TRADE MEASUREMENT LEGISLATION (AMENDMENT AND EXPIRY) BILL 2010

Second Reading

Resumed from 16 June.

MR J.C. KOBELKE (Balcatta) [5.03 pm]: I am not the lead speaker for the opposition on the Trade Measurement Legislation (Amendment and Expiry) Bill, but I will make a few comments. This bill will have no effect; it simply seeks to tidy up changes that have taken place through the Council of Australian Governments and as a result of the commonwealth assuming responsibility in the area of measurement. However, I think it is worth making some comments to mark a major improvement in this very important area, which is perhaps unheralded and unknown to many people.

In a major modern trading economy such as Australia, and particularly Western Australia, it is very important that we have a well-recognised and efficient system of weights and measures. If we are to trade nationally and internationally, people want to know that they can be sure that they are getting the correct quantity and quality. That is perhaps the biggest use of weights and measures. It is also very important at a consumer level so that people know that they are getting the amount of petrol they expect from the petrol bowser or the amount of product they expect in a particular package. It is important that we have a modern and efficient system.

When I was the Minister for Consumer and Employment Protection, I had responsibility for what is now the Department of Commerce and for weights and measures. At that time we were acting under the Weights and Measures Act 1915, which was totally out of date. When that act was brought in, we did not have modern electronic measuring devices. There was a requirement that all sets of scales be regularly checked and certified. That was back at a time when there might have been a few thousand measuring devices, whereas now there are potentially hundreds of thousands of measuring devices of various forms throughout Western Australia. We needed to modernise that legislation, but the then Liberal coalition had for many years opposed the roll-out of a national scheme across Australia. Although the rest of Australia had uniform legislation, to modernise the legislation in Western Australia, we had to bring in what was then the Trade Measurement Bill 2005, which basically reflected the national scheme but which had to be specific legislation for Western Australia. That was put through Parliament, although I note that at the time I said —

The current Weights and Measures Act and its provisions are inconsistent with the trade measurement laws that apply in the rest of Australia. However, advances in transport and technology have transformed Australia into a single market. It makes no sense for various states to maintain different trade measurement and packaging requirements. This is confusing, adds unnecessary costs to business and could impede trade.

Of course, all that is still true, but it is much better addressed by the commonwealth assuming responsibility for this area, which, as the Minister for Commerce has clearly stated in the second reading speech, it has the constitutional power to do. Having taken up and enacted that power, the national uniform trade measurement legislation is now in place. It has simply pushed aside the state legislation, and this bill will just tidy up any follow-through issues. In the briefing that the minister made available to us, it was pointed out that cases have not yet arisen in which it has been felt that it would have to be applied. But obviously it is good and proper planning to make sure that those provisions are in place should such a case arise. I am talking about issues such as an ongoing prosecution under state legislation that needs to be transferred under the new uniform trade measurement legislation of the commonwealth or outstanding issues that need to be referred to the commonwealth because it has taken over the whole process. This bill will simply put these mechanisms in place should these matters arise. As I have indicated, the advice from the minister’s advisers is that they are not yet aware of any such cases.

We must keep in mind that the new commonwealth system came into effect on 1 July 2010. It is already operating. Again, the delay in bringing forward this legislation confirms that there are no issues with the state vacating this particular field and leaving it to the commonwealth. It was at a COAG meeting in April 2007 when the then Howard government got the agreement of all the states, including the agreement of the then Labor government in Western Australia, to go to a national system of trade measurement that would be funded and administered by the commonwealth. That has taken place.

