

**DIRECTORS' LIABILITY REFORM BILL 2022**

*Committee*

Resumed from 21 February. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Postponed clause 143: Act amended —**

The clause was postponed on 21 February.

**Hon TJORN SIBMA:** Parliamentary secretary, we had anticipated this exchange when we last dealt with the Directors' Liability Reform Bill 2022. We dealt with this bill on the same sitting day as we dealt with the then Swan and Canning Rivers Management Amendment Bill 2022. Bearing in mind that at the commencement of this day's sitting a message was read alerting members to the fact that the now Swan and Canning Rivers Management Act 2023 had received royal assent, I might inquire a bit into the government's recommitted clause 2 at 1/2. As it stands, it says —

Page 3, after line 24 — To insert:

(ha) section 145A —

- (i) if the *Swan and Canning Rivers Management Act 2023* section 7 comes into operation on or before assent day — immediately after section 145 of this Act comes into operation ...

I will ask a question on proposed new paragraph (ha)(i). Has section 7 of the Swan and Canning Rivers Management Act come into operation?

**Hon MATTHEW SWINBOURN:** Chair, I know you were somewhat distracted. Hopefully this will help the member. I will try to explain the process that we are about to follow because, technically, clause 2 is not the question before the chamber at the moment and we cannot get to the supplementary notice paper until I move to recommit the bill to the house. The process, for the benefit of everyone else who is following, is that we have these remaining three clauses to deal with. We will deal with those three clauses. I think it is three clauses—clauses 143, 144 and 145. The question will be that they all stand as printed. We are not amending those clauses. Then the question will be that the title of the bill be whatever it is—the Directors' Liability Reform Bill 2022—and then I will seek that the bill be reported to the house. After the reporting of the bill to the house, I will move without notice that the bill be recommitted to deal with those matters that are on the supplementary notice paper. Upon doing that, I will provide an explanation for why we need to do those things. So long as the house agrees, we will then end up back in committee to deal with the proposed amendments to recommitted clause 2 and recommitted new clause 145A. We will then be able to get into those matters the member is talking about. It is a little bit interesting, to say the least, but I am sure we will get through it and then we will be able to deal with what the member is raising.

**Postponed clause put and passed.**

**Postponed clauses 144 and 145 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Further Recommittal*

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [2.24 pm] — without notice:  
I move —

That the Directors' Liability Reform Bill 2022 be recommitted for the purposes of reconsidering clause 2 and new clause 145A.

With your indulgence, Acting President, I would like to provide a rationale for the motion put before the house.

An amendment to the Directors' Liability Reform Bill 2022 is required as a result of the recent passage of amendments to an act that the bill proposes to amend. The bill proposes to standardise and reduce the number of derivative liability provisions across the statute book, including in relation to the Swan and Canning Rivers Management Act 2006—the SCRMA. The bill seeks to apply the new derivative liability Criminal Code provisions to the appropriate offences in the SCRMA. However, the recent passage of an act that will amend the SCRMA affects the provisions of this bill.

The Swan and Canning Rivers Management Amendment Act 2023 was considered and passed by the Legislative Council on 21 February 2023 and received royal assent on 1 March 2023. Clause 2(b) of that bill provided that all provisions, except for sections 1 and 2, would commence on a day fixed by proclamation. The

significance of that amendment act is that it includes a provision that, when it is proclaimed, will affect an offence in the table in division 58 of the Directors' Liability Reform Bill 2022.

The Legislative Council considered and passed all clauses of the Directors' Liability Reform Bill 2022 on 21 February 2023, with the exception of postponed clauses 143, 144 and 145 in division 58 of the bill. The reason for those clauses being postponed was to allow time for the Swan and Canning Rivers Management Amendment Act 2023 to receive royal assent. The consideration of this related amendment may now occur.

An amendment to the bill is therefore required that will, first, amend clause 2 to insert alternative commencement provisions. The Parliamentary Counsel's Office has advised that this approach is required to ensure that a provision inserted into the SCRMA by this bill will refer to the correct offence, depending on which statute comes into operation first—that is, the Directors' Liability Reform Act or the Swan and Canning Rivers Management Amendment Act 2023.

Second, the amendment will insert new clause 145A, which will amend proposed section 121A, which clause 145 of the bill will insert into the SCRMA. The insertion into the bill of new clause 145A will amend the proposed section 121A that clause 145 will insert into the SCRMA; that is, the table in proposed section 121A in the bill will be amended once it has been inserted into the SCRMA.

