

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 26 AUGUST 1998**

**Hon Mark Nevill (Chairman)
Hon E.R.J. Dermer
Hon Muriel Patterson
Hon Simon O'Brien
Hon Bob Thomas**

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The CHAIRMAN: I welcome you on behalf of the committee to today's meeting.

Has the State Revenue Department or any other government department consulted the Chamber of Minerals and Energy regarding the estimated revenue raising as a result of these amendments to the Stamp Act?

Mr CROUCH: Not that I am aware of.

The CHAIRMAN: Can you give the committee examples of any cases in which individuals and companies have incurred extra costs as a result of these amendments to the Stamp Act which came into force on 1 July?

Mr MAYNARD: The examples that we have seen at this time are few and far between. The issue only came up from 1 July. Due to the increased impost, we became aware of a number of transactions that were front-ended to be processed prior to the 1 July deadline. Many of those which would normally go through in the seven weeks that have transpired have not gone forward. No clear examples of transactions exist that have not progressed. We imagine that sort of thing will emerge in the next couple of months.

The CHAIRMAN: Can you give the committee a further example of one of those transactions that was front-ended prior to 1 July, and the amount of stamp duty that would be saved due to the chattels not being subject to duty? What would the impact have been if those transactions had gone through after 1 July?

Mr MAYNARD: A couple of examples have been given; firstly, in a sale of a mining interest - these are in very round numbers - of \$60m, with \$6m worth of chattels, and \$54m worth of tenements. At current rates, an extra duty of \$291 000 would be imposed on the transfer of the

plant and equipment. In another example in which the value of the tenements was low, but the value of the plant and equipment was high, plant and equipment was worth \$7.1m, the tenements were valued at \$450 000 and mining information was \$450 000.

The CHAIRMAN: We have already heard those examples.

Mr MAYNARD: These are not dissimilar to other examples that we have seen go through as well. We looked at the examples that were put forward to determine whether we thought they were reasonable examples, and whether they were typical of ones we had seen. They obviously represent different ends of the spectrum, but they would be represented in cases I have seen in practice as well and would be very similar.

The CHAIRMAN: Would that \$60m company be a medium-sized transaction?

Ms HALSEY: It would be quite large for me.

Mr MAYNARD: Yes. It would be fairly large.

The CHAIRMAN: Have you any general comments about the duty in general?

Mr MAYNARD: The chamber's concern revolves around two issues; one being equity and the other being efficiency. The first issue is largely demonstrated by the comparison with the farming industry. We note that in the second reading speech, it was proposed that chattels sold in conjunction with a farm should remain exempt from stamp duty. It reflects that they are often expensive and can account for a relatively high proportion of the total value of the farm. This is clearly the case with plant and equipment such as harvesters and tractors. It was considered that subjecting such chattels to stamp duty would have been unduly harsh, particularly given the relatively low return on capital generally achieved in farming relative to, say, mining. We believe that not all mining tenements produce relatively higher returns on capital, particularly in today's economic climate in which low market prices for outputs have made many operations marginal and uneconomic. In many cases the value of chattels is a very significant proportion of the value, although it varies considerably as it would for farming as well. In a high value mine with relatively old equipment, it may only represent 10 to 15 per cent, but even that is not insignificant. In other cases in which a mine life is short but equipment is relatively new, the value of chattels may outweigh the tenement value significantly. On efficiency grounds we consider that it would be detrimental, as the impost may be sufficient to make the purchase decision no longer viable. For large long term projects, we concede that while it is a tax on production, it is unlikely to stop the transfer going through. However, it is an extra impost that will impact on the level of investment made overall. It could impact on the amount that is spent on exploration and so on, but the real impact is likely to be on the smaller transactions which simply will not occur or the budget will be impacted to such an extent that the operation may need to be high-grade to provide a sufficient return on that investment. We think it would be a relatively simple matter to put the mining industry in the same position as the agricultural industry. Provision is in the legislation for various types of items to be made exempt by way of prescription, and we perceive that as a way to overcome the equity issue in particular.

The CHAIRMAN: Can you enlarge on that a little with some examples?

Mr MAYNARD: Of how it may be?

The CHAIRMAN: By prescription?

Mr MAYNARD: It would be possible to prescribe for example that movable mining plant be exempted from the provisions.

Ms HALSEY: That would be an easy thing to do.

