MUTUAL RECOGNITION (WESTERN AUSTRALIA) BILL 2010

Declaration as Urgent

MR C.J. BARNETT (Cottesloe — Premier) [8.25 pm]: In accordance with standing order 186, I move —

That the Mutual Recognition (Western Australia) Bill 2010 be considered an urgent bill.

The reason for this motion is that the required time stipulated in the standing orders between when this bill was introduced into this house, and when this bill is proposed to be brought on for debate—namely, today—is one day short of the required three weeks. We need to pass this bill to continue Western Australia's participation in the national mutual scheme. The Mutual Recognition (Western Australia) Act 2001, the current legislation, which adopts the commonwealth scheme, is due to expire on 28 February 2011. Therefore it is obviously necessary to get this legislation through both houses of Parliament by that time. I hope members will allow that slight indulgence so that, although the timing is one day short, we are able to deal with this bill today.

MR B.S. WYATT (Victoria Park) [8.26 pm]: I note that the Premier is requesting that this bill be declared an urgent bill. The opposition will be supporting this motion. However, we cannot let this opportunity pass without saying that we have effectively known for 10 years that 28 February 2011 is a key date, because that is when this legislation will expire. I am, therefore, curious to know why today, when it looked as though we would be debating the Premier's Statement, we find ourselves with a motion that this bill be declared an urgent bill. That suggests to me that perhaps the management of the government's legislative program has not been what it should be.

Mr R.F. Johnson: Can I tell you that I am obliging your shadow Minister for Police by rearranging legislation tonight, which I was happy to do, because she is paired.

Mr B.S. WYATT: Leader of the House, regardless of what we are doing tonight, the fact of the matter is that we are dealing with legislation that the Premier wants declared urgent. One thing that the Premier may want to consider, in light of the urgency of this matter, is that this house will be sitting for three more weeks, and I think the upper house will be sitting for three more weeks. Legislative Council standing order 230A, titled "Uniform legislation", reads as follows —

> (1) This order applies to a Bill that —
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> (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
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> (b) by reason of its subject matter, introduces a uniform scheme or uniform law throughout the Commonwealth.
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> (2) The second reading stage of a Bill is not to be resumed where SO 230(a) applies, within 30 days of the date of the adjournment …

That means that when this bill arrives in the upper house, under the standing orders of the Legislative Council, this bill must automatically be referred to the Standing Committee on Uniform Legislation and Statutes Review for consideration for no less than 30 days. So, the Premier might want to speak with his upper house colleagues, in particularly Hon Norman Moore, to make sure that this bill is dealt with expeditiously. Bearing in mind that Hon Adele Farina chairs that committee, I have no doubt she will want a thorough analysis of this bill. But of course it is for the other place to make that decision.

The opposition will support the declaration of this bill as an urgent bill. But I find it curious that on our green sheet, the Premier's Statement is listed for debate tonight, and a bill that we have known for 10 years is due to expire on 28 February 2011 —

Mr C.J. Barnett: Everyone has been waiting with keen interest and enthusiasm for this debate.

Mr B.S. WYATT: We are waiting with keen interest, Premier. Due to perhaps not the most efficient management of government business over many months—not just today—we now have to declare this bill urgent. It is an important bill and I will speak to it, as will a number of members of the opposition. The opposition will support the declaration of the bill as an urgent bill.

Question put and passed.

Second Reading

Resumed from 20 October.

MR B.S. WYATT (Victoria Park) [8.31 pm]: I rise now to speak to the Mutual Recognition (Western Australia Bill) 2010. The explanatory memorandum points out that this matter goes back to 1992. It states —

> In 1992, the Commonwealth, States and Territories entered into an agreement to establish a scheme to promote the goal of freedom of movement of goods and services providers in a national market.

