

## DUTIES LEGISLATION AMENDMENT BILL 2013

### *Consideration in Detail*

Resumed from an earlier stage of the sitting.

#### **Clause 2: Commencement** —

Debate was adjourned after the clause had been partly considered.

**Dr M.D. NAHAN:** I answered the substantive question relating to clause 2. One of the issues that came up in that question was a somewhat extraneous issue; that is, how the transfer duty that is being referred to in this bill was dealt with in the GST debate. I will reiterate. The GST proposal first came up in April 1999. There was an agreement between the states, the commonwealth and the territories to eliminate a range of state taxes as well as commonwealth taxes and replace them with the GST. That was agreed to and put forward to the commonwealth Parliament. The commonwealth Parliament changed the basis for that. It took the GST away from food, education and some other things. A compensation package was attached to it, if my memory is correct. A revised agreement came forth in June 1999. That agreement was reached by commonwealth, state and territory leaders. That agreement did not commit the states or territories to eliminate stamp duties on non-real business assets. It committed the states to review it in 2005. That review took place, which resulted in an intergovernmental agreement. The Western Australian government at the time attended that but did not accept the recommendations of the commonwealth in that intergovernmental agreement to eliminate all those taxes. It decided it would conduct a review; that is, it was going to take the issue into its control. As I said earlier during my comments in the second reading debate, I supported that move, and I support it now in retrospect. The commonwealth undertook a broad review of taxes. It decided to eliminate transfer duties on non-real business assets in 2006. That was agreed to by a ministerial council in March 2006. At that time it announced its intention to eliminate this tax on 1 July 2010. There was subsequently an intergovernmental agreement in 2008–09 to eliminate this, which was signed by the Barnett government. In 2010, it formalised it. As discussed here, the Barnett government decided to postpone that in 2009 and made amendments to the act to eliminate it in 1 July 2013, as did a number of other states. That is the progress. The GST was not one simple one-off agreement; it had many iterations. That is the history of it. The second reading speech and my statements concur with that progress.

**Mr W.J. JOHNSTON:** I want to clarify what the minister did not say. Just because in 1999 it was not specifically agreed that on 1 July 2001 this tax would be eliminated does not mean that this tax was not being contemplated by the agreement that was entered into in 1999. The minister is quite right; there needed to be an amendment to the GST agreement because the worst aspects of the proposed GST back in 1999 were overthrown against the recommendation of the minister, who opposed the change to the GST arrangements. The minister at the time opposed the removal of the GST on food, healthcare and education services. Notwithstanding his opposition, it is true that the package was modified. Part of that modification was because the GST would not raise as much as originally expected because of those modifications. The elimination of certain taxes could be delayed. It was not a case that the agreement was that they could remain forever. In fact, in the 2006 article that I referred to, the minister was complaining that the states had delayed it for too long. That is the point we are making, and we will make it again and again because it is important that we do not rewrite history in this chamber. It is important that we use facts in the debate rather than retrospectively change people's opinions. The 1999 GST deal was a bad deal for Western Australia. Notwithstanding the minister's support for that deal, the amendments to exempt food, healthcare and education services made the best of a bad deal. I agree with that and am surprised that the minister opposed those exemptions at that time. I wonder whether he, like so many of his federal Liberal colleagues, still wants to review that to see whether the GST can be extended to those areas.

**The ACTING SPEAKER (Mr P. Abetz):** I draw your attention to clause 2, which is about when this act commences. History is very interesting but I think we should stick to the subject.

**Mr W.J. JOHNSTON:** I am responding to the minister's comments. I am not trying to canvass your ruling, Mr Acting Speaker; I am making the point that I am replying to the minister's commentary. The minister is placing on the record a recreation of what happened rather than what happened. There was a delay in the timing of the elimination of these taxes, but that is not the same as saying that these taxes were not to be eliminated. I made the point that in the article I quoted from, the minister railed against the decision that was made in 2006. The minister said then that there had been too much slippage and the government was walking away from the original agreement. We are saying that we agree with the minister about the date of the commencement of these matters and believe that the minister was 100 per cent correct in 2006 when he said there should be no slippage. When the minister comes in here today and argues 100 per cent against the position that he took as a commentator, he is wrong. That is why we are saying that the commencement date should not be the date provided for here. This bill should not pass; but, if we are to have this tax, it should not start from 1 July, it

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should start from 2015. That might be a better date for it to start. We can look at the words in the proposed amendments later. I am saying that we should not rewrite history. The minister's second reading speech was correct; this tax should have been eliminated already. If the minister had not voted in favour of extending this tax to more taxpayers over the last two years, it would not exist, and if the bill does not commence on 1 July, it will not exist either. We want to make sure that there is no doubt that the commencement dates in the bill are bad law and that they should not be allowed to stand.

**Ms R. SAFFIOTI:** My question relates to the operation of this clause. I will put forward a case study because that is probably the best way to ask my question. What will be the impact on a transaction for the purchase of a business with some goodwill that takes place in the middle of July if this bill has not been passed?

**Dr M.D. Nahan:** When does the transaction take place? I did not hear.

**Ms R. SAFFIOTI:** In essence, this bill is in two parts—if it is passed by 30 June and if it is not passed by 30 June. There is a retrospective element to one section of the bill. What will be the technical impact on the transactions that occur if this bill is not passed? When is the stamp duty paid? Will it be paid retrospectively rather than at the time of the transaction?

**Dr M.D. NAHAN:** I have been advised that if a transaction takes place after July 2013 and the bill has not received royal assent by 1 July, any transactions that take place between 1 July 2013 and the time of royal assent—let us say that is 1 August—become dutiable at the time of royal assent. The seller of the business has two months from the date of royal assent to lodge the transaction and then the Department of Finance will assess it. If the transaction takes place on 15 July, assuming royal assent takes place on 1 August, the party has two months from 1 August—until 1 October—to lodge the transaction and then the Department of Finance assesses that lodgement.

**Mr W.J. JOHNSTON:** I would like to ask a question that arises from the minister's answer. Let us assume that a transaction that has a stamp duty component is made and the Commissioner of State Revenue issues an invoice and that invoice, or whatever mechanism is used by the commissioner to require the taxation to be paid, is paid and royal assent is given. Will the commissioner send a fresh invoice?

**Dr M.D. Nahan:** The member's example implies that there is no assessment and therefore the assessment takes place after the royal assent is given.

**Mr W.J. JOHNSTON:** How would the commissioner make up his mind that there was a dutiable amount? If the transaction occurs and stamp duty that is dutiable is payable on the sale because there is a real property component as part of the transaction, I assume that the commissioner will send an invoice. The commissioner then says some of the money must have been for the difference between the real property and the total payment. How does the commissioner know how much the total payment is? Is a fresh invoice issued? What will be the procedure for that?

**Dr M.D. NAHAN:** The earlier answer was based on the assumption that the transaction was for non-real assets. The member's question is: what will happen if a transaction includes real and non-real assets? If that is the case, the Department of Finance will do an assessment of the real asset and note the non-real assets. When royal assent is given and the duty becomes liable for the non-real assets, the office reassesses it at that time.

**Mr W.J. Johnston:** And issues a fresh invoice?

**Dr M.D. NAHAN:** Yes.

**Mr W.J. JOHNSTON:** Part 3 is the provision that operates after 1 July and the commissioner will carry out his duties in the way the minister described. In part 3 we are contemplating retrospective legislation.

**Dr M.D. Nahan:** No.

**Mr W.J. JOHNSTON:** Surely that must be the case because if the commissioner issues one invoice on the transaction and then a second invoice on the same transaction at a later date, that is retrospective. It is retrospective because the person paid all the duty that was due on the transaction as at the date it was transacted but subsequently there is a new obligation. Using the example the minister gave, which is 1 August, there will be a newly implemented obligation to pay that tax from the date of the transaction. That is retrospective. Surely that is the only way that could be interpreted.