Mr MAYNARD: Or particular types of assets within a mining operation could be prescribed.

The CHAIRMAN: This legislation basically eliminates the difference between fixtures and chattels, does not it?

Mr MAYNARD: That is correct.

The CHAIRMAN: Are you suggesting a separate category of chattels or fixtures should be exempt, and these are the removable equipment?

Mr MAYNARD: Yes. That is an example of how you overcome the major impact of this upon the mining industry, and the inequity between this and farming, notwithstanding there are different technical provisions involved.

Hon E.R.J. DERMER: How would you justify that differentiation between the fixed and the non-fixed assets?

Mr MAYNARD: The difference is that fixed items have always been subject to stamp duty, so that is built into the economics of the situation at the present time. The difference that arises by these provisions is that it now adds the impost to movable items that are sold with the existing tenements.

Hon E.R.J. DERMER: Is your argument based on status quo prior to 1 July?

Mr MAYNARD: It would maintain the status quo prior to 1 July.

The CHAIRMAN: Completely?

Mr MAYNARD: Yes, provided the prescription was correct. It would maintain the same situation that existed prior to 1 July for the mining industry and bring it into line with that of the farming industry.

The CHAIRMAN: What would that leave for this provision to generate in terms of revenue?

Mr MAYNARD: From the mining industry in particular or in general? Either way I am not in a position to quantify the amount. However, it would essentially remove the additional amount that is expected to be raised from the mining industry as a result of this. It would enable those transfers that will not happen as a result of this to proceed, and revenue would obviously then be

generated from those transfers in the end.

The CHAIRMAN: How would it differentiate between those that will not proceed and those that will proceed?

Mr MAYNARD: Both would continue to proceed. A lower cost would be achieved to the acquirer in both circumstances.

The CHAIRMAN: There would be no differentiation?

Mr MAYNARD: No.

The CHAIRMAN: Are you saying that the amendment should be reversed and not fiddled with?

Mr MAYNARD: Essentially that would be the outcome. Putting it into the prescription is just a method of reversing the imposition on the mining industry. That could of course be limited if examples were shown where it was in equitable.

Hon SIMON O'BRIEN: That would then be similar to the situation of not owning a leasehold business. I understand that the majority of mining operations are not really leasehold, they are tenements. However, if a leasehold business is transferred, generally no charge is made on chattels. Are you saying that, in the interests of equity, that should apply to the transfer of chattels when a tenement is transferred?

Mr MAYNARD: That would be correct.

Hon MURIEL PATTERSON: You have made a comparison between the Western Australian agricultural industry and the Western Australian mining industry. Can you make the same comparison between the Western Australian mining industry and the eastern States mining industry? What imposts do they have, and are they comparable with those in this State?

Mr MAYNARD: My knowledge of what happens in other States is somewhat limited, but my understanding is that while other States do have provisions to incorporate the value of chattels transferred with real property, not much revenue is raised through those provisions.

Hon MURIEL PATTERSON: Can you identify the areas in which they do raise revenue?

Mr MAYNARD: I am not aware of specific examples. My understanding is that the legislation in the other States operates in a similar way to our legislation.

Ms HALSEY: One of the biggest differences is that the Western Australian Stamp Act includes mining tenements and things such as exploration licences, whereas in the other States these are generally not included in the transfer of land, so that if you transfer chattels with those tenements, no duty will be payable on them. We have a very broad definition of mining tenements which includes items which are not included in other States.

Hon MURIEL PATTERSON: Do the other States distinguish between chattels and fixtures?

Ms HALSEY: Duty is paid on chattels that are transferred with either a business or land, but that raises the question of what is included in the definition of land. This new provision includes all mining tenements in the definition of land. In a number of other States, things such as exploration tenements are not included in the definition of land, and that is quite a big difference.

The CHAIRMAN: In most cases, the only chattels that would be associated with an exploration licence are information and perhaps access roads.

Ms HALSEY: It might include drilling rigs.

The CHAIRMAN: I have never seen drilling rigs attached to exploration licences.

Mr MAYNARD: In the case of most exploration licences, the percentage of the total consideration that would apply to chattels is significantly lower than in the case of mining tenements.

The CHAIRMAN: Absolutely. Is information regarded as a chattel?

