

FINANCIAL LEGISLATION AMENDMENT BILL 2021

Committee

Resumed from 17 August. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Mental Health) in charge of the bill.

Clause 11: Part 3 Division 5 replaced —

Progress was reported after the clause had been partly considered.

Hon NICK GOIRAN: When we were last looking at this bill, in particular clause 10, we had a discussion around *Treasurer's Instruction 953*, which we ascertained was a static document. A comparison was made with the Treasurer's circular, which is intended to be a fluid document that will change from year to year. Clause 11 is currently before us. At page 9, line 20, proposed section 42(2) makes reference to a draft resource agreement that must "be in a form prescribed by the Treasurer's instructions". Does an instruction of that sort already exist; and, if so, what is the instruction?

Hon STEPHEN DAWSON: I am advised it does exist in *Treasurer's Instruction 808*.

Hon NICK GOIRAN: Is it the intention that the form to be prescribed set out at proposed section 42(2) will continue to be that existing *Treasurer's Instruction 808* and that the government has no intention at this time to change that?

Hon STEPHEN DAWSON: Yes, it will remain.

Hon NICK GOIRAN: My final question on clause 11 pertains to the information set out in proposed section 42(3)(b). It refers to a date that the Treasurer must make known, but it has to be done in a manner that the Treasurer considers appropriate; what is that manner?

Hon STEPHEN DAWSON: The date will come out in the Treasury budget circular, and it is most likely to be the budget cut-off date.

Clause put and passed.

Clause 12: Section 48 amended —

Hon Dr STEVE THOMAS: I think it is reasonable that the Governor will no longer approve write-offs in excess of \$250 000. Can I just check, despite the fact it will be shifted from the Governor to the Treasurer, the disclosure process is otherwise unchanged? Can the minister give us a 60-second outline on what that disclosure process will look like?

Hon STEPHEN DAWSON: The member is correct, the process will remain the same, albeit it will be done by the Treasurer rather than the Governor. Agencies are required to keep a register of all amounts and items written off in accordance with *Treasurer's Instruction 807*. Write-offs are then disclosed in the agency's annual report.

Clause put and passed.

Clause 13: Part 3 Division 7 inserted —

Hon Dr STEVE THOMAS: It makes sense that an accountable authority will notify the minister of any financial difficulty. The fact that that does not currently exist in the legislation before the house is astounding. That a department is not legally required to notify its supervising minister that it might not be able to pay the bills at the end of the month is quite astounding. It is good that that proposed section is in the bill. Proposed section 51A(1) states that the minister is notified —

... if the accountable authority forms the opinion that the agency is unable to, or will be unlikely to be able to, satisfy any of its financial obligations financial resources available, or likely to be available, to it at the time a financial obligation is due.

I assume that there will be a set of standard operating procedures to effectively help departments to find exactly what that looks like. It is obviously more common in the private sector, where shifting money around to manage accounts is a pretty common exercise. That is partly why we debated a bill a couple of months ago about subcontractors. I assume there will be some definition by regulation—at least some sort of formal definition or a trigger point at which departments should be notifying the minister. Can the minister give us an indication of whether that is the case—whether they are being developed, or will be developed, or if they are already developed, what they look like—to know what those trigger points are? I am just concerned that we might get to the point at which a director general might be able to say, "I thought I could shuffle accounts around to get past the end of the month. It turns out that I couldn't, but I didn't notify you because I thought that I could shuffle them around." I would have thought we would want some reasonably strict or solid guidelines on what the trigger point should be.

Hon STEPHEN DAWSON: A clear sign of a trigger could be an agency's persistent structural deficit arising from ongoing revenue shortfalls or persistent expense blowouts—that is, not short-term liquidity problems arising from timing differences, but a longer term trend. The *Special inquiry into government programs and projects* highlighted

that many agencies are not observing their expense limits and that this could lead to structural deficits causing financial difficulties for agencies. What could be a suitable course of remedial action? Following the agency notification, the minister will confer with the Treasurer and the accountable authority to agree on a course of action to enable the agency to meet its financial obligations when they are due. This could include a combination of the following: an agency reprioritising its deliverables to find savings; an agency borrowing under its enabling legislation; the government providing a repayable advance; the government providing an equity injection; Treasury assisting the agency to conduct an operational review; and Treasury assisting the agency to implement improved controls and a robust cost-and-demand model. The objective is to rectify the problem and for the agency to implement sound budget management practices and internal controls.

Hon Dr STEVE THOMAS: The first point is: can departments expect a standardised document that will outline those procedures —

Hon Stephen Dawson: By way of interjection, we are developing a Treasurer's instruction on this issue.

Hon Dr STEVE THOMAS: Thank you. That is exactly what I was getting to. There will be a Treasurer's instruction and I presume that that will be a public document when it is finalised.

Hon Stephen Dawson: Again, by way of interjection, yes.

Hon Dr STEVE THOMAS: I will finish with this. I am interested to know if consistent expense blowouts might be a trigger point. For example, if the Metronet project blows out from \$3 billion to \$7 billion, I suspect that if it is a government-approved blowout that was discussed with the minister and the Treasurer, it is not a trigger. It is only a trigger if it blows out and the government finds out afterwards—heaven forbid that that should occur. Is that how the system would operate?

