

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 2008

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 25 JUNE 2008**

Members

**Hon Simon O'Brien (Chairman)
Hon Matthew Benson-Lidholm
Hon Sheila Mills
Hon Donna Faragher**

Hearing commenced at 10.07 am

RICHARDSON, MR ROD

Assistant Commissioner, Compliance, Office of State Revenue, Department of Treasury and Finance,

sworn and examined:

FITZ-JOHN, MS VALERIE

Acting Manager Legislation Services, Office of State Revenue, Department of Treasury and Finance,

sworn and examined:

SULLIVAN, MR WILLIAM ROY

Commissioner of State Revenue, Office of State Revenue, Department of Treasury and Finance,

sworn and examined:

SUCHENIA, MS NICOLE

Assistant Commissioner, Legislation, Training and Review, Office of State Revenue,

sworn and examined:

CULLEN, MR BRENDAN

Assistant Director, Revenue Policy, Department of Treasury and Finance,

sworn and examined:

The CHAIRMAN: On behalf of the committee, I welcome our witnesses to the meeting this morning. Before we begin, I must ask you all to either take the oath or affirmation.

[Witnesses took the affirmation.]

The CHAIRMAN: Thank you, I ask you in turn to please state your full name, your contact address and the capacity in which you appear before the committee.

You all have signed a document entitled "Information for Witnesses". Have all witnesses read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of the hearing to identify it for the record. Please be aware of the microphones and talk into them and ensure that you do not cover them up with papers or make noise near them apart from speaking. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Before I ask if you wish to, perhaps Mr Sullivan, make an opening statement, I will introduce my colleagues at the table. On my right is Hon Matt Benson-Lidholm and on my left is Hon Donna Faragher. Our advisory officer is Ms Anne Turner, who is seated with me, and I think you have met our committee clerk, Ms Jan Paniperis.

Mr Sullivan, perhaps as we have noted the explanatory memorandum and the second reading speech, I wonder whether there is anything else you would like to advise us about this bill by way of an opening statement.

Mr Sullivan: I think the explanatory memorandum and the speech pretty well encapsulate the purpose and the intent of the legislation so I do not think there is a lot I can add.

The CHAIRMAN: The bill, of course, is already proceeding through the parliamentary process and is now with the Council. Are there any further amendments planned for this bill?

Mr Sullivan: Not to the best of my knowledge.

The CHAIRMAN: The committee understands that there is no intergovernmental agreement to this bill or any heads of Treasury minutes. We are searching for some evidence that there is an intergovernmental agreement that has given rise to this bill. What can you tell us about that?

Mr Sullivan: Perhaps, if I give a very short history of how we have got to where we have got, and it really relates to concerns held generally across Australia both within Treasuries and revenue administrations of compliance costs that were being caused for the taxpaying community as a result of inter-jurisdiction differences. It is recognised that a number of businesses operate across jurisdiction boundaries and, as a result, where there are differences in the legislation of each jurisdiction those can cause additional cost for business, which adds no real benefit for the community. As a result of that, some initial work was commissioned by Commissioners of State Revenue around 2005 through one of our committees, a tax law committee, which asked that group to examine across jurisdictions areas for potential alignment where there was not a significant policy difference, be it the legislation had drifted apart over the time since the payroll tax legislation was handed to the states in 1971. That work was undertaken and a report provided to commissioners at a meeting in Sydney in 2005, from memory. As a result of that, recommendations were made through our respective Under Treasurers as to whether or not they believed support should be given to advancing work along these lines. That ultimately was supported in discussion between Under Treasurers and secretaries of Treasury of the various states and the like.

[10.10 am]

Each respectively put that proposition to the government in their jurisdiction and gained political endorsement as evidenced by a media statement of Treasurers. I believe that statement, provided to the committee, indicates that work would be undertaken initially in the eight areas in which it was felt that alignment across jurisdictional boundaries was possible. That was effectively the genesis of the legislation currently being considered by the committee. The Pay-roll Tax Assessment Amendment Bill 2008 makes provision for the necessary changes that will align those eight areas with what has generally been agreed to be the yardstick for consistent legislation across Australia. Going forward, further work is being considered. This was really the first stage of this exercise and it was felt important to show the commitment—in the first instance to the business community—of governments across Australia to this area and to show that they were willing to take the necessary steps to align the legislation. Various jurisdictions are at various stages of that alignment exercise and I would expect, from Western Australia's viewpoint, that that work will be ongoing.