I just wanted to make those brief comments because I believe that the trade measurement legislation and the whole system that it underpins are very important for a modern, progressive economy. What this bill will do is really of no consequence, but I wanted to make those comments because we should have on the record some recognition that we have now moved to a national scheme. I would have liked that national scheme to have been in place some years ago, but there was not the political will then because the Liberals and Nationals were generally opposed to it. One clear example of that was back in 1992 when the commonwealth moved to take over company law and the Liberal opposition in the upper house blocked the legislation. An unusual event in my
time in this house was that this house came back and sat between Christmas and New Year because the new financial system was to be rolled out across Australia on 1 January but not in Western Australia. The Liberals and Nationals had blocked the legislation in the upper house because they did not believe in uniform national legislation. Having experienced that, I did not attempt to move to uniform national legislation back in 1995. Instead, we put in place our own legislation to mirror the national scheme so that we could fit into it. One of the downsides of that was that any time a change was made to other legislation around Australia, we had to fix up our own state legislation to maintain uniformity. That was a nonsense. We mark an important day in Australia and particularly Western Australia by now having uniform national trade measurement legislation. That is a good thing. I wanted to put that on the record. This bill will really just tidy up any little issue that might arise in the transfer of jurisdiction from the state to the commonwealth, which has already taken place.

MR F.M. LOGAN (Cockburn) [5.10 pm]: I also support the passage of the Trade Measurement Legislation (Amendment and Expiry) Bill 2010. I will make some comments on the bill and ask the minister some questions that have arisen as a result of the briefing provided to us by his staff. As has been pointed out by the member for Balcatta, the commonwealth has always had powers over weights and measures under the commonwealth Constitution. However, the management and enforcement of those powers has always been done at the state level, originally through the Weights and Measures Act. As the member for Balcatta indicated, the Trade Measurement Administration Act 2006 was introduced under the Carpenter Labor administration. Of course, with the movement to national uniformity for things such as weights and measures across all state legislation, the commonwealth has now assumed powers under the Trade Measurement Act, and those powers came into force on 1 July 2010. The organisation that applies those powers and assumed responsibility for weights and measures in Western Australia and across the country is called the National Measurement Institute. There is a branch of that institute in Western Australia. We were informed by the minister’s staff that the majority of staff that had been employed in the weights and measures branch of the Department of Commerce have taken up the option to transfer to the new commonwealth institute. We were informed that all but two of the staff transferred from state employment to commonwealth employment to run the institute in Western Australia from 1 July this year.

This bill allows for the state to collect fees and issue infringement notices as a transition process to the full application of the commonwealth act, which I believe will be in 2013.

Mr W.R. Marmion: Or before.

Mr F.M. LOGAN: Or before. The advice from the minister’s office was that there are no outstanding fees or prosecutions that need to be acted upon by the state in the transfer of powers to the new commonwealth institute. That allows for a smooth transition, which is good for both the commonwealth and the state.

The title of this bill is the Trade Measurement Legislation (Amendment and Expiry) Bill 2010. We would assume from reading the bill that it will simply extinguish the current state legislation, which is the Trade Measurement Administration Act 2006. We discussed with the minister’s staff whether that is the intent and purpose of this bill. Although the minister’s staff explained that that is the intent of this bill, we pointed out to them that that is not exactly what is contained in the bill. Clause 6, which inserts new section 3B, indicates that the act will expire on and from 1 July 2013 or an earlier date if affixed. That just means that the Trade Measurement Administration Act 2006 will no longer have any force, but there is no power under this bill to repeal the legislation.

Mr W.R. Marmion: Expiry does mean that it will be repealed. Parliamentary counsel advised that the term “expiry” has the same effect as the term “repeal” and will remove both acts from the statute book. The term was recommended by parliamentary counsel. That is the term it has chosen to use. It means “repeal”. Both acts will be repealed.

Mr F.M. LOGAN: So it will have the effect of repealing the bill as well, so that it will no longer be on the statute book?

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: Okay. That is good. That clears that up.

The other issue that came up was that of verification, which was also raised by the member for Balcatta. As the member for Balcatta indicated, petrol bowers were checked every two years under the Trade Measurement Administration Act. When we asked the minister’s staff whether that will continue, we were told that it will not, because the commonwealth will not do that. We will all have to cross our fingers and hope that the petrol or diesel we put into our cars is actually the full volume of petrol or diesel recorded on the pump. We will never know whether it is, because the pumps will not have the little sticker on the side saying that it has been checked and verified, and on which date.
Mr W.R. Marmion: They will, but it may not be one or two years old; it might be a bit longer than that.