**Dr M.D. NAHAN:** As I understand it, this is a transitional clause. Using the member's example of an asset that has real and non-real components, tax on the real component is applied. Royal assent has not been received, but notice has been given that it will come in and therefore people will know that they are liable for the non-real component, not at the time that the transaction takes place but subsequent to royal assent.

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**Mr W.J. Johnston:** But the legislation might still be in Parliament.

**Dr M.D. NAHAN:** It may be and therefore it will be to some extent retrospective.

**Mr W.J. Johnston:** So, it will be retrospective.

**Dr M.D. NAHAN:** It is in the sense that it is a transitional arrangement that is in the bill to contemplate the situation that royal assent is not received before 1 July 2013.

**Ms R. SAFFIOTI:** It is a bit of an untidy way of doing things. I assume the minister has had to structure the legislation in this way because he did not want a rush of transactions occurring between the window on 1 July when the tax will be abolished and the date the tax will be introduced. Normally tax changes come into effect basically on the day of royal assent. The legislation has been structured in this way to avoid a rush of transactions between the window when the transfer duty is abolished on 30 June and the date it is reintroduced by the government.

**Dr M.D. NAHAN:** This is not typical of tax changes. Most tax changes are either a new tax that never existed, or an increase or a change in the tax rate or tax base that is announced along with the date it comes into operation, which is often not required in those types of legislation. This one is different. This is a tax that has been around for a long time and the act we are amending will dissolve that tax on 1 July 2013. The intention of this government is to have it continue. I cannot remember an example like this. With the risk that royal assent may not be given before 1 July 2013, we had to have a transitional arrangement; otherwise, perhaps a huge raft of transactions would take place between 1 July and royal assent, which would give large windfall gains to people who were able to organise their business in that way.

**Mr W.J. JOHNSTON:** Could I clarify this question of windfall gains? The minister said that people would be able to arrange their affairs to get windfall gains. How is it a windfall gain to pay the legally obliged taxation rate that applies to a transaction? I am not quite sure how that is a windfall. I would therefore like clarification of what the minister means by a windfall gain. If a taxpayer completes their transaction and, because it is a tax on the purchaser and not the seller, the purchaser complies with their legal obligation to pay tax and the transaction is finished, how is that a windfall gain?

**Dr M.D. NAHAN:** It is easy. It is because not everyone can do a transaction in the window, which might be only a day or so between 1 July and royal assent.

**Mr W.J. Johnston:** Why is that a windfall?

**Dr M.D. NAHAN:** It is just luck. Not everybody can organise their affairs like that. It is an equity issue. Some people perhaps will be able to do it—I suggest not many—depending on the length of time. Others will not be able to do it. The others who are not able to do it will have to pay the tax. Certainly if the bill did not have part 3, others would not, and I think that is an issue of equity.

**Mr W.J. JOHNSTON:** It is interesting that the minister thinks that people paying a tax that is not due is an issue of equity. It is counter to everything I understood the Liberal Party put to the community; that is, a taxpayer who has acted in accordance with the law then gets a tax invoice despite the fact that they have complied with the tax law. Firstly, I do not see how that can be said to be equity. Surely, equity is a taxpayer paying all the taxes that are due, and that is the final issue. I can understand why the minister would say to a taxpayer that if there was tax due on the date of the transaction, they should therefore pay up. But if they have paid 100 per cent of the tax due on a transaction, I do not see how the minister can describe it as a windfall and I do not see how it can be described as equity. The minister might seek to use different words, and I would be relaxed about that. I am not trying to force the minister to stick to the words “windfall” and “equity”, but they are the two words the minister has chosen to use to this point. It is a little strange for me to hear the minister say that his reasoning for introducing a retrospective taxation provision is that he does not want people to benefit from a windfall. But a windfall cannot relate to a retrospective operation of something. Does the minister understand what I am saying? There cannot be a windfall if someone has done everything that they are required to do by law. That is not a windfall. It would be a windfall if someone conducted a transaction and subsequent to the completion of the transaction the rate was retrospectively reduced, because the tax would have affected the balance between the seller and the purchaser on negotiating the price of the business transacted.

I will put that in better terms. A purchaser buying something for \$1 million with \$100 000 of tax has to find \$1.1 million. The seller thinks that \$1 million is all he can get because the extra \$100 000 is going to the government. It would be a windfall to the purchaser if, having made that transaction, the government then sent him a cheque for \$50 000, because the seller might have thought he could have asked for \$1.05 million and instead of the government giving the \$50 000 to the purchaser, it would have given it to the seller. But this legislation is actually the reverse. The purchaser and seller negotiate, and they pay the relevant tax, and now the

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minister is arguing that that is a windfall and that it is equity. I do not understand that. I can understand why the minister would argue that this is about protecting the revenue base of Western Australia and that the government cannot afford to let that tax get away from it because it is so very desperate for revenue that it is looking down the back of the couch for every penny. I understand that as an argument. But the minister chose the terms “windfall” and “equity”. I have never heard anybody propose a retrospective tax on the basis of preventing a windfall and providing for equity. I am therefore seeking clarification from the minister on that important policy issue.

**Dr M.D. NAHAN:** Again, I trust this will not arise, but part 3 of the bill will do a number of things. It will ensure that there is a liability to pay transfer duty on the non-real portion of a transaction between 1 July 2013 and when royal assent is given. There would be a number of ramifications if we did not have that provision. First, those people who could arrange their transactions during that period would perhaps not pay as much tax. That would advantage those who are in the position to do that, and those who could not would miss out. Part of taxation policy is to treat taxpayers neutrally. Those who have a similar liability for tax on profits should all be liable for it. The member is right; it is to protect revenue. It is to treat in the same way those people who the next time have transactions on non-real property. People would expect this bill to go through Parliament, and, if there is a short delay, they will make a transaction expecting to pay this, and they would not have to. It would be a windfall—an unexpected gain that they would otherwise not have. That is the term I used. There are three: first, it is equity in treating in the same way all people over the next period who have a transaction; second, it is to protect the state tax base; and, three, it is to avoid unexpected windfall gains and have people who can manipulate their timing of the transaction to gain that.

**Clause put and passed.**

**Clause 3 put and passed.**

**Clause 4: Section 2 amended —**

**Mr B.S. WYATT:** I rise to speak on this clause and note that I have an amendment on the notice paper. This reflects the amendment that was made by the Revenue Laws Amendment Act 2010. The idea for this amendment was flushed out during the member for Churchlands’ contribution to the second reading debate. The member for Churchlands was keen to come back into the chamber at some point in the future to vote to have this tax abolished. Back in 2010 when the Revenue Laws Amendment Bill passed the house, all we did was amend the Duties Legislation Amendment Act 2008. With the remaining amendments I have on the notice paper, I am attempting to bind this government to a time frame. In 2010 the government was happy to defer the abolition of this tax for three years to raise \$350 million-odd. This time the government has given up on setting a time frame to abolish this tax. It has simply said it will defer that indefinitely. Call me suspicious, but I expect that an indefinite abolition means there will never be an abolition of this tax, not under this government in any event.

This amendment seeks to impose a time frame on the government to force it to get its house in order and bring its average spending below 10 per cent and to live within its means. The amendment does two things. It opposes the clause and we will divide on that point. If I am successful in that division, which I am highly confident of because I know the member for Belmont in particular wants to vote with me on this one—I can see it written all over her face; I will get a rush of Liberal members voting with me on this one—I will then move to insert a new clause 4 as outlined on the notice paper, to delete the reference to “2013” in section 2 of the Duties Legislation Amendment Act 2008 and replace it with “2015”. I accept that we are dealing with that part of the bill provided it passes before 1 July 2013.