When I was at law school, I spent some time studying section 51 of the Constitution. For the benefit of the member of Armadale, I have even brought my old copy of the Constitution. We are adopting powers pursuant to section 51(xxxvii) of the Constitution. Queensland and New South Wales have referred their powers and do not have to come back time and again, or at a set time, to readopt the mutual recognition scheme. In 2001, Western Australia assented to the Mutual Recognition (Western Australia) Act 2001, which expires on 28 February 2011. Victoria and Tasmania also assented to mutual recognition legislation. The Mutual Recognition (Western Australia) Bill 2001 was passed by the then Gallop government, and this bill seeks to continue that process. The member for Armadale will comment on the historical position of constitutional law and why we have gone down this path. I am led to believe by Lucy Halligan, who provided a briefing to the opposition on this legislation and whom I acknowledge and thank, that when the legislation was introduced into Parliament in 2001, there was no set 10-year time frame because no time frame was given. It was Hon Peter Foss in the other place who pursued a 10-year time limit on the adoption of the commonwealth Mutual Recognition Act. That time has flown by very quickly, which is why the government has sought to introduce this bill as a matter of urgency. Tonight we are dealing with this bill, which, as the Premier has already pointed out, is quite an important bill for the freedom of movement of goods and trade across state boundaries and for the freedom of regulated occupations so that people can practise certain occupations around the country without too much prohibition. I, for one, was a beneficiary of the Mutual Recognition Act when in 1998 I moved from Western Australia to New South Wales to practise law. That act gave me the advantage of simply registering with the equivalent of the Legal Practice Board in New South Wales, allowing me to practise in New South Wales as a solicitor and to not have to go through a retraining process or any other requirements that the Law Society of New South Wales may have otherwise required of me.

This bill goes hand in hand with the Trans-Tasman Mutual Recognition (Western Australia) Act that was passed in 2007, a long time after the Trans-Tasman Mutual Recognition Act made its way through the commonwealth Parliament. In 2005, the upper house Standing Committee on Legislation inquired into the Trans-Tasman Mutual Recognition (Western Australia) Bill 2005. Some concerns were raised at that time regarding the importation of apples and the possible introduction of codling moth and apple scab from New Zealand. It is a very useful report. The shadow Minister for Agriculture and Food, the member for Collie–Preston, had then and continues to have some concerns. However, it is important to note that this bill does not stop the states having their own quarantine requirements. I wanted to put that on the record because when I read the upper house committee report, I saw that concerns were raised by the Western Australian Fruit Growers Association, which was not convinced that the mutual recognition bill would protect the Western Australian apple industry from codling moth or apple scab.

Mr M.P. Whitely: It was a big issue in Roleystone at the time.

Mr B.S. WYATT: I have no doubt that it was.

Ms R. Saffioti interjected.

Mr B.S. WYATT: I am sure that it was a similar situation.

When I read the upper house committee report, I could see that the heat that was generated by the issue was obviously quite significant at that time. At page 43 of the committee's report, the committee concluded —

> The Committee agreed with the Department of Agriculture and Food's advice that the Bill will have no impact on Western Australia's capacity to exercise biosecurity or quarantine measures in relation to apples imported from New Zealand or anywhere else based on genuine biosecurity grounds.

It is very important from Western Australia's perspective to ensure, certainly in respect of quarantine issues, that when we adopt or sign up to referred powers to the commonwealth, although it does not happen too much, we must take into account that it effectively creates a national standard. We must ensure that Western Australia does not adopt a lower standard than it has been used to and that issues of importance, such as quarantine issues, remain significant.

Mr C.J. Barnett: The crowd is building up.

Mr B.S. WYATT: I am surprised that they are here so late. I thought they would have been waiting for this bill to come through.