Ms HALSEY: That is a vexed question. Our Act provides that tenements must be valued taking account of the information to some extent. That is very broad. It has been argued that the information contained in, say, this book is to some extent chattels. However, that has been restricted by the amendments that were made to our Act in 1991. There is still some place for information to be classified as chattels, but it is much more restricted.

The CHAIRMAN: I tend to think of information as a fixture, because it is tied up with that property and would be fairly useless if it were moved off that property, whereas plant and equipment would be of equal value.

Mr MAYNARD: That might be the situation. Similarly, it might depend on the particular circumstances. You might be transferring an increased right to a particular tenement between joint venture partners, or something along those lines, where they already had the information concerned, so arguably there would be no transfer of information in those circumstances.

The CHAIRMAN: Would it be safe to assume that the issue of chattels on exploration licences is not a major factor, and we are really talking about mining leases?

Mr MAYNARD: That is a reasonable assumption.

The CHAIRMAN: Do you envisage that the possible changes to the federal taxation regime will result in none of those transactions going through, because people will wait until 1 July 2001 to transfer, when the stamp duties will be abolished if that regime comes into effect?

Mr MAYNARD: In respect of any transactions that may be affected because they are related party transactions, the numbers involved will be significant, and people may well take that opportunity to wait. On the other hand, in respect of arm's length transactions, it is questionable whether that opportunity will be available to them. Obviously people make investment decisions

for all sorts of reasons. This will just become a cost at a particular point in time, and whether people can defer that decision that far out is probably questionable, particularly at this time. It comes back to the economics of the particular transaction.

The CHAIRMAN: Do you envisage a problem with the mergers of cash strapped small exploration companies in the next couple of years, if they last that long?

Mr MAYNARD: It may certainly impact upon that. We have seen examples where two small operations relatively close to each other have merged and have subsequently sold off one lot of plant and retained the other lot of plant to make the total operation more efficient. In this circumstance, they would pay duty on both lots of plant, and the plant that was sold off would not be subject to duty when it was sold off because it was no longer transferred with the tenement. That would certainly add to the cost, probably quite significantly, and could well stop that going ahead.

The CHAIRMAN: If the plant was sold off prior to 1 July and was not attached to a tenement, would it attract stamp duty?

Mr MAYNARD: No. If it was sold independently of the tenement, it would not be subject to stamp duty either prior or currently, but if the two were brought together and the excess plant was then sold off, it would be subject to duty at the time it was brought together but not subsequently.

Hon E.R.J. DERMER: Does the chamber have a view about the importance to the overall industry of encouraging the amalgamation of small companies in order to ensure their viability?

Mr CROUCH: Yes. The gold industry is a case in point, because it is going through a restructuring, and it has become pretty clear that the gold companies that will survive in this particularly difficult climate are the ones that can get big enough. If any hindrances were put in the way of that rationalisation, that would affect the industry. The chamber would be concerned from that point of view.

Hon E.R.J. DERMER: Is the chamber in a position to make a quantitative assessment of what that impact might be?

Mr CROUCH: It is difficult to put a number on it. It will apply only in some cases, and it will apply at the margin. In some cases it will either make the transaction unviable, or be a cost that will need to be absorbed elsewhere, which will have an effect on how they conduct their business.

Hon E.R.J. DERMER: It would not be possible to make a quantitative assessment of the impact?

Mr CROUCH: We can say that the effects will be significant in some cases.

Hon E.R.J. DERMER: I am interested also in the impact of extra costs on the market viability of particular metal commodities. Does the chamber have the capacity to estimate, or has it made a decision to endeavour to estimate, the potential impact of this or other imposts on the market viability?

Mr CROUCH: It will vary from operation to operation. The basic reality is that virtually all companies, with the exception of a couple of mineral sands companies, have no ability to differentiate their product; essentially they are cost takers, so they need to absorb all of their costs and compete internationally. Their ability to absorb costs depends on a range of factors, one of which is the cost of this tax, and others such as the quality of the ore body and the economics of extraction. Some operations will be marginal and will have a great deal of difficulty in absorbing this extra cost, but others will not be in that position and will have more flexibility.

Hon E.R.J. DERMER: I appreciate the large number of variables involved and how that may impede the opportunity to develop a quantitative assessment of the impact, but does the chamber have a model or any other capacity to estimate the quantitative impact of this impost?

Mr CROUCH: It is impossible to use a modelling approach to do that in advance. I suspect that in a couple of years we will be able to say that it had a certain impact.