The minister will be pleased to know that I have no intention to continue to make those amendments to part 3 of the bill. The point is that the government has the numbers both here and in the upper house to get this through comfortably before 30 June 2013. The tax will be abolished on 1 July 2015. That is two years. The government will presumably receive just under half, about \$250 million, in revenue that is not already in the forward estimates. This proposed amendment will put some pressure on the government to get its financial house in order and give hope to businesses that this tax will be abolished as per the goods and services tax agreement as outlined by the minister in his second reading speech. I do not think there is any problem with that.

Members on the government side should feel comfortable in supporting this amendment. It will allow the government the revenue it is already busily spending away for the next couple of years, and it will then require Parliament to reassess. Either the government has its financial house in order and the tax can be abolished, or the spend under Premier Colin Barnett will continue and we will have to come back and re-debate this issue. There is nothing unreasonable about this proposed amendment and I look forward to the support of government members.

**Ms R. SAFFIOTI:** Do I need to refer to you as Mr Chair or Acting Speaker? I thought it was Mr Chair.

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**The ACTING SPEAKER:** Either/or, I am not fussed, but I am not sure what the rule is. It is Acting Speaker.

**Ms R. SAFFIOTI:** I always thought it was Mr Chair because we are in consideration in detail, but I am glad that after five years I have worked that out. I support this proposed amendment. Again, it is a very good amendment from the member for Victoria Park.

**Mr B.S. Wyatt:** I am full of good amendments.

**Ms R. SAFFIOTI:** The member is full of good amendments. The member is proposing that we oppose this clause. It gives some hope to businesses out there in Western Australia that a tax cut is coming. It also gives a bit of target and a goal for people in government to get their expenditure under control. As the member for Victoria Park has outlined on numerous occasions, this government has overseen double-digit expenditure growth that is significantly higher than expenditure growth under the previous government. This government has not been able to contain expenditure. One of the reasons we are here today debating this increase in tax is that this government has not been able to control expenditure.

It is always good to have tax reform on the agenda and some goalposts in mind. Proposed new clause 4 will not abolish the tax cut but will defer it for two years to let the government try to rein in that expenditure growth. It is a fair amendment that has been well thought out. It keeps tax reform on the agenda. I know Liberal governments like to have tax reform on the agenda, especially when Labor governments are in force. Therefore, they should also like that when they are in power. It is a good amendment. It allows the government to keep taxing away, as it does, for another two years and it keeps this issue on the agenda—as it was back in 1999 and has been since then. We do not just kill off this possibility of this tax cut, but we keep it there in the future with a hope that this government can get its finances in order after it destroyed them over the past five years and deliver some meaningful tax reform in just over two years.

**Mr B.S. WYATT:** I confirm on the record that I do not need to move this amendment as such. All we need to do is simply oppose the clause. The minister will be pleased to know that I will not labour the point again. I will conclude with some of the comments made by the member for West Swan. Another two-year extension of this tax will mean that between when it was supposed to be abolished and 2015, the government will have about \$600 million in extra revenue. That is not a small amount of money. The value of this amendment is that it keeps tax reform front and centre in the mind of the government. That is something that members of the backbench should want from their executive. Rather than continuing on the spendathon, the executive government needs to have something looming—a target—to keep in mind when it makes decisions about spending, and 2015 would give the government another couple of years. No doubt in the Premier's mind that money has already been spent—allocated, gone—but it would allow two years for the government to react and adjust. It would also give the Chamber of Commerce and Industry of Western Australia and the business sector some hope that there will be a tax cut coming; some hope that the tax cut legislated by the former Treasurer, Hon Eric Ripper, will actually be delivered rather than delayed and deferred indefinitely by the current Barnett Liberal government. It is not unreasonable, and I look forward to support from the government for this amendment.

**Dr M.D. NAHAN:** We will not accept this proposed amendment, but I will make a couple of comments. We look forward to tax reform. We are not going to do “earmark” tax reform, but we will look at it across the board. There are a large number of areas in which state tax can be reformed, and I must include that such reform should consider state–federal relations at the same time. This is not a good tax, but neither is payroll tax, conveyancing or anything else. We are not going to put on a time frame or restrict our decisions on tax to give priority to this tax.

**Mr B.S. WYATT:** Just one point to make: it is no surprise that the minister will not support this very sensible amendment, but he did make the point that he is not going to earmark tax reform—is that correct? He is not going to earmark taxes?

**Dr M.D. Nahan:** No, no. I described your proposal as earmark tax reform—that is, you're earmarking the change to one tax.

**Mr B.S. WYATT:** And the minister prefers across-the-board taxation.

**Dr M.D. Nahan:** No, I didn't say that. I said that we will look at tax reform across the board.

**Mr B.S. WYATT:** That is exactly what the government took to the election. There was no across-the-board taxation commitment, no across-the-board review; there was an earmark—to lift the threshold for payroll tax at some point in this term. That was the only mention made of tax increases or decreases. There was nothing other than an earmark; I have not used that term before, but that is exactly what the government took to the election. Obviously, it did not then say that it was going to increase taxes, which is what we are doing now, but it is disappointing that the minister could not see that, after accepting that this tax is not a good tax and is an

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inefficient tax. It is a tax that should have disappeared on 1 July 2010, yet here we are again, with the Barnett government not even willing to set itself a target, an ambition, to get its financial house in order by 1 July 2015. It is not even willing to do that, so I dare say the prediction I made back in 2010 that this will be deferred again, has come true today. Not only has it been deferred again; the government is not even willing to give itself a date—the constraint of a time frame within which a tax will be abolished.

*Division*

Clause put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the ayes, with the following result —

Ayes (30)

Mr P. Abetz	Mr J.H.D. Day	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Ms W.M. Duncan	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Ms E. Evangel	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.M. Britza	Mr J.M. Francis	Mr P.T. Miles	Mr M.H. Taylor
Mr T.R. Buswell	Mrs G.J. Godfrey	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (14)

Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J. Farrer	Ms S.F. McGurk	Ms R. Saffioti	Mr D.A. Templeman ( <i>Teller</i> )
Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire	
Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson	

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Pairs

Mr B.J. Grylls	Ms L.L. Baker
Mr R.F. Johnson	Mr J.R. Quigley
Dr G.G. Jacobs	Mr P.C. Tinley
Dr K.D. Hames	Mr W.J. Johnston

**Clause thus passed.**

**Clause 5: Part 2 Division 2 Subdivision 3 deleted —**

**Mr B.S. WYATT:** I rise to make a few comments on my opposition to clause 5. I have a similar amendment for this clause to the one that I just tried to force through the house with the power of numbers that I have! I cannot express my disappointment enough, particularly since this amendment was the Churchlands amendment, member for Churchlands! The member was not here earlier when I mentioned the fact that it was him who gave me this idea—the inspiration of Liberal philosophy to ensure that this amendment was moved—and he missed it!

**Mr S.K. L'Estrange:** Say it again!

**Mr B.S. WYATT:** Oh, do not worry, I will; I will probably say it three or four times!

To his credit, the member for Churchlands was one of the few Liberals to make a contribution to the second reading debate on the Duties Legislation Amendment Bill 2013. Towards the conclusion of his speech, in reference to the member for Mirrabooka, he said —

In particular to the member for Mirrabooka, I look forward to the time when the bill to have that transfer duty removed is put on the table ...

What I am doing is giving the member for Churchlands a time that he can look forward to, so that he can plan the cocktail parties with his business supporters when this tax is abolished. Rather than simply allowing the government to have the ill-discipline of deferring this tax indefinitely, and allowing millions of dollars of revenue to roll in that the member for Cottesloe can gorge himself on, I am saying to the Premier, “Discipline yourself”. The member for Churchlands is right. The Premier needs to discipline himself. That is what the member for Churchlands is really saying in his commentary in the second reading debate.