The commonwealth Mutual Recognition Act was assented to in 1992. Section 6 of the original Western Australian act, the Mutual Recognition (Western Australia) Act 1995, stated that a review into the operation of the bill would take place and be laid before Parliament no later than 31 August 1997. That was only a couple of years after the implementation of the Mutual Recognition Act. The review of the legislation was to occur only a

short time after the commencement of the act probably because the scheme had been in place for only a short time. The review was to consider the benefits that Western Australia would receive from being part of a national standard. Issues such as the lowering of standards were considered as early as 1997 and the committee concluded that it could not find any evidence of a lowering of standards for either goods or occupations. In fact, the committee found that signing up to the mutual recognition scheme promoted the industry, itself forming national standards in different areas. Page 12 of the 1997 review reads —

> Mutual recognition has contributed to, or provided the impetus for, the development of national standards in occupations in the health, building, food and other industries. There is no doubt, however, that the perception of some of the occupational registration agencies in Western Australia is that some situations under the mutual recognition scheme may lead to a lowering of standards.
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> The local registration agencies and government agencies involved in the occupational registration of nurses and real estate and business agents made strong submissions in this regard. Although no evidence of the lowering of standards could be found at this stage this remains a legitimate concern, especially where the health and safety of the public may be placed at risk.

In respect of goods, I refer to page 13 of that 1997 review that specifically noted on quarantine —

> Some goods are permanently exempted from mutual recognition such as weapons, pornographic material and machines. Exemptions also apply to certain regulations such as quarantine, protection of fauna or flora from extinction, censorship laws and state ozone protection laws.

The 1997 report concluded on page 17 by saying —

> The positive impact for Western Australia of mutual recognition on mobility and recruitment and the transfer of skills and knowledge, the creation of national goods markets and the elimination of costs for business was highlighted in the submissions. Although concerns were raised, no submission received suggested that Western Australia would benefit from withdrawing from the scheme.

We saw significant benefits in the very early days after the adoption of the scheme. I think that any member of Parliament could understand why such significant benefits flowed to Western Australia from mobility of trade and occupation across state boundaries, and now, of course, across the Tasman. In Western Australia in particular, that transfer of skills and knowledge across boundaries is very, very important. As Western Australia goes into another skills shortage, one of the places that the former government looked to, and no doubt this government will end up looking to, are workers in other states. The ability for skilled workers to come to Western Australia and work in occupations that require workers to be registered is due to arrangements put in place by the mutual recognition scheme.

As that 1997 review highlighted the concerns in respect of nurses, real estate and business agents and the potential lowering of standards, the Productivity Commission considered that aspect in its 2009 national review of the mutual recognition scheme that had been put in place by the commonwealth and the states. The two co-key points highlight the benefit of the mutual recognition scheme. The first point reads —

> Mutual recognition is a low-cost decentralised means of dealing with interjurisdictional differences in laws and regulations.

The second point reads —

> The Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) have increased the mobility of goods and labour around Australia and across the Tasman.
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> – Greater mobility of goods and labour is a potential source of economic benefits, and is consistent with a move to a seamless Australian economy and a single trans-Tasman market.

The Productivity Commission highlighted the fact that gone are the days of the inefficient states operating effectively in isolation to one another where standards in some states were considerably different in some situations from those in other states. This created an enormous amount of red tape and prohibition, and increased significantly the costs for people and businesses wishing to either trade across state boundaries or to practise whatever their particular trade was across state boundaries. The overview of the Productivity Commission report of 2009 concluded by saying —

> Mutual recognition—under both the MRA and TTMRA—has served the Australian and New Zealand economies well. As a low-cost, decentralised means of dealing with interjurisdictional differences in regulations and laws, mutual recognition has reduced the costs of both goods and labour mobility. However, many of the gains have been captured and fulfilment of the full potential of the schemes is now stymied by ambiguities and omissions in the Acts, and by weaknesses in their implementation. There is also a strong case for extending the coverage and scope of the schemes, given the many

> changes that have occurred in the goods and labour markets over the past decade or so. Amending the MRA and TTMRA and strengthening their architecture along the lines suggested in this report should now be accorded a high priority.

