the report. If there is more to it, it would have been —

The DEPUTY PRESIDENT (Hon Brian Ellis): Order, members!

Sitting suspended from 1.00 to 2.00 pm

Hon MICHAEL MISCHIN: I do not propose to say much more on this aspect of the committee's report, other than simply to address the concerns that were expressed by Hon Lynn MacLaren. We can have an argument at some other time about memoranda to ministers and the like and what the procedures should be. From the government's perspective, it received a request for information that was over and above what it had provided at the time of the second reading speech; the government provided that information in what it considered to be an immediate fashion. Things took their course with the committee and the committee's reasons for tabling its report early and for feeling that it could not complete its task are matters for the committee. I commenced my address several weeks ago by saying that I had not intended to use this as an opportunity to criticise the committee, but simply wanted to ensure that the house was aware that, from its perspective, the government had responded in a timely fashion.

To allay any residual concerns the house may have, the bill itself develops a position that had been established in 2003 with the Electronic Transactions Act 2003, which picked up on the conventions which were then in place and which governed how electronic transactions and contracts were to be determined. This bill simply develops that and brings those procedures up to date in accordance with current United Nations commercial law conventions and international practice. The bill adopts those as part of the law of Western Australia so that it is consistent with what is done internationally and in other states of Australia. No formal intergovernmental agreement has been signed to which the government is committed. This arose out of the deliberations of the Standing Committee of Attorneys-General with an objective of harmonising the laws across Australia in a way that is consistent with international commercial practice.

I am able to say that the Queensland equivalent legislation, the Justice and Other Legislation Amendment Act 2010, was assented to on 14 October 2010 and commenced its operations on assent. In New South Wales the Electronic Transactions Amendment Act 2010 was assented to on 28 September last year and commenced its operations on 15 October last year. In Tasmania the Electronic Transactions Amendment Act 210 was assented to on 28 October last year and commenced on 1 January this year. In South Australia the Electronic Transactions (Miscellaneous) Amendment Bill of 20 November passed the South Australian Legislative Assembly on 3 May this year and was second-read in the Legislative Council also on 3 May this year. The Northern Territory Electronic Transactions (Northern Territory) Amendment Act 2011 was assented to on 18 April and commenced its operations on 23 May this year.

The only outstanding jurisdictions are Western Australia and Victoria. Hopefully, we will soon join that group in having our law and conventions for electronic transactions reflect those that are being adopted internationally and in other jurisdictions. On that note, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, and transmitted to the Assembly.