Mr F.M. Logan: The minister’s staff indicated that the commonwealth has no intention of doing this.

Mr W.R. Marmion: If there is a verification sticker on a pump now, they are not going to take it off. My point is that it will be there but it might not be renewed every one or two years.

Mr F.M. Logan: The minister’s staff indicated that the sticker on the pumps will be there for historical purposes only; it will not be renewed because the commonwealth has no intention of doing that.

Mr W.R. Marmion: They are not going to rip the sticker off.

Mr F.M. Logan: I assume that the commonwealth will say that it has the power to regulate, but that it will really let the market sort itself out. Hopefully the electronics on the pumps will always be perfect and we will get the full volume of petrol or diesel that we are paying for. It is difficult for customers to check that. It is an issue. The whole point was that people relied upon the regulator—the government—to ensure that whatever the consumer was buying was the full volume or weight that he or she was paying for. Whom do they go to complain to if they have not been sold the full volume of weight? There are some people in society who take their packets of goods home and put them on the scale just to make sure that it is exactly the right weight. Whom they go to complain to is the third issue I want to raise with the minister; that is, communication. I think we will find that only people such as the minister and members of his staff would know that the powers on weights and measures have been transferred to the commonwealth under the new commonwealth National Measurement Institute from 1 July 2010. I am sure nobody else in the community has any idea that there has been this transfer of power from the state to the commonwealth and would have no idea whatsoever who to contact should they have a complaint about weights or measures. The minister’s staff indicated to members of the opposition that the Department of Commerce will continue its role of responding to customer complaints and that if a complaint goes to weights or measures, they will refer customers to the new commonwealth National Measurement Institute. But I put it to the minister that it would be of benefit to consumers generally if the information were communicated more broadly to the general public of Western Australia that in future these powers of weights and measures and any complaint about enforcement of weights and measures now rest with a completely separate group of people in the commonwealth. I think it is important, as a consumer regulatory group that falls under the powers of the Department of Commerce, that the public be informed that this transfer of powers has occurred. I therefore put it to the minister as a suggestion for the benefit of the consumers of Western Australia. It would seek the minister’s opinion and views about my concerns about the regulation of weights and measures when no actual on-the-ground inspection or testing is likely to take place under the new commonwealth institute. However, in terms of how it operates, it is no different; it is a seamless transfer basically.

In terms of reverification, the member for Cockburn is correct: Western Australia is the only state in Australia where every single instrument—except for one particular measuring instrument—is checked every one or two years. There is, therefore, a cycle in which they are all reverified or recertified. If the checking is done by an external person and not a weights and measures person, it is called certification. I actually know a reasonable amount about this, because a friend of mine ran the section of the department. This is a good opportunity to acknowledge all the state public servants who have been involved in weights and measures over time. Now that their roles have gone to the commonwealth, their service to the state should be recognised. The person who ran the section was Craig Boyce and he should be acknowledged as well.

Western Australia went into bat reasonably strongly to have these reverification and recertification clauses included in the commonwealth uniform legislation. Although the commonwealth act allows the inclusion of certain measuring instruments in the act for reverification, I understand that only weighbridges have been chosen at the moment. However, there is the possibility, if there is an issue in their sampling technique for going around
and checking certain instruments, for other instruments to be brought under the commonwealth legislation. We therefore have not shut the gate on the legislation, but the commonwealth legislation allows that to occur, and the commonwealth will be looking closely at that now that the legislation is up and running. That is not to say that instruments will not be checked. Instruments will be checked. Spot sampling inspections will be done. The commonwealth view is that going to a total of one-year or two-year verification checks for every single instrument is inefficient. That is where we are at. I think it is important that, because it is uniform legislation, we go with the flow.

Mr F.M. Logan: Yes; sure.

Mr W.R. MARMION: However, if we have some problems we will be able to bring them up at the ministerial council. On that note, I thank both the member for Balcatta and the member for Cockburn for their support for this bill and I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by Mr W.R. Marmion (Minister for Commerce), and transmitted to the Council.