The CHAIRMAN: If we have time, we will come back to some of those potential future aspects. In a moment I will have some other questions about the way harmonisation is being implemented. Before we move on, the committee has noted that the only available records seem to be a couple of media releases and a COAG communique dated March 2008 in which very little reference is made to payroll tax—and no detail is provided. On behalf of the committee I have to express some

surprise at the absence of any sort of official record of these agreements and discussions. Can you enlighten us?

Mr Sullivan: Perhaps the genesis of this came initially from revenue administrators and the Treasuries and, dare I say it, we have really just been getting on with it. It has been appropriately endorsed along the way; particularly in terms of the discussions—as evidenced by the media statement that you have—in which the Treasurers endorsed the intended work and flagged their collective support for the general direction that was being pursued. Up to this point, it has not been developed in what I consider to be a more formalised form or framework. Instead, it has been the revenue administrators and the Treasuries actually seeking to drive the agenda; albeit with the support of the various governments around Australia.

I think the information provided to the committee is fairly comprehensive in terms of the information that does exist and the formal structure. However, reform has not been pursued in the way that more traditional reform may be pursued through intergovernmental agreements and —

The CHAIRMAN: How would more traditional reform be pursued and then reflected in records?

Mr Sullivan: I do not know that there is any one format that is followed. I can only reflect on my own experience and I would not anticipate that that would be comprehensive. Quite often structures or working groups and the like are established at a high level and, perhaps, initially at a political level. The underlying structures are only then put in place. I guess the process in question has evolved from the ground up as opposed to a top down approach and perhaps that is the reason there is little documentation.

The CHAIRMAN: Once again—and perhaps this is leading—I would have thought that a COAG meeting would produce an agenda. I would have thought that there would be a draft report. I would have thought that there would be minutes. I would have thought that there may be a formally signed-off agreement or perhaps a memorandum of understanding—yet all we have is a media release. Can you enlighten us as to whether any of those materials I have just mentioned exist?

[10.20 am]

Mr Sullivan: You have outlined my understanding of the situation. There were some discussions with Ms Turner and our office exploring what documentation did exist. To the best of my knowledge, what we have has been provided.

The CHAIRMAN: We will move on. I note in the COAG communiqué of March 2008 a statement that each reform area has been categorised according to the level of regulatory change that is desirable, involves mutual recognition, harmonisation or a national system. With respect to payroll tax reform, which is the subject of the bill that we are now dealing with, why was harmonisation chosen as the approach rather, say, than a mutual recognition bill of another jurisdiction's legislation or a national uniform bill?

Mr Sullivan: My view of where we are going on this does not preclude those things happening in the future. In terms of the various stages that each of the jurisdictions is at at this time, we needed to get an agreement on the underlying policy setting. In terms of how that is translated and the best means by which that is translated into legislation, that is still an open question. In relation to aligning into one single piece of legislation or a referred statute, for want of a better description, that could be considered at a later stage when all the policy alignment has been worked through to the extent possible. At this point we are only through the first stage of that process. I would suggest that that question is yet to be more fully pursued.

The CHAIRMAN: What are the advantages for Western Australia participating in this harmonisation process? Perhaps I could elucidate a little more about what I am getting at. Does it make it easier for Western Australia to pursue its own interests in the future, for example? Is it easier to perhaps opt out if Western Australia wanted to opt out of the process? We have gone down this particular path. I am wondering whether there are any advantages for Western Australia in it.

Mr Sullivan: The advantage that has been pointed to and which drove this in the first instance was the reduction in red tape for business and the compliance costs associated with businesses having to potentially deal with up to eight sets of legislation dealing with their payrolls. That has been the driver for it. In relation to the benefit for Western Australia generally, it really would be how those savings are translated back into the community. By way of background, around 38 per cent of our registered employers by number, not necessarily by value, pay wages in another jurisdiction. Four in 10 businesses that are registered for payroll tax should benefit through these alignments.