The Productivity Commission highlighted what has been an economic success in those two arrangements, but also has suggested that the labour market has changed by such a significant level that perhaps we need to have a look at the architecture around it. As the Premier no doubt knows, there are processes in which these changes tend to take place and controversy forms around what comes within it and what is exempt from it. There are permanent exemptions. There is the capacity as outlined in the 2001 bill, which attached the commonwealth law for temporary exemptions. However, those exemptions only survive effectively for a period of 12 months, and then authority or approval is needed from the other states for them to be permanent. That is the very reason for those prescriptions to ensure it is difficult to get exemptions from the mutual recognition act.

The opposition supports the Mutual Recognition (Western Australia) Bill 2010. Of course, we moved and passed an identical piece of legislation nearly 10 years ago, which will expire on 28 February 2011. Whilst it is perhaps not the most exciting of bills, it is an important bill for a state like Western Australia that is experiencing significant growth, and that growth is likely to continue certainly in the medium term and we will be requiring skills and other Australians to move to Western Australia. Whether they are miners, lawyers, accountants or engineers, they will come over here and work here under the freedoms that are generated by the mutual recognition arrangements between the commonwealth and the states.

I want to note that not that long ago—a few months back—I was at the Telfer mine site and the most senior person in the open pit that day was a fly in, fly out worker from Shepperton. He was an engineer by trade. He was two weeks on, two weeks off. He would get himself to Brisbane and AngloGold would fly him across to Telfer and back. That is an extraordinary distance to travel to work in the middle of Western Australia. This story is not unique. There was a time when that would have been very difficult, but the mutual recognition scheme allows for those processes to take place.

As I said, the opposition supports the bill, but I do point out to the Premier that the upper house may cause him some grief—unless he can deal with our colleagues in the upper house—because of standing order 230A. At the moment, when the bill hits the upper house, it will be referred automatically to the Standing Committee on Uniform Legislation and Statutes Review for no less than 30 days. That obviously will push the bill off to an upper house committee, and it cannot be considered in the upper house until February next year. The Premier knows we have that deadline of 28 February 2011, so our parliamentary colleagues in the upper house may be required to come back before then. I do not know for sure, but I believe there is capacity in the upper house to not automatically send this bill off to the Standing Committee on Uniform Legislation and Statutes Review. I know Hon Adele Farina. I know that she is a very diligent, hardworking, focused member of Parliament, and I know that she will be very reluctant to not run the ruler over this bill—certainly as Hon Peter Foss did back in 2001 when he was considering the Mutual Recognition (Western Australia) Bill 2001. He argued by way of amendment for a 10-year time line on the adoption of these powers, which the government agreed to and supported.

With that brief contribution, the opposition supports the Mutual Recognition (Western Australia) Bill and looks forward to, hopefully, watching the Premier and the government guide the bill through the Legislative Council.

MR A.J. WADDELL (Forrestfield) [8.50 pm]: I rise also to support this Mutual Recognition (Western Australia) Bill. Mutual recognition is, of course, quite significant; it covers virtually every aspect of commerce within Western Australia and a multitude of businesses and operations. One shudders to think of the impact that would be faced by the Western Australian economy, and in fact the economies of other states where businesses carry out significant trade with Western Australia, if we were to discontinue this arrangement. I certainly hope that the Premier is able to see this bill navigated through the upper house to ensure that there is no disruption.

Upon reading this bill, I decided to have a brief look into its history and found that the legislation in fact goes back quite some time. The arrangements that must have faced businesses back in the 1980s and earlier in their attempts to negotiate and navigate through the multitude of state jurisdictions beggars belief. The rules and regulations in legislation, probably made in the best interests of each state, created a hotchpotch of difficult regulations for anybody to navigate when selling a good across the nation. It certainly seems that this problem was not contemplated by the founding fathers when the Constitution was originally drafted. Clearly there are powers in the Constitution to deal with free trade between the states. However, I do not believe the level of commerce that we face in a modern economy like we have today was contemplated. These issues, therefore, were not dealt with and, of course, that left the states with residual powers. In that situation the states of course have several options. We can create our own regulatory framework, we can adopt a national framework or we can refer our powers to the commonwealth. In the case of the Mutual Recognition (Western Australia) Bill, we are continuing on a process of adopting a commonwealth statute. Other states have chosen to go down a different