New clause 145A will simply delete the reference in the table to section 32(5), which will no longer be operative once section 7 of the Swan and Canning Rivers Management Amendment Act 2023 has been proclaimed, and will replace it with a reference to section 32B(2). The related amendment to clause 2—the first amendment discussed above—will ensure that new clause 145A will take effect at the appropriate time, depending on when section 7 of the Swan and Canning Rivers Management Amendment Act 2023 is proclaimed.

This approach has been used in other parts of the bill to manage similar conditional scenarios, such as the amendments to the Betting Control Act 1954 in division 8 of part 3 of the bill.

Question put and passed.

*Committee*

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Clause 2: Commencement —**

**Hon MATTHEW SWINBOURN:** I move —

Page 3, after line 24 — To insert —

(ha) section 145A —

- (i) if the *Swan and Canning Rivers Management Act 2023* section 7 comes into operation on or before assent day — immediately after section 145 of this Act comes into operation; or
- (ii) otherwise — when the *Swan and Canning Rivers Management Act 2023* section 7 comes into operation;

**Hon TJORN SIBMA:** I thank the parliamentary secretary for guiding the chamber through the mechanics, which are, to some degree, unfortunate. Frankly, not to go over the second reading debate, I think that this situation could possibly have been avoided if the Directors' Liability Reform Bill 2022 had been given the same degree of urgency that other jurisdictions in Australia, with the exception of Tasmania, felt fit to take up about a decade ago.

I seek clarification. Effectively, if a layperson were to read this and take from this suggested amendment that the government is effectively giving itself some optionality around the timing, are we not yet at a stage to determine when and if section 7 of the Swan and Canning Rivers Management Act may be proclaimed? Has the Attorney General received any advice on that question?

**Hon MATTHEW SWINBOURN:** As the member can appreciate, the Swan and Canning Rivers Management Act is not an act of the Attorney General or the Department of Justice, the agency that we deal with. The advice that we have received from the Department of Biodiversity, Conservation and Attractions, which is the responsible agency, is that that section and the provisions it relates to will not commence for another six to 12 months. As the member will acknowledge, that is not very precise. I think that is why we have to have this alternative here. As the member says, there are probably a lot of other paths that could have been taken on an earlier occasion. Unfortunately, that did not happen, we are where we are now, and we have to do this rather complex fix.

**Hon TJORN SIBMA:** I appreciate the situation that the parliamentary secretary and, indeed, the Attorney General have encountered. I thank the parliamentary secretary for that advice and I accept the spirit with which it was given.

This is advice from the DBCA, which is not an agency under the control of the minister whom the parliamentary secretary represents. Its advice is conditional and a best estimate.

Is it therefore necessary to present to this chamber the options? We now know that, potentially, proposed section 2(ha)(i) will be largely redundant because section 7 of the Swan and Canning Rivers Management Act has not yet come into effect and is not likely to be proclaimed or enacted upon for another six to 12 months, so is it necessary that we give contemplation to that, or can we just deal with proposed subsection (ii) —

otherwise — when the *Swan and Canning Rivers Management Act 2023* section 7 comes into operation;

As a non-lawyer, I understand that a lot more clearly. I think that this is probably a neater encapsulation of the intent here and is probably the most likely outcome.

**Hon MATTHEW SWINBOURN:** I always love it when the member says that he is not a lawyer and all those sorts of things. I read that stuff; I am a lawyer, and I did not understand any of it particularly well, either!

**Hon Tjorn Sibma:** That inspires great confidence!

**Hon MATTHEW SWINBOURN:** That is why I have such excellent service from the advisers here at the table. The point the member has made is probably not without merit. I would say that we are guided by the Parliamentary Counsel's Office on these matters, and it has drafted this consistently. If we look at clause 2 of the bill as has been agreed to, the member will see that that clause has been drafted in the alternative for all the other acts that are dealt with at proposed subsections (b), (c), (d), (e), (f), (g), (h) and (i). This amendment is to maintain that consistency. I will not give the member a better answer than that. It is about consistency, and, in all likelihood, it will become redundant because the reality is, as we now understand, that those other provisions will not come into effect for six to 12 months.

**Hon TJORN SIBMA:** Yes, I think I can acknowledge and accept that justification that this drafting is consistent with the way these matters have been treated previously and are likely to be treated in the future, and if in doubt as to the plain English comprehension of what is drafted, we can always rely on "The PCO told us so." That is a trigger that I hope to rely on in the future, so, on that basis, on behalf of the opposition, we accept that.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**New clause 145A —**

**Hon MATTHEW SWINBOURN:** I move —

Page 56, after line 2 — To insert —

**145A. Section 121A amended**

In section 121A in the Table delete "s. 32(5)" and insert:

s. 32B(2)

**New clause put and passed.**

**Title put and passed.**

**Bill again reported, with an amendment.**