The CHAIRMAN: I guess the potential disadvantages would be if another jurisdiction decided it did not want to go down the harmonisation route. From our point of view, that would weaken the process.

Mr Sullivan: I should emphasise that this exercise is focused on getting policy alignment in agreed areas. To date, there has been no agreement. I do not believe that there was anything in the media statement from Treasury that indicated that every provision of every payroll tax act around Australia would be aligned. States and territories have retained the autonomy to carve out areas of the tax base or treatments of certain wages to have jurisdictional specific differences where they believe that is in the interests of their local community, even to the extent of the New South Wales-Victorian alignment, which has generally been characterised as total harmonisation. Nonetheless, differences specific to each jurisdiction are contained within the legislation. To date, this has not been an exercise of total policy alignment; it has been an exercise of attempting to get policy alignment in specific areas whilst retaining the jurisdictional autonomy where that choice is made by that jurisdiction.

The CHAIRMAN: In the information provided, including the second reading speech, eight areas are nominated as being areas in which this bill will achieve greater levels of consistency in payroll tax administration. Is it fair to say that these are the non-controversial areas; the easy to achieve agreement areas as a rule?

Mr Sullivan: I am smiling wryly because in dealing with seven other jurisdictions at any point, it can always be problematic because they come from a different starting point, a different history and have different local jurisdictional concerns. Certainly, they were the areas where it was felt that the starting point was more closely aligned so the shifts that needed to be made were not necessarily that large. They were also areas where jurisdictions felt that there would be a commitment where alignment would be possible. Some of those are certainly minor. Some of them are certainly of greater substance, particularly the area of grouping, as evidenced by the costs involved for Western Australia in terms of aligning with what has been chosen as the consistent position.

The CHAIRMAN: Hansard can also record my wry smile because my colleagues and I can also understand the difficulty in getting those other jurisdictions to see the light of day from our point of view. It must be like herding cats.

You have already alluded to the fact that further areas are yet to be explored and agreement reached, and maybe that is something for another bill or another agreement on another day. Could you give us an indication of what those areas might be?

Mr Sullivan: I will preface my comments by saying that we are yet to work through the other areas of difference. The fact that we would be working through them does not mean that any policy decision has been made by government to shift from the current position. We will be undertaking work to advise government to make those choices. In terms of the existing areas of difference, and using the New South Wales and Victorian legislation as a starting point, I might ask Ms Suchenia to outline the other areas of difference that exists at a fairly high level between that legislation and the Western Australian legislation.

Ms Suchenia: The New South Wales-Victoria bilateral process effectively involved additional areas in relation to an exemption for maternity and adoption leave, an exemption for payments

made to a portable long service leave fund, exemptions for wages paid when an employee is engaged in voluntary work, such as FESA, and an exemption from an employment agent for staff on hire to a payroll tax entity. For example, if an employment agent was hiring nurses to hospitals in their own right, those are the exemptions being considered in New South Wales and Victoria. The process also included removing the exemption for wages paid to apprentices and trainees and replacing it with a rebate system in some instances, a new charities definition for the purposes of the charities exemption and the relevant contract provisions of New South Wales and Victoria. They are effectively the major areas of consistency that Western Australia needs to examine. The extent to which changes are necessary in Western Australia obviously varies depending on the position WA is in.

The CHAIRMAN: This is probably a related question. I will ask it now. Page 3 of the explanatory memorandum refers to WA's unique superannuation provisions, stating that it was not possible to adopt template legislation from other jurisdictions, so we have our own alternative. Could you briefly explain what template legislation was proposed among other states and why it was not possible to use that here?

[10.30 am]

Ms Suchenia: Victoria and New South Wales essentially have a model that is a template between them. At the end of those provisions are a series of specific rates and exemptions that differ between them.