path. I understand that New South Wales and Queensland have referred their powers to the commonwealth. Presumably, therefore, they do not face this same ticking time bomb that we face, in terms of what will happen if we do not continue on with the arrangement that we had agreed to. Presumably they have simply solved the problem once and for all. However, of course, in adopting the model that we have adopted, we could argue that it gives a certain level of flexibility for Western Australia to insert its own safety net to pull out of the legislation if it feels necessary. Of course, the nature of the legislation itself is very restrictive in what we as a Parliament can do to impact on the regulations that surround this legislation. When looking at the history of this legislation, I could see that it was certainly a concern of many people that it would result in a race to the bottom, with the adoption of the lowest common denominator across the nation and the potential, in the arrangements for the registration of professions and so forth, for people to jurisdiction-shop to find the easiest jurisdiction in which they could be registered. For example, one could argue that my friend the member for Victoria Park, who received his legal qualifications in Western Australia and then practised in New South Wales, could be accused of jurisdiction shopping by anyone who felt that the New South Wales standards were in fact higher than the Western Australian ones. I do not practise law myself, so I could not comment on whether it is more difficult to obtain —

Mr C.J. Barnett: He would be a University of Western Australia graduate, I would think.

Mr A.J. WADDELL: I am certain, then, that his qualifications are beyond question!

Mr C.J. Barnett: Enough said!

Mr A.J. WADDELL: However, it was noted in the 1997 review that there were some concerns about the lowering of standards—I think in relation to nurses. Nurses applying for registration in Western Australia under the former Nurses Act 1992 had to meet further requirements, such as overseas nurses undergoing a migrant bridging course and out-of-practice nurses undergoing a renewal of registration program. The applicant could go to another jurisdiction—for example, New South Wales—obtain registration there and come back to Western Australia and apply for registration under the Mutual Recognition (Western Australia) Act. In some instances it was understood that people could simply go to another state to obtain registration, never in fact practise in that state and then move back into this state to carry out their profession. That said, the wheels of the legislation have not fallen off, have they? There has not been a multitude of problems arising from that, but certainly different standards do exist across multiple states.

One area that I thought was particularly interesting was that of deeming; that is, somebody comes into Western Australia, claims to be registered to practise in another state and simply makes an application. The mere making of the application deems that person to be qualified and then there is a process that happens post the deeming to determine in fact whether that claim is legitimate. Obviously there was a small window when somebody who had not properly qualified for one reason or another or had been struck off or something like that could practise in our jurisdiction.

Mr C.J. Barnett: I agree with the point you make, and I don't think there's been a falling in standards. However, I think there is a certain risk at the moment to the extent that the commonwealth starts to enter into areas of qualifications and the like. This is not a state rights type of argument. But I will mention two examples. Back some time ago when I was education minister the commonwealth wanted, as it wants now, to have rights to basically register universities. At the time the commonwealth was promoting a university of the South Pacific. Every state minister knew it was a dodgy outfit. The commonwealth foresaw it as a new generation of universities, and eventually that was dealt with. Equally, again not being political, there was the fiasco over ceiling insulation when the commonwealth took it upon itself to accredit contractors and the like without a background and experience in electrical safety. I don't think it will continue. If there have been weaknesses, it is when a jurisdiction has entered into an area without history or experience, and that is where the danger is.

Mr A.J. WADDELL: Certainly, and I think they are extremely valid points. That also possibly comes to the question of scrutiny as well in that under this legislation we move to that ministerial council model, particularly for regulations, when ministers need basically to agree to a regulatory change before it can change; there has to be mutual consent right across the board for regulations to occur. But of course that means that the regulation is still occurring within the commonwealth, and so any scrutiny of that regulatory process is in fact occurring within the commonwealth Parliament.

Mr B.S. Wyatt: What happens is that it is laid on the table here without any discussion.

