

UNIVERSITIES LEGISLATION AMENDMENT BILL 2016

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 100: Section 14 replaced —

Debate was interrupted after the clause had been partly considered.

Mr P.C. TINLEY: Proposed section 13(4) refers to the nominations committee maintaining a public list. Bear with me while I gather my thoughts. Proposed subsection (6) states —

The Nominations Committee may regulate its own procedure, but it must comply with any direction given by the Senate.

Obviously, it is effectively a subcommittee of the university senate. When a list of potential nominees is sought, is there a method by which they might go out and do that? It seems as though it is a closed shop. I mean that in the sense of a certain circle of people end up being on the senates of universities. I am particularly talking about student representatives and so forth. A pretty prescriptive list of people can be on the senate, as stated at proposed section 13(3). Is there any intention, either by policy or within this legislation, to require them to seek a wider net? This very bill will modernise universities in what they do and how they are presented. In my contribution to the second reading I talked about how universities need to be industry focused. In his address, the member for Victoria Park talked about them taking a greater role in public discourse and public debate. I seek the Premier's comment about clause 100. It seems very prescriptive, but there does not appear to be any requirement on behalf of the senate and, in this case, the nominations committee to seek a very wide net of potential candidates.

Mr C.J. BARNETT: Some senate members or academic council members are elected, as would student representatives, convocation or alumni associations, and I would think probably staff representatives. That is outside this selection committee, if you like, or nominations committee. In practical terms, university senates tend to be informed groups and my observation is that they will look for a range of different experiences. Although it is not advertised, people will express their interest in going onto university senates from time to time. Although it might appear as though it is a closed shop, I do not believe it is. Also, the Governor's nominations will effectively become, in practical terms, the minister's nominations, and that goes through cabinet. That opens up the field. Often it has been the case that the Governor or government nominations allow outsiders to come into the university. That has usually been the practice. I understand the concern that the legislation might read a little bit that way, but I do not think that that is the practical result at all. In fact, by taking away the prescriptive nature of some of the rules for the composition of senates, this bill actually opens it up more widely, as it should.

Clause put and passed.

Clauses 101 and 102 put and passed.

Clause 103: Section 16 replaced —

Mr P.C. TINLEY: This brings me to my point about casual vacancies. The election of a new senate member to fill a casual vacancy takes place as if that member's term of office had expired. How long is a vacancy allowed to be maintained before it is filled? Is there a mandated requirement?

Mr C.J. BARNETT: My understanding is that there is no requirement as such, but when there is a casual vacancy—someone resigns or dies or whatever—the person filling that casual vacancy is given a full three-year term. Members of senates and councils are limited to three three-year terms, so basically they are limited to a nine-year period on the council.

Mr P.C. TINLEY: My point is: how long would a vacancy be allowed to exist in a senate before it is filled?

Mr C.J. Barnett: The bill does not stipulate that, but I expect that universities would fill vacancies in a prompt way.

Clause put and passed.

Clause 104: Section 17 amended —

Dr A.D. BUTI: This clause, which amends section 17 of the Murdoch University Act, deletes the word "servants", which is not very appropriate in today's age, and inserts "employees". However, in view of the different contractual arrangements that universities now have with their staff et cetera, and given that an employee is not defined in the act, where do we go for that? What actually is an employee? I know that it refers to academic and other staff, but people might be employed on a contract under which they are not actually

academic staff, or not even staff at all. They are just employed on a contract that does not come within this definition. Would they be covered, and in what terminology would they be covered?

Mr C.J. BARNETT: “Employee” is obviously slightly more contemporary language than “servant”. Typically, the representation would be academic, but there is no reason why senior administrative staff of the university could not be appointed to the senate, in addition to the vice-chancellor, who is an automatic appointment. Quite often, senior administrative people are former academics.

Clause put and passed.

Clause 105 put and passed.

Clause 106: Section 19 replaced —

Mr P.C. TINLEY: Clause 106 replaces section 19 with proposed section 19A, “Remuneration and allowances for Senate members”, which delegates responsibility for remuneration and allowances to the Salaries and Allowances Tribunal. Is there any requirement for the minister to provide any guidance or accept anything, or is it just the SAT making its recommendation or finding automatically?