The CHAIRMAN: Do not say that! We are expecting State Revenue to tell us exactly how it has modelled it!

Hon E.R.J. DERMER: It will be possible in a couple of years to look at that retrospectively and make a decision about the impact?

Mr CROUCH: In a couple of years we will be in a better position to look back and see the effect on a particular transaction and probably put a dollar figure on it. It is much more difficult to do it now by looking into the future.

The CHAIRMAN: You still will not be able to tell which transactions did not take place and which companies went out of business?

Mr CROUCH: We will have a more accurate picture, but we will still have the issue of what was the effect. The underlying reality is that it will make life very difficult for a number of people, even if we cannot tell you exactly who they are and cannot put a dollar figure on it.

Hon E.R.J. DERMER: Whenever that could be done, it would be very much an estimate, and I take your point that if it were done retrospectively in a couple of years it would make that estimate viable, whereas today it perhaps would not be.

Ms HALSEY: It would be almost impossible to determine, because if the current Government was re-elected and stamp duty did disappear in 2001, a range of devices would be developed - and we are working them out now - to make sure that people were locked into transactions which would not be effective until 2001. A vast amount of that will take place.

Hon E.R.J. DERMER: Long term contracts?

Ms HALSEY: Yes. There are many options as to what you can do.

Hon E.R.J. DERMER: That is quite a natural response from the industry's point of view.

Ms HALSEY: Yes, and it will be extremely difficult to determine what is happening and whether a lot more revenue is being raised in this way, because the whole system will be so distorted.

Hon E.R.J. DERMER: Even the election may not determine the prognosis, because of the situation in the Senate.

Ms HALSEY: Yes.

The CHAIRMAN: Would it be possible and practicable, where you have this problem of the low level of equity in the transaction, to give relief to companies by limiting the stamp duty to 5 per cent of the equity?

Ms HALSEY: I suspect that the avoidance schemes that will be developed as a result of that will be enormous.

The CHAIRMAN: But you will not get that duty anyway.

Ms HALSEY: I do not know how the State Revenue Department will draft it to be effective, because everyone will gear up the projects incredibly beforehand. Stamp duty is the last of the great avoidance taxes. There is no anti-avoidance provision for stamp duty, so you will end up with a vast range of schemes. It will be quite difficult to develop that. It will be preferable to have it based on gearing levels.

Hon SIMON O'BRIEN: All this talk of avoidance schemes has given me an education. My innocence has been shattered!

Hon E.R.J. DERMER: Given that you represent the Chamber of Minerals and Energy, it is expected that you would say that any impost is inappropriate. Of course, as an impost it will impact on the margin of every transaction in your industry. The reason I was trying to explore the possibility of a quantitative assessment of the impact is that that would give us more substantial information on which to make a judgment. Any tax imposed by any Government in any jurisdiction will attract the obvious response that it will significantly impact on performance. How much? A rough estimate could be available in two years. What is your reaction in terms of how we as policy makers can read the appropriateness or otherwise of this tax when all you can say is that it will be an impost on some performance levels?

Mr CROUCH: I can make a general comment about how this fits into the State Government's overall budget strategy. Virtually all of the State Government's current tax base is distortionary and inefficient. Any revenue source that the State uses will have distortionary effects because that is the nature of the revenue base. When the legislation was introduced, the chamber said it was disappointed to see that the balanced Budget had been delivered by revenue raising rather than expenditure management. Until there is some broadening of the State's revenue base this problem will arise whenever the Government tries to increase taxes. I understand that from an economic point of view the most efficient and equitable tax measure available to the State is to increase electricity and gas charges because they are income based; everything else is either regressive or inefficient.

Hon E.R.J. DERMER: Does the chamber have a policy in relation to rationalising the number of tax imposts on the mining industry to a more equitable number?

Mr CROUCH: In principle, the Chamber would favour that, but I wonder whether it would be feasible given the current constitutional and political realities.

Hon E.R.J. DERMER: Does the chamber have a specific policy?

Mr CROUCH: The chamber's submission to the Gibson committee said it would like to see the State's revenue base broadened, thus giving it access to a more comprehensive direct and indirect tax base. The approach is entirely consistent with that policy. I wonder how feasible that is given constitutional issues such as the striking down of the franchise fees and the political reality, which is that there will always be this adversarial relationship between the States and Canberra.

[The witnesses retired]