

# **STANDING COMMITTEE ON LEGISLATION**

## **TAXATION ADMINISTRATION BILL 2001 TAXATION ADMINISTRATION (CONSEQUENTIAL PROVISIONS) (TAXING) BILL 2001 TAXATION ADMINISTRATION (CONSEQUENTIAL PROVISIONS) BILL 2001**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
ON WEDNESDAY, 15 MAY 2002**

### **SESSION 4**

**Hon Jon Ford (Chairman)  
Hon Giz Watson (Deputy Chairman)  
Hon Kate Doust  
Hon Paddy Embry  
Hon Adele Farina  
Hon Peter Foss  
Hon Bill Stretch (Substituted by Hon George Cash)**

**CROUCH, MR CHARLES**  
**Executive Officer, Economic Affairs,**  
**Chamber of Minerals and Energy,**  
**examined:**

**LAUREN, MR JACK**  
**Senior Manager, Indirect Taxes, KPMG,**  
**examined:**

**The CHAIRMAN:** On behalf of the committee, I welcome you to the meeting. You will both have signed the document entitled Information for Witnesses. Have you read and understood that document?

**The Witnesses:** Yes, we have.

**The CHAIRMAN:** For your information, these proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them and please try to speak in turn. 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 a 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 a 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. You can now make a statement to the committee.

[12.00 pm]

**Mr Crouch:** I will open with my statement and Mr Lauren will follow. I refer specifically to clause 67 of the Bill, which seeks to make company directors liable on notice from the Commissioner of State Revenue for unpaid state taxes. We have significant concerns with this provision. We outlined our concerns in the letter sent to the committee, and I will touch briefly on those concerns. Any attempt to make directors liable for the actions of their companies overturns the principle of limited liability, which is the fundamental basis of corporate governance. We believe that, while there are circumstances to make a case for the commissioner to do that, they should be the exception and occur only when there is clear evidence that the benefits of doing that outweigh the costs. We are not convinced that is currently the case because of the link between the use of this provision and insolvency. I understand that one way a director can discharge his liability once a notice has been issued is to put the company into voluntary liquidation. The commissioner would be asked to forecast whether a company is solvent before that happens. We have concerns with that. The State will be put in a privileged position over other creditors in that no other creditor has the ability to use this provision. It means that the State will use these

arrangements to get full payment of its tax liabilities rather than be treated in the same way as any other creditor.

**Mr Lauren:** I will make a few points. To the best of our knowledge there is little evidence to suggest that the rate of insolvency of corporations operating in this State and which have a liability to pay state taxes is of an extent that would warrant the enactment of such a provision to hold directors liable for unpaid state taxes. We hold the view that the enactment of such a provision is a case of overkill. It seems to adopt an approach which, to the best of our knowledge, is not warranted. Whilst we acknowledge the comments made in the explanatory memorandum accompanying the Bill that similar provisions have been made in New South Wales, to the best of our knowledge we are not aware of those provisions having been enacted. If they have, they have received very little publicity. We do not see that as being a reason to support the enactment of these provisions for payroll tax in this State.

**Hon GEORGE CASH:** Mr Crouch talked about the Commissioner of State Revenue being put in a privileged position, as did Mr Lauren. Is the witness saying that he does not believe there are other jurisdictions in Australia that put a commissioner in such a privileged position? I am thinking of the Australian Taxation Office and other offices. I am not aware of any. It is not a trick question. Apart from New South Wales, has there been any discussion in this area?

**Mr Crouch:** What I meant when I referred to a privileged position was vis-a-vis other creditors or potential creditors. I am comparing the commissioner to someone who handles the catering or anyone else who may be a potential creditor. As I understand it, these provisions are not unique in Australia as there are similar provisions in other jurisdictions. I understand that what is proposed goes beyond the operation of other provisions in that they are linked to specific taxes rather than the general catch-all of state taxes. In that sense, one could argue that the commissioner would be put in a position in which he enjoyed more ability to use this provision to obtain state taxes than in other jurisdictions. That was not the primary thrust of what I was referring to.