Mr C.J. BARNETT: There is no requirement in the bill. However, a Minister for Education may well decide to make a submission to SAT if he wished to, but there is no requirement to do so. As I said before, the expectation is that for an ordinary member, if you like, of a senate, the payment would be around \$10 000. There is no requirement for the minister to express a view, but there is nothing to prevent him from expressing a view, and it happens quite commonly in government appointments that cabinet or a minister may express a view as to what is a reasonable rate of remuneration, and SAT would treat it as a submission.

Mr P.C. Tinley: By way of interjection, does SAT give any greater weighting to a submission from the minister?

Mr C.J. BARNETT: I suppose a minister is a minister; they may, but in this case I doubt a minister would make a submission unless he or she thought that the level of remuneration was excessive. For example, there might be a situation in which one university pushes up remuneration for senate members way beyond the norm of other universities, here or on the east coast. Then there might be a situation in which a minister says, “That seems to us to be an excessive proposal.” That could happen; it happened in government recently with the heads of government trading enterprises.

Mr P.C. TINLEY: Just further, is there any requirement for SAT to give due regard to the remuneration of all universities’ senates in relation to the Premier’s point about them getting out of kilter? Is there a normalising formula, if you like, or normalising component that it must look at?

Mr C.J. BARNETT: In terms of a submission on remuneration, the Salaries and Allowances Tribunal would, as a matter of course, do a comparative study. It would look at other universities here and elsewhere in Australia and it would clearly, I think, reject one if it was out of bounds, in a sense. We would expect that the remuneration would come into play, but it would be comparatively modest.

Clause put and passed.

Clause 107 put and passed.

Clause 108: Section 20A replaced —

Mr C.J. BARNETT — by leave: I move —

Page 113, lines 13 and 14 — To delete the lines.

Page 113, after line 25 — To insert —

- (3) The Senate must pay to the Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

I think this is the same point that we have discussed on several occasions.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 109: Section 20B amended —

Mr P.C. TINLEY: Clause 109 proposes to delete section 20B(1) and (2) and insert —

(1) The Senate must prescribe, by Statute —

- (a) the broad categories of amenities and services to which the Guild may apply the fees paid to the Guild; and

(b) the process for determining those categories.

Can the Premier give us a sense of what those broad categories would be? I should preface this question by saying that it just seems pretty general. A senate could have a particular view about the amenities and services that a guild may apply the fees to but I wonder what oversight there would be to ensure that they are considered reasonable. Can the Premier describe what he understands the broad categories of amenities and services to be? What sort of latitude and/or oversight would be provided for the senates to make sure they do what is reasonable?

Mr C.J. BARNETT: I am advised that there are 19 categories under the commonwealth laws and there are three impermissible categories. I might just inquire what they are, if my adviser knows. I think they would be fairly standard such as sporting activities, cultural and arts activities, perhaps child-caring or student counselling—those types of things. It is up to the individual senate to determine whether they are appropriate. I would imagine that if a guild made a donation to a political party, it would probably catch the ire of the guild.

Dr A.D. Buti: It's not allowed under the federal legislation.

Mr C.J. BARNETT: Yes; it is one of the impermissible ones. I think it is fairly common sense. It would obviously be for services to students. Those services change. Guilds now run creches and all sorts of things that would not have happened in my university days, but it is quite appropriate that that now takes place. It allows the senate to oversee that and make sure that the moneys that the universities collect is spent in appropriate ways.

Dr A.D. BUTI: It is interesting and I mentioned it in my contribution to the second reading debate that the bill before us does not just reproduce the categories in the commonwealth legislation. There is an argument about constitutional inconsistency, but we will not go there. I would have thought it would have been just as easy for the state bill to replicate the federal constraints.

Mr C.J. Barnett: That is other than the fact that they may change over time, which would require amendments.

Dr A.D. Buti: That is true.

Clause put and passed.

Clauses 110 to 120 put and passed.

Clause 121: Section 30A inserted —

Ms R. SAFFIOTI: I want to ask a question about developer contributions or levies that could be applied to pay for public transport infrastructure. There has been a lot of debate about light rail routes but they could connect many of these universities. Does anything in this clause or this legislation limit or impact the ability of the state to collect a levy or developer contribution of some sort to finance public transport infrastructure?