Hon STEPHEN DAWSON: Of course, I am sure it would not happen, but, yes, the member is correct.

Clause put and passed.

Clause 14: Section 53 amended —

Hon NICK GOIRAN: Clause 14 intends to insert after section 53(1)(c), proposed new paragraph (cb). In proposed subparagraph (i) of that new paragraph, it discusses an agency complying with any state government policy prescribed by the *Treasurer's instructions*. The following proposed subparagraph (ii) states —

in particular, officers of the agency who commit and incur expenditure on behalf of the agency do so in a manner that is not inconsistent with any State government policy prescribed by the Treasurer's instructions;

I can understand the first of those two limbs; there is a desire by government to ensure that agencies comply with any government policy, and an agency will know that because they will receive a prescribed Treasurer's instruction. But what is the genesis of the matter that has developed the need for us to go one step further and then instruct, as a matter of law, that officers of agencies should not commit and incur expenditure on behalf of the agency that is not inconsistent with government policy? We have just asked them to be consistent with policy, and now we are saying, "Above all, do not be inconsistent." Has there been some sort of mischief that has given rise to the need for this extra clarification?

Hon STEPHEN DAWSON: Although there has not been a particular issue, honourable member, the report of the special inquiry—the Langouant report—raised issues that led to the government feeling that it was appropriate to be explicit in this amendment. There is a real focus on officers incurring expenditure that has approved funding. We want to be explicit and make sure that there is an onus on the accountable authority to ensure that officers in that agency are aware of the law and what they should not be doing.

Hon NICK GOIRAN: Is it the case then that this amendment to clause 4 has been expressly recommended by one of the statutory reviews—either the 2012 review or the 2017 review—or is it an expressed recommendation that it arises out of the special inquiry?

Hon STEPHEN DAWSON: It was recommended in the 2012 review and it was reinforced by the special inquiry. The words are slightly different from the recommendation in the 2012 inquiry; I am advised that that is simply to do with how Parliamentary Counsel's Office have drafted it, but it is the same intent.

Hon NICK GOIRAN: Just to conclude on this point then, minister, which recommendation was it in the 2012 review?

Hon STEPHEN DAWSON: It was recommendation 4.

Hon Dr STEVE THOMAS: That was a very good point raised by my friend and colleague Hon Nick Goiran. There is an issue with the legal entity to which we attribute responsibility and it is very easy to hide amongst this conglomerate called a department if an office holder is, in the whole, responsible. That is a reasonable thing, but Hon Nick Goiran made a good point, which was probably highlighted by a recent case in which a particular office holder did some inappropriate things, so that is reasonable.

In terms of this amendment being inserted for accountability of either the agency or the individual involved, can the minister provide an outline of the accountability mechanism? The insertion prohibits an agency or an individual from acting inappropriately and not complying with government policies. What is the process for picking them up and what is the penalty that that individual or conglomerate could potentially face?

Hon STEPHEN DAWSON: The Financial Legislation Amendment Bill does not put in place specific disciplinary measures or penalties for breaches, but the bill tightens the requirement for compliance so that noncompliance could conceivably allow the use of disciplinary processes available in other legislation, when warranted.

Hon Dr Steve Thomas: Will the Public Sector Management Act basically pick that up?

Hon STEPHEN DAWSON: Exactly. That will be picked up by division 3 under part 5 of the Public Sector Management Act. A breach, depending on the severity, could be referred to the Public Sector Commissioner. That would be subject to an appropriate investigation, which provides for a range of actions such as fines and dismissal. The Corruption, Crime and Misconduct Act 2003 also provides for minor misconduct to be referred to the Public Sector Commission and serious misconduct to be referred to the Corruption and Crime Commission. I can go through what minor misconduct includes, but essentially there are other acts through which this could be policed.

Clause put and passed.

Clause 15: Section 61 amended —

Hon Dr STEVE THOMAS: Clause 15 refers to key performance indicators. We had a discussion around that during the second reading debate, so I will not go through that whole process again. This clause gives only the Treasurer the power to exempt agencies from reporting key performance indicators in their annual reports. It is intended that it will be used only in exceptional circumstances. We have sort of agreed that, for the annual report, lots of KPIs are a complete waste of time, as they are in the budget process. This clause will allow the Treasurer, in exceptional circumstances, to avoid reporting key performance indicators. Is it expected that it will be all the key performance indicators, or could it be an individual key performance indicator? Basically, is it an all-or-nothing exemption, or can the Treasurer identify individual KPIs to pull out?

Hon STEPHEN DAWSON: It can be individual KPIs. I will restate that Treasury has embarked on a review of the outcome-based management framework because it recognises that it is problematic.

Hon Dr STEVE THOMAS: I will finish by reinforcing that KPIs need an enormous overhaul to make them relevant and worthwhile. If the minister manages to achieve that, he has probably done a greater service to the governance of Western Australia than any member of Parliament for a very long time. I wish him the best. We are here to support him if possible. Please make KPIs mean something in the future!