**Mr S.K. L'Estrange:** I do not think I said that.

**Mr B.S. WYATT:** I listened keenly. I know that is what the member for Churchlands was saying. The member for Churchlands was saying, “The Premier is out of control. He cannot control his spending. Nothing will control his spending, except a deadline.” That is what we need to impose on this Premier. We need to impose a deadline. We need to impose discipline and fortitude. That is why I have proposed this amendment. It is the Churchlands amendment. This amendment will impose a deadline. For the benefit of the member for Churchlands, who was not in the chamber previously, what I am proposing is that instead of allowing this tax cut to be deferred

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indefinitely, the Duties Legislation Amendment Bill be amended so that this tax will be automatically abolished on 1 July 2015. That will give the Premier \$250 million or \$300 million to waste on whatever he wants to spend it on. But he will know that on 1 July 2015, he will lose that revenue source. Bearing in mind the good Liberals that members opposite are, and bearing in mind the entrepreneurial spirit and risk-taking courage of the small business sector, the member for Churchlands will be able to give them a gift on 1 July 2015. The member for Churchlands will be able to crow and say, "I gave you that gift." He will be able to say again—he has form on this; I am very impressed—"I stood up to the Premier, and I got you a tax cut." I am sure that when the member for Churchlands goes to the Old Aquinians dinners, he will be able to say, "I was the backbencher who got that tax cut for the small business sector on 1 July 2015", and I will be there, listening, and I will applaud him.

I want the member for Churchlands to come over on this side, because we are going to divide again. We need to make this point. We cannot simply allow governments to increase their means. The minister will say, the Treasurer will say and the Premier will say, "We have to live within our means." But they keep growing the means. If they keep growing the means, they will never be able to give a tax cut. They will never be able to give tax reform. They will never be able to trot over to the Chamber of Commerce and Industry of WA and say, "I got this for you." We need to nip this in the bud and say, "Premier, 10 per cent average expense growth for the past four or five years is not acceptable. We will give you until 1 July 2015 to get that under control, and we then expect this tax to be abolished."

Member for Churchlands, come on over and vote with the opposition!

**Ms R. SAFFIOTI:** I support this proposed amendment, which from now on will be known as the Churchlands amendment. I do not know why the Premier did not want the member for Churchlands to be on the front bench, with such an amendment! This proposed Churchlands amendment will give hope to the business community, because it will know that a tax cut is on its way. This proposed amendment will—I think this is why the member for Churchlands sponsored this amendment—enforce discipline for the government. Through this proposed amendment, the government will know that in two years' time, it will need to have its house in order so that this tax cut can be put in place.

This proposed amendment meets the government halfway. We are opposed to this tax increase, and the government is endorsing and loving this tax increase. What we are saying is, "Government, have your tax increase for two years, but then bring in this tax cut." This tax cut was signed off on not last year, not two years ago, and not even a decade ago, but in 1999. This tax cut was signed off on by the commonwealth and the states in 1999. It is now 2013, and the government is proposing to abolish this tax cut for ever and ever—it will ride off into the sunset, never to be seen again. We are seeking to give this little tax cut a bit of hope.

**Mr B.S. Wyatt:** Putting it on life support for a couple of years!

**Ms R. SAFFIOTI:** Yes; giving it a bit of CPR!

We are saying, "Little tax cut, we will let you hang around, and you can come back in two years' time." We are giving hope for this tax cut and hope for the small businesses in Western Australia. This is meeting the government halfway. I do not think that is being unreasonable at all. The government wants to abolish this tax cut; we want to keep this tax cut. But we will give the government two years to get its house in order. Two years is a tight time frame. But we have seen what the government has done over the past four and a half years. The government has taken the strongest set of books in the state's history and completely destroyed them. It has turned absolutely massive operating surpluses into losses. Those surpluses were so large that the former Labor government was criticised heavily for them. Those surpluses showed that the budget was on a structurally sound footing. At that time, income far outweighed expenditure, and that recurrent and operating income went towards paying off our investment program. That was a structurally sound budget. This government has completely trashed the budget, to the point that pens cannot be ordered, public servants are being sacked, and secret little taxes, such as the third party insurance tax, are being introduced in the hope that no-one will notice; and now a massive tax cut that was scheduled to commence in two or three weeks has been not just postponed, but put off into the never, never.

So I support this proposed amendment, and I congratulate the member for Churchlands for putting it up. It is a very good idea, which the member for Victoria Park has grabbed. I hope that members on the other side will understand and appreciate how important that proposed amendment would be for small businesses around the state. I hope also that they can understand that this is a compromise from our side. It is meeting the government halfway. A reasonable person would understand that we are meeting the government halfway. I therefore urge the member for Churchlands to join us and vote for this amendment.

*Division*

Dr Mike Nahan; Mr Bill Johnston; Ms Rita Saffioti; Mr Ben Wyatt; Acting Speaker; Mrs Michelle Roberts; Mr Mark McGowan; Mr David Templeman; Mr John Day

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**The ACTING SPEAKER (Mr P. Abetz):** I remind the house that we are dealing with clause 5, not an amendment. The question before the house is that clause 5 stand as printed. All those in favour say aye, those to the contrary say no. I think the ayes have it. Division called, ring the bells.

**Mr D.A. TEMPLEMAN:** Mr Acting Speaker, I understand that the member for Joondalup called for the division. That means, of course, that he is required to vote with the opposition.

**The ACTING SPEAKER:** I heard the member for Victoria Park call the division. That is what I heard, perhaps because the member is closer to me.

**Mr B.S. Wyatt:** No. He called it first. We will have to get the tape.

**The ACTING SPEAKER:** I heard it first from the member for Victoria Park.

*Point of Order*

**Mr M. McGOWAN:** Mr Acting Speaker, the ordinary rule is that the person who calls the division is required to vote with the side that is voting against the motion. I think it is incumbent on the member for Joondalup, if he did call for the division, to own up to whether he did so. If you are of the view, Mr Acting Speaker, that you did not hear him say that, it is incumbent on the member for Joondalup to own up as to whether he did or did not say it, because the rule is clear that he should vote in accordance with how he called the division.

**The ACTING SPEAKER (Mr P. Abetz):** I take your point of order that if a division is called, the person who calls for the division needs to vote accordingly. But, as Acting Speaker, I heard the call for the division from the member for Victoria Park; I did not hear it from the member for Joondalup. If the member for Joondalup called it, he needs to deal with that.

*Division Resumed*

**Mr P.B. Watson:** I heard him from here and you're there. You're a disgrace in that chair; you shouldn't be there.

**The ACTING SPEAKER:** Member for Albany, if you are calling into question my ruling, you have a right to dissent from the ruling of the Chair, but to mouth off at the Acting Speaker is not acceptable conduct and I call you for the second time.

**Mr P.B. Watson:** Mr Acting Speaker, I heard it from here and you sat directly opposite me.

**The ACTING SPEAKER:** I call you for the third time today.

The question is that clause 5 stand as printed. All those in favour pass to the right of the Chair; all those against pass to the left of the Chair. I appoint the member for Carine as teller for the ayes and I appoint the member for Mandurah as teller for the noes. I exercise my right to vote with the ayes.

*Point of Order*

**Mrs M.H. ROBERTS:** Mr Acting Speaker, I understand that you gave a ruling that somebody who calls for a division has to vote accordingly, and of course that is provided for in the standing orders. A number of my colleagues on this side of the house have said that they distinctly heard the member for Joondalup call for a division. Therefore, he should be sitting on this side of the house and passing his vote in accordance with your direction, Mr Acting Speaker.

**Mr M. McGOWAN:** Mr Acting Speaker, further to the point of order, standing order 137(2) states —

A member who calls for a division will not leave the House and will vote with those who, in the opinion of the Speaker, were in the minority.

The member for Joondalup called the division. The standing order does not refer to who heard him call the division. It is up to him to admit whether he called the division and to vote with those who, in your opinion, are in the minority, which is quite clear. It is up to him to own up to whether he called a division. It is not a judgement call for other people. It was clearly heard by other people, and the look on his face obviously indicated that he knew he had called a division. So it is now up to him to own up to whether he called a division. It is not a matter for a ruling.