Mr A.J. WADDELL: Precisely; it becomes a report. Essentially what we are doing is handing over the power of scrutiny from our own Parliament directly to the minister. It is therefore a transfer of power from the Parliament to the executive wing, which, depending on one's flavour, presents certain problems.

The other issue that certainly interested me as I read through the bill was which standards we use when we adopt a national standard—for example, for packaging or for a particular good. If all the states do not define their own

standards, we tend to move towards the Australian – New Zealand level of standards. This has been a bit of a bugbear for me. I understand that about 61 per cent of the standards are uniform across Australia and New Zealand, so 39 per cent are purely Australian. A number of years ago we saw the privatisation of the Australian standards. A person who tries to seek a list of the standards on the Standards Australia website will be referred to the website of an external company, SAI Global Ltd, which requests the person's credit card details before that person can find out what the Australian standard is for a particular thing. I really think that we need to be on top of this, because we put through a large amount of regulation that we rightfully say will sort out A, B, C, D and E. That regulation then simply says that we will adopt the Australian standard, but the Australian standard is privatised. Essentially, we are telling citizens that they have to pay a private company to find out what the law is. I think that is a real problem and a real risk. It fits into this model, and it encourages that behaviour. I think the commonwealth made a huge error in privatising the Australian standards in that way. Through my work on the Joint Standing Committee on Delegated Legislation, I have been pushing to get government agencies that rely on Australian standards to ensure that the standard is published in a way that is accessible to people who might want it. Unfortunately, again, we run into copyright problems. Often there is a copy of the standard at the office and people can inspect it if they want to. It is remarkable that, as we approach the second decade of the twenty-first century in the days of the electronic media that we are used to, people basically have to get on their bike and ride down to a storefront to read a piece of paper. That is a problem that we have to deal with generally.

The final point I would like to raise on the Mutual Recognition (Western Australia) Bill is the issue of innovation. Western Australia led the way with legislation dealing with cigarette smoking. One of the mechanisms that we used for that was packaging and putting warning labels on cigarette packets. Under this legislation, we can do that but it will be overridden by the commonwealth standards. If a company in New South Wales manufactures cigarettes, it will not be required to label the packets in the way that we have defined in this Parliament. Our ability to innovate will be somewhat reduced in those circumstances.

Mr C.C. Porter interjected.

Mr A.J. WADDELL: I will take that point. The difference is that if the power has been referred, a parliamentary group is capable of doing all the regulations as opposed to a ministerial council, and the ministerial council is then the executive that determines these matters rather than an elected wing. I suppose they are the two points that are mixed up there.

We will lose the ability to innovate in that sense. There is an ability to create exemptions under this bill whereby we can issue an exemption for a period of one year and say that that standard will not apply in Western Australia, and people will have to jump through some additional hoops to sell or register a product. Again, the restriction in the commonwealth act is that that cannot continue for more than one year; it cannot be renewed after one year. If we cannot convince the other states to adopt what we adopted during that one year, we will be sunk. We will go back to the lowest common denominator; we will go back to what everyone else has adopted. That is a bit of a problem. It certainly is a problem in relation to safety standards. If a product comes onto the market and we find, for whatever reason, that it is an unsafe product and that we want it removed from the market, this bill will override our ability to do that unless we pass a special exemption. That will complicate the process a little. If we wanted to quickly remove the product from the market, it would mean that it would take longer to achieve that. That is the balancing act we have to do. We will lose some flexibility and innovation. On the upside, we will become part of the national and, if we include New Zealand, international marketplace. It will allow our businesses to trade more easily with those in other states and for businesses in other states to trade more easily with businesses in our state. One cannot underestimate the future demands of employment in Western Australia and the need for skilled people to come into Western Australia. Of course, this bill will enable that to occur as well. On balance, we will support this bill. These are just warnings that I would like to flag for whoever will be looking at this bill in 10 years.

DR A.D. BUTI (Armadale) [9.05 pm]: After the outstanding contributions from the member for Victoria Park and the member for Forrestfield, I will abbreviate my comments.