Hon STEPHEN DAWSON: I want to make the point that I am not the minister with responsibility for this, however —

Hon Tjorn Sibma: But you're very good!

Hon STEPHEN DAWSON: You'll just get me in trouble. However, I think there was universal agreement in this chamber at an earlier stage that KPIs are cumbersome, not fit for purpose and challenging to change. Hopefully, the Treasury review will lead to more fruitful KPIs in the future.

Clause put and passed.

Clause 16 put and passed —

Clause 17: Section 85 amended —

Hon NICK GOIRAN: In clause 17, as I understand it, we are looking to increase the period of time for the review from a rolling five-year period to a rolling 10-year period. I believe this has its history in a recommendation arising from the Joint Standing Committee on Audit. If this bill passes in an unamended form, as it will, and it is to receive royal assent this week, this provision would take effect 28 days later. In approximately a month from now, this 10-year period would take effect. How will this date for the review impact on the current review which we discussed during a previous clause and which is imminent? To what extent will it marry up with the term of the Auditor General? I believe that the Auditor General has a 10-year term, so I really want to ascertain when the Auditor General's term will expire and when the next review will commence.

Hon STEPHEN DAWSON: I understand that the Auditor General's term is for 10 years. The current Auditor General was appointed in May 2018. Regarding the review period changing from five years to 10 years, the member is correct. The amendment mirrors recommendation 23 that was made by the Joint Standing Committee on Audit in its review of the operation and effectiveness of the Auditor General Act 2006 and its recommendation that the Treasurer amend the Auditor General Act to require a review of the act to occur every 10 years instead of five years on the basis that five years was too frequent. Similarly, it was considered that a five-year period is also too frequent for the periodic review of the FMA, given the significant workload.

I am advised that the next legislative review of the FMA will be after May 2029. That will be 10 years from the tabling of the Joint Standing Committee on Audit's report, which was the second review of the Financial Management Act 2006. It was tabled in Parliament on 16 May 2019.

Hon NICK GOIRAN: Let us say that we do not change this provision and we leave it at the five-year rolling cycle, rather than the 10-year cycle. Does that mean that the next review would be due in 2024?

Hon STEPHEN DAWSON: I am advised that it would be in February 2022. Section 85 of the Financial Management Act states —

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after —
 - (a) the fifth anniversary of its commencement; and
 - (b) the expiry of each 5 yearly interval after that anniversary.

Hon NICK GOIRAN: By passing this amendment now, would the review that would be due commence in February 2022?

Hon Stephen Dawson: Yes.

Hon NICK GOIRAN: A review is due to start in February 2022 but we will pass an amendment now that will make that obsolete and push out the commencement date to 2029; is that right?

Hon Stephen Dawson: That is correct.

Hon NICK GOIRAN: Is it prescribed when this review needs to be done when it commences in 2029?

Hon STEPHEN DAWSON: It is not. However, legislative amendments to the FMA can be made in the interim, if warranted. We do not need to wait for the statutory review in 10 years to make changes to the FMA, if required.

Clause put and passed.

Clause 18: Schedule 2 amended —

Hon Dr STEVE THOMAS: Hopefully there is a simple explanation to my question about this clause and the answer for clause 19 will be the same so that I will not need to ask it twice. The bill makes the effort of deleting the word “copies” and substituting “a copy”. Is that just because it is parliamentary language or shall only one copy ever be delivered to each house and this is a cost-shifting exercise to make the Legislative Council and Legislative Assembly print copies as members require them, rather than departments? There is probably a drafting reason for it; I am interested to know what it is.

Hon STEPHEN DAWSON: It is a good question. I have referred to it previously, but I am happy to go again. Under section 10 of the Interpretation Act 1984, words and singular numbers include the plural and vice versa. Therefore, it is a tidy up, essentially. It is consistency with the PCO.

Clause put and passed.

Clauses 19 to 22 put and passed.

Clause 23: Section 3A inserted —

Hon Dr STEVE THOMAS: We have come to the final clause, which is good. This clause is about the temporary repaying and redrawing of borrowings, which I think just makes sense. Obviously, there is a need for this. Can the minister give us an indication of the financial cost or benefit that might be gained out of shifting these accounts around to cut borrowings rather than leaving money sitting in a holding account, which is, effectively, what I think we are talking about?

Hon STEPHEN DAWSON: This clause is to do with the current differential in rates at around 2.2 per cent based in interest rates and borrowings of 2.41 per cent and interest rates on investments of 0.21 per cent, so there is a significant financial benefit from this.

Hon Dr STEVE THOMAS: Do we have a dollar estimate on potential savings to the operations?

Hon STEPHEN DAWSON: This would mean that around \$22 million would be saved each year in interest costs for each billion dollars applied to debt repayment instead of investments.

Hon Dr STEVE THOMAS: Thank you, minister. If the minister needs any assistance in working out where to spend that \$22 million, I am here, available and happy to help!

Hon Stephen Dawson: Generous as ever!

Hon Dr STEVE THOMAS: Excellent!

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Mental Health)**, and passed.

Sitting suspended from 4.14 to 4.30 pm