**The ACTING SPEAKER (Mr P. Abetz):** I said before that I heard the member for Victoria Park call for a division. That was the first call that I heard. I did not hear a second call for a division.

**Mr B.S. Wyatt:** I was the second call.

Dr Mike Nahan; Mr Bill Johnston; Ms Rita Saffioti; Mr Ben Wyatt; Acting Speaker; Mrs Michelle Roberts; Mr Mark McGowan; Mr David Templeman; Mr John Day

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**The ACTING SPEAKER:** If the member for Joondalup called the division, it is up to him. It is not for me to rule; that is my understanding. I heard the member for Victoria Park call for a division. That was the basis on which I called the division.

**Mrs M.H. ROBERTS:** Further to the point of order, the fact of the matter is that standing orders provide that any member who calls for a division has to vote with the minority. That much you have made clear, Mr Acting Speaker. Can I inquire why you would not ask him whether he called for a division? It does matter, because if he did call that way, he should be directed to move to this side of the house. I have been here long enough to have seen people be directed by the Speaker to do that.

**Mr D.A. TEMPLEMAN:** Further to the point of order, Mr Acting Speaker, I had just entered the chamber when you put the vote. Because I was standing closest to where the member for Joondalup was sitting, I clearly heard him call the division. I simply think he should admit that he did so and join us on this side to vote against this clause.

**Mr J.H.D. DAY:** On the point of order, Mr Acting Speaker, you have made a ruling. It is up to the member for Joondalup to make a decision in his own mind how he is going to vote. He is a relatively new member. I have no doubt that he would not have intended for a division to be called and to vote alongside the opposition. I think a bit of a mountain is being made out of a molehill.

**The ACTING SPEAKER:** I have just been advised that, because I called the division on the basis of the call that I heard from the member for Victoria Park, that settles the matter.

*Division Resumed*

The division resulted as follows —

Ayes (27)

Mr P. Abetz	Mr J.H.D. Day	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Ms W.M. Duncan	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr P.T. Miles	Mr A.J. Simpson
Mr I.M. Britza	Mrs G.J. Godfrey	Ms A.R. Mitchell	Mr M.H. Taylor
Mr T.R. Buswell	Mrs L.M. Harvey	Mr N.W. Morton	Mr T.K. Waldron
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	Mr A. Krsticevic ( <i>Teller</i> )
Ms M.J. Davies	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (15)

Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr P.B. Watson
Ms J. Farrer	Ms S.F. McGurk	Ms R. Saffioti	Mr B.S. Wyatt
Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire	Mr D.A. Templeman ( <i>Teller</i> )
Mr F.M. Logan	Ms M.M. Quirk	Mr P.C. Tinley	

Pairs

Mr B.J. Grylls	Ms L.L. Baker
Mr R.F. Johnson	Mr J.R. Quigley
Dr G.G. Jacobs	Mr W.J. Johnston
Dr K.D. Hames	Mr D.J. Kelly
Mr G.M. Castrilli	Mr M.P. Murray

**Clause thus passed.**

**Clause 6 put and passed.**

**Clause 7: Schedule 3 Division 3 deleted —**

**Mr B.S. WYATT:** As is clear on the notice paper, I have another amendment to potentially move in the event that I am successful when the member for Joondalup gets a number of his colleagues to join us! The Churchlands amendment has gone down once. It was voted down by the member for Churchlands, which was a surprise. He wanted the amendment to be moved, but he did not vote for it. It is perplexing, member for Churchlands! He was a co-sponsor; I worked with the member for Churchlands on this amendment, yet he simply would not vote for it! I think the member for Joondalup had a fit of Liberal renewal when he thought back to his first speech and thought, "Actually, I don't like taxes, I do like small government, and I want to protect the small business sector because it takes the risks and has entrepreneurial spirit and courage." They were those lovely things that we heard in the first speeches given by the new members of Parliament. As I have said, the member for Churchlands is one of the few members who gave a very good speech on the second reading debate of this bill. I read his contribution to the second reading debate and he said to the member for Mirrabooka, "I look forward to the time when the bill to have that transfer duty removed is put on the table". I see that as a call for help from the opposition to get rid of this tax.

**Mrs L.M. Harvey:** Is this relevant?

Dr Mike Nahan; Mr Bill Johnston; Ms Rita Saffioti; Mr Ben Wyatt; Acting Speaker; Mrs Michelle Roberts; Mr Mark McGowan; Mr David Templeman; Mr John Day

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**Mr B.S. WYATT:** Very relevant. If the minister had been listening to the debate around the amendment, she would know that it is very relevant. I am helping the member for Churchlands and also the member for Joondalup, who is no doubt halfway to Joondalup right now. As the other two suggested amendments sought to do, this seeks to impose on ministers a bit of discipline. I know the member for Alfred Cove, a former banker, wants to support it. He knows the value of discipline. I know the member for Bateman wants to support it; he knows the value of discipline. I know they all want to support their colleague, the member for Churchlands, in getting a date, setting a time frame—2015—when the government has got to get its house in order and then this tax will go. We can then ignite that fire under the entrepreneurial spirit of the business sector when it sees this inefficient, nasty tax finally being removed. Overall, that will give about \$600 million in extra revenue from the moment the abolition of this tax was deferred in 2010 through to 1 July 2015. I think \$600 million in extra revenue is more than sufficient for this big spending, big government philosophy Liberal government. That is plenty of opportunity. As the member for Churchlands suggested in his cry for help in the second reading debate, this will impose a bit of discipline and will give the business sector a bit of hope that come 1 July, Premier Barnett might have finished his spending gorge and will be looking to actually do some tax reform and will get rid of the tax that the Minister for Finance said should have been abolished as part of the GST agreement between the commonwealth and all states and territories. It will provide a time frame.

The government will defer it indefinitely, and as long as that mob is in government, this tax will never be abolished. My previous prediction has come true. In 2010 I said to the then Treasurer, who was the Premier —

**Mr M. McGowan:** They've had a lot of them.

**Mr B.S. WYATT:** They have had a few; I get confused. I said to the Premier and Treasurer at the time that he would not get finances in order or spending under control, and my prediction was that by 2013 we would again be deferring this tax cut. Sure enough, here we are. Giving the government a deadline of 1 July 2015 will force the Parliament to re-address the issues of government spending, of big government—small government, and of how we can assist the entrepreneurial spirit of our business sector. Those who have the courage take the risks. Do not simply get rid of it forever, because the tax will never be abolished; I assure members of that.

**Ms R. SAFFIOTI:** I again rise to support this amendment along with the other amendments.

**The DEPUTY SPEAKER:** Order, members. We are not discussing the amendment; we are discussing clause 7.

**Ms R. SAFFIOTI:** Sorry. I will discuss clause 7. I congratulate the member for Victoria Park and the member for Churchlands for putting the suggestion to oppose this clause on the notice paper. As the member for Victoria Park just said, it was first mentioned in 1999 that this tax would be abolished. It has been on the agenda for abolition since 1999—14 years. The member for Victoria Park is trying to put a goal in place; that is, for this tax to be abolished in two years' time. That would allow the government two years to get its finances in order. As I said before, we are proposing to meet halfway. Labor wanted and had legislated to have this tax abolished back on 1 July 2010. That is when Labor proposed for this tax to be abolished. The Liberal Party then deferred the abolition to 1 July 2013. Today, the Liberal government is trying to remove this tax cut altogether. We propose to push it back another two years to allow the government to not only collect another \$240 million, but also put some discipline in place and keep this tax cut on the agenda. It has been planned to be abolished in some form or another since 1999. It has been on the table since 1999. The member for Victoria Park is trying to keep this tax cut on the agenda and to make sure that there is some discipline within government to get those finances right to ensure that meaningful tax reform can be delivered.