Mr C.J. BARNETT: No. There is nothing specifically to do that. I guess if, for example, light rail was built into a university campus, the university may well contribute to that. It would be a negotiated thing not a levy, as such. Curtin University is very keen to have light rail go out to Curtin, obviously; and so is the University of Western Australia. It is not inconceivable that those universities could contribute to perhaps an on-campus station or something like that.

Ms R. SAFFIOTI: Does this legislation prohibit a levy?

Mr C.J. Barnett: It does not preclude it, no.

Mr P.C. TINLEY: Sorry, I am being challenged keeping up tonight. Sorry, is it clause 121?

The ACTING SPEAKER: Yes; clause 121, member.

Mr P.C. TINLEY: Thank you. Proposed section 30A is titled "Exemption from rate or tax". Proposed subsection (3) states —

The Land Tax Assessment Act 2002 section 33 provides an exemption from land tax in respect of land owned by, vested in or held in trust for the University, in the circumstances set out in that section.

What about the circumstances in which a university is clearly undertaking purely commercial activities? Will it be exempt from land tax? I draw the Premier's attention to St Ives, which is the 500-resident retirement village that sits at Murdoch University. When it was established, there was some conjecture about whether it was illegal under the act, but maybe this act will now make it legal. Are those sorts of commercial activities for which the use of land is purely to derive a profit and, in this case, a passive income taxable?

Mr C.J. BARNETT: Proposed section 30A(2) makes it clear that although university land is exempt, that is not the case if it is used for a private purpose or for a commercial purpose as defined. There would be neutrality there. If there were a private commercial operation on university land, the normal taxes or levies would apply.

Mr P.C. Tinley: What do you mean by "private commercial" activity?

Extract from Hansard

[ASSEMBLY — Wednesday, 14 September 2016]

p6026a-6030a

Mr Peter Tinley; Mr Colin Barnett; Dr Tony Buti; Ms Rita Saffioti

Mr C.J. BARNETT: Yes, on university land. If something that was deemed to be a private for-profit organisation was set up, it would pay all normal taxes.

Mr P.C. TINLEY: This then becomes a little grey, because the commercial activities that are undertaken by the various faculties at some universities derive a purely commercial return for the university. Is there not some proportional way that that would be taxed?

Mr C.J. BARNETT: There might be a grey area, although I think it is defined as well as it can be. The same would apply to, for example, enterprises that operate under a church structure or many not-for-profits. In the case of state taxation, the Commissioner of State Revenue would make a ruling. The intent is that if it is commercial, it would pay all normal duties.

Clause put and passed.

Clauses 122 to 124 put and passed.

Clause 125: Part 6 inserted —

Mr C.J. BARNETT — by leave: I move —

Page 140, the Table item 9 the 2nd column — To delete “Retirement Services Pty Ltd” and substitute —

University

Page 140, the Table item 10 the 2nd column — To delete “Retirement Services Pty Ltd” and substitute —

University

Dr A.D. BUTI: I presume, Premier, that there is no longer a Murdoch Retirement Services Pty Ltd. I just wonder why it is being changed.

Mr C.J. BARNETT: I will read out this note I have. I think it is a specific Murdoch University issue. Murdoch University requested amendments to clause 125 of the bill. Specifically, there are two errors in items 9 and 10 in the column headed “Parties to lease” in the table. In each of these two items, there is a need to delete “Retirement Services Pty Ltd” after “Murdoch” and substitute “University”. I think it is just an error in the way it was drafted.

Mr P.C. TINLEY: Having looked into this issue because it is in my area, Murdoch Retirement Services has obviously subcontracted or leased out to St Ives the management of the retirement village in Murdoch. There will be some consequential contractual obligations, which are not contemplated by this legislation and nor is it the concern of this legislation. Will this—I am talking generally about the whole table—provide that the retirement village at Murdoch is wholly within the law both in intent and at law?