In relation to Western Australia adopting that template, a number of areas outside of the eight that were agreed to be adopted are different in Western Australia. However, even within the areas that were agreed to be adopted, there were a couple of differences that resulted in Western Australia putting in taxpayer-beneficial arrangements. One of those was the quarterly and annual lodgement arrangements, which not only benefit interjurisdictional taxpayers, but also have a high take-up rate by local taxpayers. If you move to the template model, a whole series of local taxpayers will lose the benefit of those provisions, and so it was felt that that area needed to be maintained in the Western Australian provisions.

In relation to superannuation, the template model has been adopted up to the point that New South Wales and Victoria have done. The Western Australian provisions add an additional layer of information for people who have to calculate tax on defined benefit schemes so that they are able to make those calculations, which assists them in determining their tax liability. The New South Wales and Victorian provisions do not have that guidance. It was felt that, because of the compliments that we have received in the past about the ease of using those provisions, it needed to be maintained. At the end of the day, the difference in the area of superannuation is probably just giving a further level of detail for people to be able to make calculations and so forth.

The CHAIRMAN: Also on page 3 of the EM, a comment is made that there is an opportunity to include changes as a result of the commonwealth's superannuation simplification provisions that commenced on 1 July 2007. Has the commonwealth been involved in this harmonisation process as well or was it excluded?

Mr Sullivan: No, this has been an exercise purely between the states and territories. The involvement of the commonwealth has been merely to bring it under the COAG agenda. To date, its involvement has been fairly peripheral.

The CHAIRMAN: Can you enlarge on the statement in the EM that it provides an opportunity to include changes as a result of the commonwealth's superannuation simplification provisions?

Mr Sullivan: I will refer to Ms Fitz-John.

Ms Fitz-John: In making these amendments to the Pay-roll Tax Assessment Act, we took the opportunity to change definitions and to include changes such as choice of funds from the

superannuation provisions of the commonwealth because we rely on those provisions when applying payroll tax on wages. That is what is meant by that statement.

The CHAIRMAN: Clause 2 of the bill relates to commencement. Why is there a separate commencement date of 1 July 2009 for part 2, division 3?

Mr Sullivan: This portion relates to the grouping of controlled entities and the discretion for the commissioner to exclude a member from a group. In looking at the various areas of alignment, grouping was the most problematic to the extent that there was a spectrum of policy positions underlying what the commissioner would or would not take into consideration or, in fact, whether he could exclude a member from a group, notwithstanding that common control might in the first instance be established. The provisions of New South Wales and Victoria have operated since 1 July 2007 and are probably further down the track in getting alignment on the administration of those provisions than are those of other jurisdictions. Other jurisdictions generally will have those provisions operating from 1 July 2008. In the advice that I have provided to the government, I felt that for us to have that operative date was fraught with a risk that we would not have in place the administrative mechanisms to ensure consistency in administration. One of the reasons that that was more of an issue for us than for other jurisdictions is the extent of possible change that will flow from that ability to exclude. It is the underlying policy position that we had taken on grouping up to that point in time. Relative to the Victorian position in particular, we were at the other end of the spectrum. On that basis, the advice provided to government, which is reflected in the legislation, was that it would be prudent to have that delay to allow our revenue authority to work with the others to put in place as much as possible the administrative support for alignment.

The CHAIRMAN: I note that the commencement date for the rest of part 2 is 1 July 2008 or the day of assent, whichever is later. Clearly, the Parliament will not be able to deal with this bill before 1 July. Will that have any implications on, for example, costs to employers in the form of benefits not being available until a later date?

Mr Sullivan: I will ask Ms Suchenia to respond.

Ms Suchenia: I must admit that this bill has been put together a little differently from the usual way in which the commencement provisions are drafted. The provisions will commence and operate from 1 July 2008, but because there may be a period of retrospectivity, employers will need to use the current provisions and work on the basis of the provisions as they exist until the assent date. Once the provisions commence, they will be backdated effectively to 1 July 2008. That means that employers who need to do reassessments in the period before the bill receives the royal assent will need to make adjustments through their ongoing return process. They will have the option of either making that adjustment through their return or leaving that adjustment until the end of the financial year when they will do an annual reconciliation and then balance the amount at the end of that reconciliation process. It is not the ideal approach to have to go through that sort of process, but there is a mechanism in place to be able to deal with those particular instances. The nature of the amendments—that is referenced by the fact that the revenue estimate is in the order of \$2 million for the balance of those amendments—is such that we do not expect that there will be large amounts of payroll tax involved in those adjustments. It just means that they will need to make the relative adjustments either going forward or at the end of the financial year.