**Mr M. McGOWAN:** I will add my remarks to those of the shadow Treasurer and the shadow Minister for Finance. We are attempting to ensure that the government delivers on its promise, even if belatedly. The way the legislation is currently structured, the promise that was made, by legislation, by the Premier in 2010 will never be delivered. The member for West Swan said we are meeting the government halfway. By that she is assuming that the tax cut would kick in on 1 July 2017. I think she was being very generous, because the way the legislation is currently structured, it is gone; it is an indefinite delay and it will never happen. We are trying to give the government another two years' leeway on top of the three or four years' leeway it has already had for the imposition of this tax cut. That is what the amendments have been about. That is what the proposal for new clause 7 is about. That is what we thought, for a brief moment, the member for Joondalup was endorsing in his courageous cry of "division" during the last clause. The member for Joondalup gave a courageous cry of "division", a cry that was heard throughout this house. For one first, fine, careless rapture I sat there thinking, "At last; there is a new member of the Liberal Party who has come in here embodying that Menzian spirit and has shown his colours by indicating that he would vote with the majority", as indicated by that cry of division. The member for Victoria Park, the shadow Treasurer, was so enlivened and so excited by what the member for Joondalup did, he repeated it! Like a hallelujah, he followed along; he followed the member for Joondalup with another "hallelujah" to the house! A division was called. He said "division". We could very well have been in

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church on Sunday—“Hallelujah, brother; we are all together on this!” The member for Joondalup is the most courageous new member of the house. I can tell that by looking at him and listening to his insightful questions during question time. It only lasted a second or two until he looked across the chamber and saw the glowering looks, the negative visage, of the Leader of the House, Mr John Day, who is well known for his shockingly bad temper, his ruthlessness and his brutalising of poor, unsuspecting members of the Liberal Party.

**The DEPUTY SPEAKER:** Order, Leader of the Opposition! Please return to the debate on clause 7.

**Mr M. McGOWAN:** The brutal Leader of the House, Hon John Day, formerly a suburban dentist, who emerged from —

**The DEPUTY SPEAKER:** Leader of the Opposition, please return to debating the clause!

**Mr M. McGOWAN:** Thank you, Madam Deputy Speaker; you are a very firm guide and I respect your experience in this place.

The point is this: we sought the support of new members of the Liberal Party to stop this massive tax rise and we were disappointed. We were disappointed by what has taken place today, because for one brief moment we thought we had the support of a leader amongst the new members of the Liberal Party. We were disappointed by that. We will continue to raise over the coming three and a half years this massive tax imposition on small business across Western Australia that has been imposed by none other than Premier Barnett.

Clause put and a division taken, the Deputy Speaker casting her vote with the ayes, with the following result —

Ayes (30)

Mr P. Abetz	Mr J.H.D. Day	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Ms W.M. Duncan	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Ms E. Evangel	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.C. Blayney	Mr J.M. Francis	Mr P.T. Miles	Mr M.H. Taylor
Mr I.M. Britza	Mrs G.J. Godfrey	Ms A.R. Mitchell	Mr T.K. Waldron
Mr T.R. Buswell	Mrs L.M. Harvey	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (15)

Mr R.H. Cook	Mr F.M. Logan	Mrs M.H. Roberts	Mr P.B. Watson
Ms J. Farrer	Mr M. McGowan	Ms R. Saffioti	Mr B.S. Wyatt
Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire	Ms S.F. McGurk ( <i>Teller</i> )
Mr W.J. Johnston	Ms M.M. Quirk	Mr P.C. Tinley	

Pairs

Mr B.J. Grylls	Ms L.L. Baker
Mr R.F. Johnson	Mr J.R. Quigley
Dr K.D. Hames	Mr D.J. Kelly
Mr G.M. Castrilli	Mr D.A. Templeman
Mr A.P. Jacob	Mr M.P. Murray

**Clause thus passed.**

**Clause 8 put and passed.**

**Clause 9: Section 9 amended —**

**Mr B.S. WYATT:** During the briefing on this bill with the departmental staff—my question is about the definition of “Western Australian business asset”—some discussion was had around the nature of non-real property, what non-real property is, and goodwill, licences et cetera. Is there a particular component of non-real property that raises the majority of that revenue? Is it goodwill or franchise licences? I think the minister understands the question I am asking.

**Dr M.D. NAHAN:** My advisers say that when they levy the proposed tax, they do not differentiate between the various types of non-real assets and therefore they cannot answer that question on whether it is goodwill or otherwise.

**Mr B.S. WYATT:** Further, just so that I understand, when a transaction takes place for the sale of a Western Australian business to the value of \$1 million, and \$700 000 of that \$1 million is attributed to real property, therefore for the purposes of assessing the duty on the non-real asset, will it be assumed that that \$300 000 difference is all the non-real component?

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**Dr M.D. NAHAN:** I take it from the member's question that there was \$1 million worth of dutiable value, both real and non-real.

**Mr B.S. Wyatt:** Altogether there's \$1 million.

**Dr M.D. NAHAN:** My advisers wanted to make that clear because a \$1 million transaction might be related to non-dutiable items. Let us say there is \$1 million of dutiable, real or non-real, assets and \$700 000 is real. By the member's assumption, the other \$300 000 of the duty relates to non-real.

**Mr B.S. Wyatt:** Is that effectively how it works? I don't know.

**Dr M.D. NAHAN:** Let us assume it is not between related parties; therefore, this is a question of the valuation and it would be accepted that that \$300 000 in the member's example is non-real and a duty would be imposed on that.

**Mr B.S. WYATT:** No doubt there is an obvious answer to this, so I will ask the obvious question. The impact of this duty has been recognised. The minister has said, we have said and I think his staff might have even said to us in our briefing that it is an inefficient tax—one of the taxes we wanted to abolish. Does it have the impact therefore on the transaction of a buyer and seller wanting to deliberately deflate the value of the non-real assets and entering into a bit of an understanding on the side perhaps, thereby creating a distortion that might have a much greater impact on the economy than we would otherwise realise?

**Dr M.D. NAHAN:** In income tax, there is a great deal of debate about the valuation of goodwill and other issues and the shifting of that valuation between profit versus goodwill. I have been informed that right now it is not a big issue because both real and non-real assets are taxed at the same rate. The question was: if we did away with the non-real and the real was taxed, would it give people an incentive to shift the valuation to the non-real side?

**Mr B.S. Wyatt:** I basically said the opposite of that, but that is exactly right.

**Dr M.D. NAHAN:** My advice is yes. That would require a great deal more diligence on behalf of the tax officers.

**Ms R. SAFFIOTI:** I understand that this clause inserts definitions into the Duties Act 2008. I have that act in front of me and it appears to already have those definitions.

**Dr M.D. NAHAN:** I am advised that the reason for this clause is that this amendment will do away with the tax on 1 July 2013 and that the terms need to be reinstated. After 1 July 2013, these definitions will fall away and this clause will put them back in. I will try to clarify that. The definitions in the 2008 act will fall away and this clause reinstates those definitions if royal assent is given after 1 July.

**Mr W.J. Johnston:** Let us assume that this legislation does not pass before 30 June and on 1 July these definitions disappear by action of the 2008 act —

**Mr B.S. Wyatt:** As amended by the 2010 bill.

**Mr W.J. Johnston:** What did we do in 2010?

**Dr M.D. NAHAN:** We just changed the dates. The member for West Swan referred to the 2008 act.

**Ms R. SAFFIOTI:** I am trying to get my head around this. Did the 2007 bill delete these two parts?

**Dr M.D. NAHAN:** The 2007 bill did away with the duty from 1 July 2010. Subsequently, we amended the Duties Act and changed the dates from 1 July 2010 to 1 July 2013. We have changed the completion date of the tax. The 2007 bill amended the completion date in the act to 1 July 2010, which was later amended to 1 July 2013. All those definitions will fall away when the tax is abolished. This clause reinstates them if royal assent is given after 1 July 2013.