Mr D.A. Templeman: We can go home then!

Dr A.D. BUTI: We can go home then.

This is a very important bill. As the Premier said, he was very surprised that the gallery was not packed because the bill is also very interesting. I will make some comments about the history of the legislation. I am sure that the honourable Attorney General will be interested in the legal history that led to the act that we are hoping to extend with this bill.

I do not think we can talk about the Mutual Recognition (Western Australia) Act and the Mutual Recognition (Western Australia) Bill without talking about section 92 of the Australian Constitution. As we all know, section 92 of the commonwealth Constitution is all about freedom of trade and commerce across state boundaries. It is

one of the most litigated sections of the Constitution. It guarantees that trade, commerce and intercourse among states should be absolutely free. The question is: what does that actually mean? There are many cases that dealt with this section. One of the most famous uses of this section dealt with the federal government's plan back in the 1950s to nationalise the banking system of Australia. I believe it is similar to the suggestion by Joe Hockey for the nationalisation of banks, but I am not sure about that. Section 92 was reinterpreted by the 1998 Cole v Whitfield decision, which basically prohibited only laws that discriminated against interstate trade and commerce that were for a protectionist purpose. That put a different weighting on the way that section 92 can be litigated.

We have had a case in Western Australia in the past couple of years—that is, Betfair Pty Limited v Western Australia. Betfair is an internet betting exchange that was set up in Hobart. It allowed Western Australians to place bets from their homes. The Western Australian Parliament passed legislation to try to prohibit this practice. This was litigated in the High Court under section 92 of the Constitution. The High Court was unanimous in holding that the Western Australian legislation was unconstitutional. In the decision, reference was made to the 1990 decision of Castlemaine Tooheys Ltd v South Australia. It stated that section 92 decisions —

> appear to discount the significance of movement of persons across Australia, and of instantaneous commercial communication, and to look back to a time of physically distinct communities located within colonial borders and separated by the tyranny of distance.

Of course, when section 92 of the Constitution was first drafted as part of the Federation, they would not have thought about internet communications and so forth, so we now have to come up to scratch with regard to the new technology.

In the Cole v Whitfield decision, much use was made by the justices of economic theory and literature. In other cases, reference was also made to international jurisdictions. It was stated in various decisions that it seemed absurd that in Australia we would restrict the free movement of trade and commerce when there is, for instance, a European community and there is free movement of people and goods across various nationalities. This bill refers only to state jurisdictions within the commonwealth of Australia. One of the famous European decisions was the so-called Bosman decision, which related to a professional soccer player who was out of contract. He was prevented from moving to another club in another member state of the European Union. It was determined that that violated the freedom of movement under the articles that set up the European Union. As a result, we have had a revolution in the transfer of players in the European football world.

Section 92 of the original Constitution of Australia was set up to try to ensure that we had free movement of trade and commerce across state boundaries. The Mutual Recognition (Western Australia) Bill seeks to extend the Mutual Recognition Act, which was first implemented, as stated by previous speakers, in 1993 as a result of the 1992 commonwealth act. It became a national scheme in 1995 when Western Australia enacted legislation. In 1995, the agreement reached by the Commonwealth Heads of Government Meeting in 1992 finally became a national scheme.

Some very good comments were made by my friend the member for Forrestfield, and the Premier also made some interesting comments about the fact that we have to be careful with national uniform legislation and standards. One way to remove the need for mutual recognition is to have national uniform standards. If everyone has to abide by the same standards, we do not really need to say that we recognise someone else's jurisdiction because everyone has the same standard. The Premier made a good point in that it may cause some problems. The Attorney General should correct me if I am wrong, but I thought the mutual recognition principle was based on a cross-border model. It is really trying to ensure that we allow the free movement of trade and commerce and occupations across borders, but it does not prevent internal regulation within the state jurisdiction. If that is the case, even if we had national standards, I do not think that would necessarily prevent us from imposing our own regulations. For instance, we could not prevent a lawyer who was admitted in New South Wales under the mutual recognition scheme from practising in Western Australia because he or she was admitted in New South Wales. However, I am not sure that it would prevent us ensuring that he or she had met certain standards. The Attorney General may be able to correct me if I am wrong in that assumption.