The CHAIRMAN: At the moment, for people who are keeping the books in a business, it will be business as usual, and then they will have to do a backdated reconciliation for the period from 1 July until the effect of the changes in order to get the benefits. They will just have to do it anyway.

Ms Suchenia: That is right. Depending on the particular circumstances and the way that the amendment operates, it might be that they have a higher liability during that period and a lower liability for a different type of arrangement. Depending on the types of allowances they pay and those types of adjustments, it could be an increase or a decrease.

[10.40 am]

The CHAIRMAN: When was this bill drafted?

Ms Suchenia: Around Christmas we started.

The CHAIRMAN: Two thousand and?

Ms Suchenia: Two thousand and seven.

The CHAIRMAN: The Christmas just gone. When was it finished?

Mr Sullivan: I think it is important to note the government announced its position and followed up with the legislation as part of the budget given the significant budgetary impact associated with the difficulty grouping provision. It was considered by the government in the context of ultimately the budgetary process for 2008-09.

The CHAIRMAN: I want to quickly turn to page 20 of the bill, to proposed new section 9DD(3), which says that for a purpose dealt with elsewhere in the clause —

. . . the Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications . . .

At face value that might seem to be trying to vary commonwealth legislation—I am sure that is not the case. Can you tell us how that variation is intended to apply?

Ms Fitz-John: The reason for this provision is for calculating the valuation of a share or an option provided to an employee or a director. The template legislation has taken on the commonwealth market valuation calculations to value that market value. So we have taken those provisions from the commonwealth Income Tax Act 1936 exactly the same as all the other jurisdictions. What they have had to do is because the Income Tax Act applies to an employee who receives a share or an option and they have to include in their income tax return the discount that they have received, it has had to modify those provisions, so therefore it then will apply to an employer that has provided a share or an option to their employee. That is why they are —

The CHAIRMAN: We are using a starting point of a definition?

Ms Fitz-John: That is correct.

The CHAIRMAN: Then varying it according to the needs of our legislation?

Ms Fitz-John: That is correct.

The CHAIRMAN: As opposed to seeking to vary the commonwealth act?

Ms Fitz-John: No. We are not varying the commonwealth act, we are merely modifying it so it will apply to the state.

The CHAIRMAN: Modify the definition, not the act?

Ms Fitz-John: The definition; that is correct, yes

The CHAIRMAN: We were sure that was the case, but we thought we would ask. Actually, if you had tried to modify commonwealth legislation through this bill I think we would all have developed a sneaking admiration! There are some other questions we have got here. We are rapidly running out of time. These are relatively complex, technical matters. What I propose to do is provide a series of questions which I would ask Mr Sullivan, if you could take on notice, and perhaps by correspondence with our advisory officer return some responses to the committee. Would that be acceptable?

Mr Sullivan: Certainly. Do you have a time frame in mind for a response?

The CHAIRMAN: Yes. I will not read these into the record, they are just technical matters. In terms of a time frame, if we could work on, say, a week.

Mr Sullivan: We will go on a best-endeavours basis, without having the benefit of seeing what the questions are and how much work, we will attempt to —

The CHAIRMAN: I appreciate that. If we say a week for now. It is obviously by negotiation with our advisory officer; if you could liaise with our advisory officer to provide this further information. I do not think it will be voluminous, but it is of quite a technical nature and we do not have the time to get into it now.

Hon DONNA FARAGHER: I have one question with respect to other states and territories. Are we the last state to enact this legislation; and, if not, which other states are in the process of enacting legislation?

Mr Sullivan: What we can give you is our best understanding at this point in time in relation to the other states. Ms Fitz-John might give a very high-level summary in terms of which states have enacted these provisions and which states are still in the process of doing so.