**Mr W.J. JOHNSTON:** I draw the minister's attention to the second reading contribution of the member for Churchlands, who talked about giving us the opportunity to remove these taxation arrangements in the future. I am wondering why we are doing it this way. Why would we not just amend the completion date? We could have said that the tax was abolished on 1 July 2019—a random date beyond the next election—and the government would have had six years to change the date of the operation. The member for Churchlands—he is not the minister, and I am not suggesting he is—stated in the last paragraph of his contribution to the second reading debate that he would be delighted to see Labor Party members vote in favour of the future removal of this provision. I am a bit confused —

**Mr S.K. L'Estrange:** Are you inviting me to interject, member for Cannington?

Dr Mike Nahan; Mr Bill Johnston; Ms Rita Saffioti; Mr Ben Wyatt; Acting Speaker; Mrs Michelle Roberts; Mr Mark McGowan; Mr David Templeman; Mr John Day

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**Mr W.J. JOHNSTON:** Go ahead.

**Mr S.K. L'Estrange:** I made it clear. I said to the member for Mirrabooka that I look forward to the time when a bill to remove that transfer duty is put on the table and all the von Hayek and Friedman converts on the other side come on board to vote yes. It was in the context of saying that we are being fiscally responsible. That is why we are doing this, but in the future, if it comes on the table, we hope that you come on board to vote with us. It was that simple.

**Mr W.J. JOHNSTON:** That is the challenge I am giving the minister. I acknowledge that the member for Churchlands is not part of the cabinet and I am not suggesting that he is binding the Liberal Party. I am just trying to establish the Liberal Party's philosophy on this issue. If what the member for Churchlands has repeated—I am not sure what he is reading from because he cannot read from the draft *Hansard* as it is not final—is the position of the Liberal Party and it wants to get rid of this tax, why is it doing it this way and putting it back in in perpetuity? In 2010, all we did was delay it to a future date. Surely, if the intention is to get rid of the tax at a later date, the Liberal Party should mirror what it did in 2010 and delay the implementation of the change. If the government needed to tidy up doing it retrospectively, it could have done that. I am not certain why we are doing this very cumbersome process that is contrary to the recommendation of the Red Tape Reduction Group, which was chaired by the member for Scarborough, who is now the Minister for Small Business. One of the recommendations of that group's report was to have red tape impact statements, which we do not have in this bill, and to reduce the amount of legislation. One page of the bill deals with what to do if the bill receives royal assent by 1 July, which will not happen, and 13 pages deal with what to do if it is not assented to by 1 July. I am not quite sure what the underlying philosophy is. Why would the government not just amend the act, just as it did with the 2010 bill? Why do we need to do all these things? Why not just change the completion date to a future date?

**Dr M.D. NAHAN:** The member for Victoria Park moved an amendment to insert an effective cessation date of 2015. We have had that debate and the amendment was not supported. All this clause does is deal with the transitional arrangements. If the bill does not get royal assent by 1 July 2013, we have to do a number of things, one of which is to reinstate the definitions. That is what this clause does.

**Mr W.J. JOHNSTON:** I thank the minister. I wanted to clarify that and I am happy that the minister has clarified that the Liberal Party does not intend to remove this tax at any time in the future. It may be that a future government decides to do that but that is not the intention of the Liberal Party. I was confused. As I said, I understand that the member for Churchlands is not a member of cabinet but there was a suggestion that the Liberal Party would bring this legislation back to us at a future date. I just wanted it clarified so that there was no doubt that the Liberal Party has no intention of removing this tax at any time in the future.

**Clause put and passed.**

**Clause 10: Section 15 amended —**

**Mr B.S. WYATT:** The opposition is opposing this legislation and I am keen to hear from the minister exactly what this clause does. We are now dealing with royal assent on or after 1 July 2013—the retrospective tax that the member for Cannington uncovered during the course of debate today. I am very keen to hear why this clause is here and why the post-1 July 2013 requirements are not required prior to 1 July 2013.

**Dr M.D. NAHAN:** The wider Duties Act 2008 defines dutiable properties, including land, a right and a chattel. Because of the amendments in 2010, this would fall away in 2013.

**Mr B.S. Wyatt:** I am sorry; what is falling away?

**Dr M.D. NAHAN:** The 2010 amendment to the act removed the duty on Western Australian business assets; that is, the 2010 amendment to the act, as the member well knows, was designed to remove the liability for duty on non-real property. This clause reinstates that. It reinstates the words “a Western Australian business asset” to the definition of “dutiable property”.

**Clause put and passed.**

**Clause 11: Section 17 amended —**

**Mr W.J. JOHNSTON:** Again, I understand that the government is saying it is reinstating a provision that would otherwise fall out of the act. The provision I am concerned about is the question of intellectual property. Intellectual property is an essential part of what we should be encouraging in Western Australia, particularly among small business people. I would like a clear understanding of what the philosophical purpose is of the Liberal Party taxing intellectual property in small businesses. I would be interested to know from the minister the sort of information that was contained in the submission from the Minister for Small Business to the Minister for Finance in the framing of this legislation. As the minister knows, the recommendations of the Red Tape

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Reduction Group require that there be an impact statement prepared on the effect of these types of arrangements on small business. What advice has the minister received about the impact on small business in Western Australia from the Minister for Small Business and her agencies on this proposed provision in clause 11 to reinsert that provision in proposed section 17(1)(c)(i)? As the minister knows, a recommendation arriving out of the Red Tape Reduction Group is that there be an impact statement for these types of regulatory issues. What advice can the minister share with the chamber on the impact on small business of this tax on intellectual property?

**Dr M.D. NAHAN:** There are a couple of things. This duty, as the member knows, applies to a range of things, such as goodwill, intellectual property —

**Mr W.J. Johnston:** Yes, but I'm only asking about intellectual property.

**Dr M.D. NAHAN:** I know. I am just putting it into context. The member went widely and came down to specific issues. I will do the same thing. Intellectual property is one of those aspects of value that is subject to duty. I confirm that this is imposed not only on small businesses but also on large businesses. Small businesses have intellectual property, no doubt, but they have a range of other things. I am not sure why the member chooses to focus only on intellectual property.

**Mr W.J. Johnston:** It is because I can do what I like.

**Dr M.D. NAHAN:** The member can do what he wants but I would think that small business would be concerned not just about intellectual property, but —

**Mr W.J. Johnston:** I am sure they are concerned about a retrospective tax and a range of issues but I am only asking about the retrospective tax on intellectual property.

**Dr M.D. NAHAN:** Yes. This is the continuation of an existing duty. A regulatory review was done on it. I have had no conversation or correspondence with the Minister for Small Business on it.

**Mr W.J. JOHNSTON:** I want to confirm this so that I am not in any way getting it wrong. There was no regulatory impact statement on the issue and there was no advocacy on behalf of the small businesses of Western Australia by the Minister for Small Business on this imposition of a retrospective tax on the intellectual property of businesses when they are sold.

**Dr M.D. NAHAN:** First, it is not a retrospective tax.

**Mr W.J. Johnston:** It is.

**Dr M.D. NAHAN:** The tax exists now.

**Mr W.J. Johnston:** No, this is the retrospective tax provision.

**Dr M.D. NAHAN:** It exists. Small business is concerned not just about intellectual property but also about all aspects of their business, and this is a continuation of an existing tax.

**Mr W.J. JOHNSTON:** I am not quite sure what the minister was answering because it was not an answer to the question I asked. There are two provisions in this bill. We have already dealt with one of those, which is part 2 about whether the minister can get the work done before 1 July.

**Mr B.S. Wyatt:** We've dealt with it.

**Mr W.J. JOHNSTON:** We have dealt with that. Now we are dealing with the retrospective section. As we discussed earlier in debate on clause 2, the minister explained to me that the reason for part 3 is that this is the retrospective bit. I am seeking clarification. The minister has confirmed, if I understand the minister correctly, that there was no regulatory impact statement over the retrospective aspects of this bill and there was no advocacy to him on behalf of the small business community by the Minister for Small Business. The minister is entitled to answer any way he wants, if he answers the question. There are two specific questions. Was there a regulatory statement about the retrospective aspect of the bill—and what was the advocacy on behalf of the small business community from the minister regarding this retrospective aspect?