Mr C.C. Porter: This particular legislation does not affect the national legal profession reform project, which we are debating in SCAG at the moment. It does not affect the legal profession as such. It does not affect professions such as plumbers or other trades professions, which is a separate debate. I understood that the mutual recognition of standards was more to do with, as the member for Forrestfield was citing, standards for widgets, if one likes—that is, things rather than professions.

Dr A.D. BUTI: That is not my understanding. My understanding of the mutual recognition principle, and of the act, is that it deals with occupations.

Mr C.C. Porter: It might deal with them in principle, but I think those things are still being added to it. It certainly doesn't cover the legal profession.

Dr A.D. BUTI: In any case, I do not think the principle prevents the state from imposing its own regulations. If we take the legal profession, we cannot bar someone from practising because he or she has been admitted in another state. Moving away from the legal profession, it could apply to any profession. The Premier's concern, which is legitimate, is that it does not prevent a state from ensuring that the standards are not reduced, as long as we do not refer the power to regulate to the commonwealth. I am saying that we should accept the commonwealth standard but still have the regulatory capacity within our own jurisdiction.

Mr C.J. Barnett: It is a safety check.

Dr A.D. BUTI: Yes. We on this side of the house are supportive of the bill. The history relates back to section 92 and the recognition that if we are going to have a national market, we need to have this mutual recognition legislation. This bill is intended to extend the act as it stands at the moment.

MR C.J. BARNETT (Cottesloe — Premier) [9.15 pm] — in reply: I thank members opposite for their support of the Mutual Recognition (Western Australia) Bill 2010 and for their contributions, which were all very well considered. The member for Victoria Park raised the issue of the 10-year renewal of mutual recognition. I think it is wise that we do that. While it might be a nuisance, it means that we will have a discussion, albeit quite a brief one. We can feel satisfied that mutual recognition is working. If for some reason it is not working, at least this Parliament will retain its sovereignty and its ability to do something about it. That is an appropriate safety check from this state's point of view. The member also outlined the results of the Productivity Commission report and the benefits of mutual recognition under this arrangement. It is very important to Western Australia to allow the free flow of goods and particularly of labour. All members would agree that with very strong growth in the resources industry in particular, we would want workers to be able to come to Western Australia from various parts of Australia, to have their qualifications recognised and to take up work on some of these projects. I very much hope that in this period of economic expansion, we see some genuine mobility of labour within Australia. One of the impediments that this country has suffered from, in comparison with the United States, is the relative reluctance of labour to move. I suspect that is changing. The newer and younger generation is far more mobile now. That is important for this state.

The member for Forrestfield said that despite concerns, there is no evidence of a fall in standards. While that risk is always there, I would agree with him. The standards issue is okay.

I am pleased to see the member for Armadale contributing to debate. That is a good thing as a new member. He drew attention to the European Union customs union. It is applied there on a grand scale. From my casual observation, there is a high degree of mobility of labour within Europe. It is basically one economy. In many respects, that is a remarkable achievement given the historic differences, the language differences and the cultural differences.

I thank members for their support for this legislation. It was debated at length. It has been widely accepted and it has been a good feature of the Australian Federation. It is a good example of retaining a federal system but moving to adjust to change and to modern needs.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

MR C.J. BARNETT (Cottesloe — Premier) [9.19 pm]: I move —

> That the bill be now read a third time.

Again, I thank members for their support, and I thank Lucy Halligan from the Department of the Premier and Cabinet, who provided briefings to members on this bill.

MR B.S. WYATT (Victoria Park) [9.19 pm]: I also thank Lucy Halligan from the Department of the Premier and Cabinet for providing the opposition with a briefing on this legislation on Monday.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 9.19 pm

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