Ms Fitz-John: All states and territories have actually amended their payroll tax acts to a certain extent. Some states have amended to harmonise their legislation completely with New South Wales and Victoria. Some states have only amended for the eight agreed areas and, in some cases, such as the Northern Territory, they already had two of the eight areas so they amended the other six.

Hon DONNA FARAGHER: In terms then of the eight, which are the key ones we are talking about at the moment, all other states have passed the legislation with respect to those, so we are the last; is that right?

Ms Fitz-John: I believe that the Northern Territory is still waiting for assent. But other than that, they have gone through.

Hon DONNA FARAGHER: The legislation has gone through Parliament?

Ms Fitz-John: Yes.

Hon MATT BENSON-LIDHOLM: I do not have any questions of the witnesses, but I will raise some other issues in our own committee meeting stage. I have a couple of minor issues.

Hon DONNA FARAGHER: I have one more very quick question. These are obviously significant changes to business. What is the level of knowledge in business of these changes? What community relations and public education has been undertaken by Treasury with respect to these changes so that they are fully aware that they are imminent, if I can put it that way?

Mr Sullivan: This is always a difficult problem for a revenue administrator in terms of actually going out and announcing things that have not yet been passed by the Parliament. We are very mindful of the sovereignty of the Parliament and, as such, our communication necessarily has to be at a fairly high level. Having said that, we do try to draw to the attention of the tax-paying community the legislation and certainly I believe the minister has raised awareness on more than one occasion within the tax-paying community of the changes that were in the offing. We certainly do participate in seminars and the like, particularly ones that are on a national basis, and we can do that in the context of flagging merely that these are the changes that others in some cases have already made. What we will be doing is, as soon as the legislation is through the Parliament, we will be working quite actively in terms of raising awareness through circulars, taxpayer education and placing materials on our website. But to be specific would be to pre-empt the Parliament and I do not believe it is appropriate.

Hon DONNA FARAGHER: I was not suggesting pre-empting it, but I suppose once the legislation is passed, what education program will be taking place? It sounds like things have been done, or will be done.

Mr Sullivan: The only other thing in terms of awareness was this was certainly raised or flagged as part of the state tax review. Reference was made to the intention during that review process in its final report.

The CHAIRMAN: When you undertake the process of education and communication, are there some key peak bodies that you would go to, to assist you in that process?

Mr Sullivan: Generally, as you would appreciate, we are not a large office like the Australian Taxation Office, which has 20 000-odd employees. Our resources necessarily need to look to ways to leverage into the community. Generally speaking, we will work through those industry groups who we believe will give us the greatest bang for the buck and, generally speaking, they will either be large industry representative bodies like the Chamber of Commerce and Industry in Western Australia or professional bodies where the membership of those are likely to be advising in the area of the tax that we are administering. So the CPAs, Institute of Chartered Accountants in Australia, National Institute of Accountants, Taxation Institute of Australia, Law Society of Western Australia, et cetera. Those groups are the groups we generally liaise through.

Ms Suchenia: I was going to add to that. We also run programs targeted specifically at taxpayers that we do have registered. We have a customer education program, a seminar-type arrangement where people can voluntarily elect to go along, and that is using our existing employer database.

The CHAIRMAN: Yes, but of course you know who is already paying payroll tax, so that is the obvious place to disseminate some information about changes.

Mr Sullivan: Just on that: the other good thing is that the vast majority—well in excess of 90 per cent—of our payroll tax base now interact with us electronically, through our Revenue Online system. Part of that includes email notification, and we can also target them according to whether or not they pay wages in more than one jurisdiction, were that to be relevant. In this case these changes will obviously affect everybody, so we would be putting that information out, and we will be hitting the target audience through that medium as well. It is a broad-brush approach, but we believe that we have got it covered. The timing, however, is pretty well predicated on the passage of the legislation.

The CHAIRMAN: I think we have come to the end of our hearing now, particularly noting the constraints of time. I would like to thank you, Mr Sullivan, and your colleagues, each of you, for your assistance this morning to the committee, particularly as things have been done at fairly short notice. Thanks very much, once again, and we wish you a good morning.

Hearing concluded at 10.50 am