**Dr M.D. NAHAN:** Treasury did consult with small business. There was no requirement to have a regulatory review because it was an existing arrangement.

**Mr B.S. WYATT:** Who did Treasury consult with?

**Dr M.D. Nahan:** Treasury consulted with the regulatory gate unit within Treasury.

**Mr W.J. Johnston:** Treasury consulted itself!

**Dr M.D. Nahan:** The tax policy section of Treasury—that's the structure.

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**Mr B.S. WYATT:** What about the Department of Finance?

**Dr M.D. NAHAN:** This is a tax policy issue. The cabinet submission was brought by the Treasurer; therefore, the tax policy section of Treasury had carriage of the bill. I am the Minister for Finance and I have carriage of it in this house as the minister responsible for the Office of State Revenue.

**Mr B.S. WYATT:** Can I just clarify the Minister for Finance's role? The Treasurer has conduct of the development of policy on tax but the Minister for Finance's role starts only once it is in Parliament.

**Dr M.D. Nahan:** No; the administration of it.

**Mr W.J. Johnston:** The minister for short stories!

**Mr B.S. WYATT:** Was the Department of Finance consulted prior to its introduction into Parliament by the Treasurer?

**Dr M.D. Nahan:** Yes, most definitely. The administration of the act, once passed, lies with the Office of State Revenue.

**Mr B.S. WYATT:** In the event that the government meets its commitment regarding the payroll tax threshold, will responsibility for that be on the Minister for Finance or on the Treasurer?

**Dr M.D. Nahan:** The policy decision to alter the threshold will be that of the Treasurer. The administration of the act will be through me.

**Ms R. SAFFIOTI:** I think we have hit a rich vein here. On this issue the Minister for Finance is responsible for the administration of the act once it is in place. Why is the Treasurer not bringing it through Parliament? He did first read it, did he not?

**Dr M.D. Nahan:** No; I did.

**Mr B.S. Wyatt:** No; you did the second reading.

**Dr M.D. Nahan:** I did the first and second readings. The Treasurer announced that he was going to do it.

**Ms R. SAFFIOTI:** That is right. He made a ministerial statement on it; that is what happened.

**Mr W.J. Johnston:** He pushed the minister out a window! That's what he did.

**Ms R. SAFFIOTI:** About three weeks ago. I am just now, upon thinking about it, surprised that it is not the Treasurer bringing through the bill because this is an area of taxation policy. I understand the minister's role as a tax administrator once he basically —

**Dr M.D. Nahan:** Except that the act lies under my responsibility.

**Ms R. SAFFIOTI:** It does, but the minister is overseeing the Commissioner of State Revenue to collect the revenue. Why did the minister not make the ministerial statement? Why did the Treasurer make the ministerial statement and the minister bring in the legislation?

**Dr M.D. Nahan:** It was a statement of policy.

**Ms R. SAFFIOTI:** This is policy.

**Dr M.D. Nahan:** We are debating the bill and it did not deal with the justice issue.

**Ms R. SAFFIOTI:** Just to clarify in my head then, it would have been, as I think the minister confirmed, the Treasurer who took this into cabinet.

**Dr M.D. Nahan:** It was a joint submission to cabinet, as many are. As the member well knows, it was a policy decision that the Treasurer made and the cabinet made on tax policy. His ministerial statement dealt with a number of other issues —

**The DEPUTY SPEAKER:** Minister, if you are giving a long answer, perhaps you should stand and the member sit down.

**Dr M.D. NAHAN:** The Treasurer made a ministerial statement on a range of issues, including this one and charitable exemptions. Then I brought forward the act as the minister overseeing the bill once it is passed into an act.

**Mr B.S. WYATT:** Just following on from what the minister has just stated, let us use that other one as an example. I have the Treasurer's brief ministerial statement here. He indicated that the state government would introduce legislation regarding the state tax exemptions for charities. Will the minister or the Treasurer introduce that legislation?

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**Dr M.D. NAHAN:** I assume I have not seen that legislation, of course—it is being developed—but I assume it is me.

**Mr B.S. Wyatt:** It is being drafted now, but the minister has not seen it.

**Dr M.D. NAHAN:** I have not seen the result of it. It is in drafting. The policy is with the people to draft the act.

**Ms R. SAFFIOTI:** We are just trying to understand. The responsibilities of the Minister for Finance and the Treasurer are quite interesting and important aspects of government.

**Dr M.D. Nahan:** It is called teamwork.

**Ms R. SAFFIOTI:** That is one way of calling it.

**Mr B.S. Wyatt:** We are wondering who is in the team!

**Ms R. SAFFIOTI:** As I recall, it was the Treasurer who brought in all the taxing bills under the previous government.

**Dr M.D. NAHAN:** That is because the Minister for Finance was in the upper house.

**Mr P. Papalia:** He could still introduce them in the upper house.

**Ms R. SAFFIOTI:** No, not taxing bills. I am still unclear about why the ministerial statement was made by the Treasurer and I am perplexed by the fact that this other bill is being drafted and the minister has not seen it and —

**Dr M.D. Nahan:** It is not drafted.

**Mr B.S. WYATT:** I have a question on “a restraint of trade arrangement”. I am interested in the revelation that no regulatory impact statement was prepared —

**Dr M.D. Nahan:** What clause are we on?

**Mr B.S. WYATT:** We are on clause 11. Members will see in clause 11, “a restraint of trade arrangement”. I assume that that refers to a key employee leaving a business and in that contract of employment the employer, the business owner, has a restraint of trade clause. From my understanding of restraint of trade clauses, they are limited in both time and space; that is, they cannot restrain the trade of a person for 20 years or anywhere in the world. It is six months within the city of Perth. I am just curious about when an employer has a restraint of trade clause with a former employee and that is transferred and the new purchaser pays the duty on the non-real policy, which includes a restraint of trade arrangement. I would have thought that it would have significant impact in terms of red tape on that business. Is my understanding of a restraint of trade arrangement correct? Does the minister think that we should have had a regulatory impact statement in this legislation?

**Dr M.D. NAHAN:** Member for Victoria Park, this exists under current arrangements. It relates to business transactions, not restraints on an employer to employee.

**Mr B.S. Wyatt:** Sorry, can you explain that to me again?

**Dr M.D. NAHAN:** This applies to the owner of a business who sells their business and as part of that transaction the owner then cannot compete or there are agreed restraints on that activity. That has some valuation, as I was informed. In the past there was shifting of those valuations, so it was included in a dutiable item and has been an established part of tax law for a good deal of time.

**Mr B.S. WYATT:** This is another layer to the question we were dealing with before; that is, as I understand it, the government does not define each component of goodwill and impose a duty on each separate one. In reality, will the commissioner go through these various listings? Further down the bill, clause 12 refers again to “restraint of trade” and “business licence” and “business identity”. I am still a bit unsure about how we get to the value of the non-real property.

**Dr M.D. NAHAN:** Generally, the starting point of the valuation or assessment, unless it is not an arms-length transaction, is the declaration. If there is some concern, the commissioner has the ability to go through the transaction and itemise and make an evaluation and exploration in discussion. If it is not an arms-length transaction, the commissioner will go through it in detail. There is accepted case law and guidelines for the decision-making process of the commissioner and how the transaction is valued.

**Clause put and passed.**

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.

*House adjourned at 4.58 pm*

**Extract from *Hansard***

[ASSEMBLY — Thursday, 13 June 2013]

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Dr Mike Nahan; Mr Bill Johnston; Ms Rita Saffioti; Mr Ben Wyatt; Acting Speaker; Mrs Michelle Roberts; Mr Mark McGowan; Mr David Templeman; Mr John Day

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