

**CHEMISTRY CENTRE (WA) BILL 2006**

*Committee*

Resumed from 4 April. The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Progress was reported after the long title, as amended, had been agreed to.

**Postponed new clause 31 -**

The new clause was postponed on 4 April after it had been partly considered.

**The CHAIRMAN:** Two matters are outstanding in respect of this bill - new clause 31 and schedule 2, as amended. We will deal with the first item, which is new clause 31. The Deputy Chairman yesterday gave a ruling in respect of new clause 31, and it was a matter that the Leader of the House intended to consider overnight. I now put the question that new clause 31 stand as printed to enable the Leader of the House to provide a response.

**Hon KIM CHANCE:** Just by way of general explanation, I have a short, and I think pretty much to the point, explanation of where I see the situation that has arisen on the question that was asked by the Deputy Chairman yesterday. It is something, however, that I believe needs a little more consideration, so after I have given my explanation, I will seek to defer this clause again. I understand that this is a bill to which some urgency attaches; however, because this bill has already been amended, we will not in any case get to the point today when we can deal with the third reading. Therefore, the government is not losing any time in the progression of the bill by not finishing the deliberation in committee. Given that this matter has been raised and I now have a fairly clear picture of where we stand on the question that was put to me by the Deputy Chairman, it might be advantageous in the interests of not only this legislation, but also future legislation to have the matter clarified. The chamber might need to give some time and consideration to it before we finally resolve the matter.

The explanation I can provide is that parliamentary counsel has confirmed that new clause 31 is in fact taken from the legislation to which I referred behind the chair, the Land Information Authority Act 2006. We have in fact legislated in this way before and the matter did not arise then. Parliamentary counsel's view is that new clause 31 does not impose a tax, but rather restores the liability for tax that is imposed by another instrumentality. That is, in the absence of clause 5, the Chemistry Centre would be liable for those taxes. New clause 31 simply reverses that immunity, but it does not impose a tax. There is a range of things that might be considered but that is the core contention that we make. Another view that might be considered is that this is not a tax but rather a transfer of revenue between one state agency and another and clause 31 effectively provides the formula to quantify or regulate that transfer. That is another point of view and one that the chamber might like to consider in the fullness of time. That is all I have to say on that matter. We also deferred consideration of schedule 2.

**The CHAIRMAN:** The minister referred to clause 5; did he mean clause 6 in the bill?

**Hon KIM CHANCE:** No. Clause 5 is the clause that refers to crown immunity.

**The CHAIRMAN:** I am sorry. Quite so.

**Hon KIM CHANCE:** Clause 5 asserts that the Chemistry Centre is an agent of the Crown and enjoys the status, immunities and privileges that go with that, and those immunities include immunity from taxation. That is why new clause 31 has to be inserted: to fulfil the principles of competitive neutrality by providing the ability for the centre to be taxed.

**The CHAIRMAN:** I understand. I was unsure of the numeral.

**Hon KIM CHANCE:** Thank you, Mr Chairman. That is all I have to say on the question of new clause 31.

**Hon BARRY HOUSE:** I think it is wise for the Leader of the House to take the course of action he is suggesting. I pose again the question I raised yesterday, which I do not think has been addressed: new clause 31 attempts to introduce a tax equivalent regime into the Chemistry Centre's operations, which is fine, but it is only in relation to local government rates and charges. Yesterday I was searching for an indication of how the bill adapts that to state taxes and charges. It is clear that the Chemistry Centre, with 97 employees, would be liable for payroll tax, and the Chemistry Centre is entering into commercial operations. Therefore, we need to ensure in this legislation that it will enter into those commercial operations on a level playing field with other operators. I asked the Leader of the House to point out where in the bill that is covered. In my reading of it, new clause 31 covers only half of it, in terms of local government obligations but not state government obligations. Perhaps the minister could clear that up.

**Hon KIM CHANCE:** It was my error that I did not deal with it. The reason I made that error was that when I went back through the duplicates of last night's *Hansard*, I noted that this issue arose in the context of schedule 2 rather than in discussion on new clause 31. Having considered the matter since the member spoke today, I realise he is quite right. It is as equally relevant to new clause 31 as it is to schedule 2, and perhaps more so. Parliamentary counsel's advice provided to me this morning confirms that all the range of state taxes are handled no differently from the way in which local government taxes are included in new clause 31(1). The particular component of new clause 31 is subclause (1), which states -

Despite any other written law but except as stated in subsection (2) -

- (a) the Chemistry Centre; and
- (b) deeds or other instruments to which it is a party,

are liable to and chargeable with duties, taxes or other imposts under any written law.

It is in those last words that we get the extent of the effect of new clause 31. "Any written law" includes the legislative instrument that imposes payroll tax, for example. I am sorry I did not see that when the honourable member asked the question yesterday. I knew it must have been there, but I could not see it.

**Hon BARRY HOUSE:** I thank the Leader of the House. My fears are allayed.

**Hon MURRAY CRIDDLE:** The Leader of the House knows that port authorities pay tax equivalence. Will the same tax equivalence apply to this as applies to the port authorities?

**Hon KIM CHANCE:** The answer is yes. I asked for clarification on whether it is done with a same or similar mechanism, and the answer is, yes, we think so. It is achieved in much the same legislative machinery.

**Hon BARRY HOUSE:** Was the relevant provision in the previous legislation to which the Leader of the House referred, the Land Information Authority Act, inserted by the Legislative Council, or was it part of the original bill that came from the Assembly to this place?

**Hon KIM CHANCE:** That is an interesting question, but not one that I can answer. It is worth researching, and in the consideration time that we have between now and when we next consider new clause 31, that could well be relevant. It would certainly be interesting.

**Further consideration of the new clause postponed until after consideration of postponed schedule 2, as amended, on motion by Hon Kim Chance (Leader of the House).**

**Postponed schedule 2, as amended, put and passed.**

**Progress reported and leave granted to sit again.**