Mr C.J. BARNETT: I will read out this information, as it will probably mean more to the member than it will to me. Murdoch University established a retirement village on campus in 1999 through a wholly owned subsidiary entity called Murdoch Retirement Services Pty Ltd. MRS leases the land from the university pursuant to two leases—item 7 for stages 1 to 9 and item 8 for stage 10—and subleases the units to the retiree St Ives group, the appointed management of the retirement village. I think this will just bring it back and make it clear that the lease is ultimately from the university. That is the way I interpret it.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 126 to 134 put and passed.

Clause 135: Section 8 amended —

Dr A.D. BUTI: I seek your guidance, Madam Acting Speaker. I would seek leave to move my two amendments together; however, the Premier has an amendment on the notice paper that is listed between my two amendments.

The ACTING SPEAKER (Ms L.L. Baker): No; you need to move them individually.

Dr A.D. BUTI: In that case, I move —

Page 148, lines 12 and 13 — To delete “one person who is a member of the academic staff of the University and who is” and substitute —

two persons who are members of the academic staff of the University and who are

Mr C.J. BARNETT: The government does not agree with the amendment, and I am trying to determine why it does not agree.

Mr B.S. Wyatt: That's because it's our idea!

Mr C.J. BARNETT: That is a very strong argument!

The effect of the member's amendment is to add an additional staff representative, which is the argument that we had before, and the government does not agree with that. That is not to preclude another academic member being appointed through another vehicle.

Dr A.D. Buti: What is the difference?

Mr C.J. BARNETT: The Governor's appointments could include an academic, yes—could.

Amendment put and negatived.

Mr C.J. BARNETT: I move —

Page 148, lines 21 to 29 — To delete the lines and substitute —

- (g) 2 persons who are students and are elected by the students in the manner prescribed by regulations;

Dr A.D. BUTI: Premier, I am uneasy about this amendment, not that we will be opposing it. This amendment will remove the one undergraduate and one postgraduate combination. I assume, and I am interested in the Premier's response, that the reason for this amendment is that under the new course structure at the University of Western Australia, which is the Melbourne model, there are now more postgraduate students than was the case previously, because engineering is all postgraduate and law is all postgraduate. Is the reason for this amendment that there is now a greater percentage of postgraduate students?

Mr C.J. BARNETT: No. My advice is that it is primarily at the request of the University of WA guild that two members be elected and that we do not prescribe that one must be undergraduate and one must be postgraduate. The guild may well go that way, but it does not want that to be prescribed. It wants it to be left open. So, it could be two undergraduates or two postgraduates, or one of each.

Dr A.D. BUTI: I am wondering whether that is because UWA now has more postgraduate students.

Mr C.J. BARNETT: That may well be the motivation of the guild. We are responding to the guild request, and we are quite accepting of that.

Mr P.C. TINLEY: On this amendment, noting that we are talking about the composition of the elected student body, was there any contemplation in the drafting of this bill, or was there any commentary from stakeholders, about gender requirements and/or ethnicity, or international students, for example, which is clearly something that the tertiary sector wants to undertake?

Mr C.J. BARNETT: There is no quasi quota in terms of gender, course, Australian students and overseas students, and nor do I think there should be. I think the history of guilds is that they show wide representation in the people they nominate for senates and elect as guild presidents. That is the history of guilds. A number of members in this place were elected to guild positions in their student days.

Amendment put and passed.

Dr A.D. BUTI: I move —

Page 149, line 1 — To delete "5" and substitute —

4

Amendment put and negatived.

Clause, as amended, put and passed.

Clauses 136 to 159 put and passed.

Clause 160: Section 28A replaced —

Mr C.J. BARNETT — by leave: I move —

Page 170, lines 19 and 20 — To delete the lines.

Page 170, after line 31 — To insert —

Extract from *Hansard*

[ASSEMBLY — Wednesday, 14 September 2016]

p6026a-6030a

Mr Peter Tinley; Mr Colin Barnett; Dr Tony Buti; Ms Rita Saffioti

- (2A) The Senate must pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

Clause 160 is the same amendment that the government has put in place, and the opposition agrees with, relating to the use of student amenities fees. This one applies to the legislation relating to the University of Western Australia.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 161 to 197 put and passed.

Title put and passed.