**Mr Lauren:** At the federal level there are provisions similar to this that make directors liable for the unpaid liabilities of companies in respect of withholding tax that has been deducted from employees' salaries and wages. We must recognise that money deducted from salaries and wages is held on trust by an employer for payment to the Australian Taxation Office. That situation is totally different from the provisions sought to be enacted in this Bill.

**Hon GEORGE CASH:** The responsibility of holding money on trust is quite different from that of a primary taxpayer. Under clause 67 in its present form, do the witnesses have any recommendations or amendments that they want the committee to consider? If they are not at hand, do the witnesses want to submit proposed changes? From what has been said, it seems to me that the first preference is for clause 67 to be deleted. If that cannot be the case, do the witnesses have any recommendations as to how directors might be better protected? I raise the question because it seems that clause 67 captures all directors whether or not they were personally responsible for the non-payment of tax. That obviously means that innocent directors could also be caught. What are your comments or amendments?

**Mr Crouch:** My first response is that we do not believe there is sufficient justification for clause 67. Our ideal position is for it to be deleted. We have spoken to the Office of State Revenue and we understand that, while on the face of it the Bill

gives the commissioner unfettered discretion in that he can do this to whoever he likes, there is a highly specific set of circumstances in which he would do it. It is not intended to give the commissioner a licence to target all companies. It targets only those where there is a very real risk of the State losing out because a company is trading when it is insolvent. One possibility is to provide some guidance so that the commissioner's discretion is not as absolute as it appears to be in the current provisions. Our first preference is for the removal of the clause.

**Hon GEORGE CASH:** I understand that. It is also fair to say that if one talks to the commissioner and is told formally that there is a policy or that it is not his intention to act in particular circumstances, it must be accepted that the legislation, in its present form, clearly gives him the authority to act in any circumstance. I would have thought that the legislation needs to be qualified to catch only those people who are seen as knowingly trying to evade paying tax. If the witnesses are interested in providing an amendment to clause 67 or any other clause, the committee would be very interested to look at it so it can discuss the matter with the Commissioner of State Revenue. The witnesses will be pleased to know that the commissioner told the committee that he would be quite happy to see the Bill improved. He did not go into any detail as to what "improved" meant. I am not sure whether he meant improved for his benefit. If we come up with some logical amendments, they will be forwarded for consideration by the Government.

**Mr Crouch:** What is the process if we wish to avail ourselves of that?

**The CHAIRMAN:** We would need details within a week. At the very least, we would need an indication of the sorts of amendments you had in mind.

**Hon GEORGE CASH:** A number of the clauses appear to deal with policy issues. Clause 26(1) deals with penalty tax at the rate of 20 per cent being levied on outstanding amounts. My understanding is that there are policies in the Office of State Revenue to determine how that penalty is applied. Are the witnesses aware of the policies; are they sufficiently public? Are there any problems in dealing with areas of discretion with the commissioner or his officers?

**Mr Lauren:** I assume that the member is referring to existing provisions within payroll tax legislation. While the commissioner has not publicly stated a written policy regarding imposing or remitting penalties, it is our experience that there is no written policy, although there is an internal policy that deals with that that has been made available verbally to taxpayers and sundry.

**Hon GEORGE CASH:** Because the various Acts are being compiled, what might appear in one Act is compiled into the principal Act and other subsidiary legislation. What might be unique to one Act will be used to cover the field, so to speak, if these Bills are agreed to. There is a certain enhancing of the commissioner's powers, but there is also an enhancement of taxpayers' rights. The committee is endeavouring to get some information on that. Do the witnesses have any other comments they wish to make in respect of the Bills generally or the Taxation Administration Bill in particular?

**Mr Lauren:** As far as the experience of other state jurisdictions is concerned, that process has been fairly well received by the taxpaying public generally. It provides a more efficient and effective way of trying to administer various state taxes. From that perspective, it has been quite a good move.

**Hon GEORGE CASH:** In respect of judicial review not being allowed on some of the commissioner's decisions, do the witnesses have any comments?

**Mr Lauren:** None that I can think of.

**Hon GEORGE CASH:** Thank you.

**The CHAIRMAN:** Thank you for your attendance today. The committee is sorry the witnesses had to wait. I remind the witnesses to forward any amendments they have as soon as possible. The committee will convene again on 27 May to consider any submissions.