TRADE MEASUREMENT LEGISLATION (AMENDMENT AND EXPIRY) BILL 2010

Second Reading

Resumed from 14 September.

HON LJILJANNA RAVLICH (East Metropolitan) [5.19 pm]: I rise on behalf of the Labor Party to support the Trade Measurement Legislation (Amendment and Expiry) Bill 2010. This legislation was introduced in the Legislative Assembly on 16 June 2010 and it was read a third time in that place on 9 September 2010. It was introduced into the Legislative Council on 14 September 2010 and consequently referred to the Standing Committee on Uniform Legislation and Statutes Review, which did a very good job in looking at this legislation very thoroughly. Following analysis of this bill, I understand that three minor amendments will be moved by a representative of the committee. I understand that the government is satisfied with those amendments, so I do not expect any problems with that.

This bill is titled the Trade Measurement Legislation (Amendment and Expiry) Bill 2010 and, as its name suggests, it deals with the expiration of state statutes, and power over trade measurements is in fact transferred to the commonwealth government. All Australian jurisdictions, including Western Australia, signed a Council of Australian Governments national partnership agreement that included agreed time lines to transition trade measurements to the commonwealth. No referral power by the states was necessary as there is a head of power under the commonwealth Constitution to legislate weights and measures. The bill also provides for some transitional arrangements to ensure that the state continues to issue or withdraw infringement notices, takes disciplinary action against licensees who have been issued with written notices before the transition date, and so on and so forth.

At the heart of this legislation is the fact that we all aspire to ensure there is consistency and integrity in trade measurement. When I picked up this legislation I thought, “Well, this bill is going to be pretty boring because you cannot get too excited about measurement legislation”, but then I managed to get on to the Australian government National Measurement Institute website. Boy oh boy—is that a bit of an eye-opener! If members are having a boring Saturday night at home, they must take themselves to the National Measurement Institute website because it will really liven up their night!

Hon Liz Behjat: Size does matter!

HON LJILJANNA RAVLICH: I will not go there and I hope Hansard has not recorded that!

The importance of trade measurement is of course obvious, given that we have for a long, long time participated in global markets. The integrity of measurement is absolutely critical in the workings of those global markets and international measurement transparency. There is no doubt that to compete in a global economy that is becoming more globalised all the time, Australian industry needs a national measurement system that is sound and internationally recognised. The National Measurement Institute maintains Australia’s primary measurement standards and its capabilities and expertise make it one of the world’s top measurement institutes. Therefore, we can and do say that Australia takes the issue of measurement very, very seriously. I agree that it is best handled at a national level to ensure consistency and transparency across all states and territories so that when it comes to the important issue of weights and measures we ensure that we can have confidence in the integrity of weights and measures.

I do not intend to speak to this bill any longer except to simply say again that this is part of uniform legislation that has been agreed to by all states and territories. By nature of the fact that it has been agreed to by everybody, this legislation is seen to be in the national interest. It is in the interest of Australia’s competitiveness in an international global market. Having said all of that, we will support this bill but will put forward a couple of minor amendments as per the recommendations of the Standing Committee on Uniform Legislation and Statutes Review.

HON ALISON XAMON (East Metropolitan) [5.25 pm]: The Greens (WA) also support the Trade Measurement Legislation (Amendment and Expiry) Bill 2010 and the idea of a single commonwealth-based regulatory regime. We note the number of transitional matters that are outlined in the legislation. The Greens will also support the Standing Committee on Uniform Legislation and Statutes Review’s suggested amendments.

HON ADELE FARINA (South West) [5.26 pm]: I rise as the Chairman of the Standing Committee on Uniform Legislation and Statutes Review to speak very briefly on the Trade Measurement Legislation (Amendment and Expiry) Bill 2010. Hon Norman Moore is already frowning, so I promise I will keep my contribution very brief!

Hon Norman Moore: I do that all the time, Ljiljanna told me the other day!
Hon ADELE FARINA: I want to commend the committee staff for the excellent work they did in advising the committee on its fifty-fifth report. Like Hon Ljiljanna Ravlich, I also thought that this would be very boring subject matter only to have my eyes opened about just how important this issue actually is!

Just very briefly, the Standing Committee on Uniform Legislation and Statutes Review has made a couple of recommendations that I will highlight to the Parliament. The first is the importance of the role of the explanatory memorandum. We have raised this issue previously. It really is helpful if departments provide explanatory memoranda that actually explain the purpose of a bill and its provisions and, in particular, the rationale behind the clauses in the proposed legislation. It makes it a lot easier for the committee to get on with its work, particularly when it has only 30 days in which to report. It also makes it easier for members of Parliament who are picking up that legislation for the first time to get their heads around it. Therefore, I again simply make that point.

I also make the point about the committee’s concern—it is a concern of not just our committee, but all Legislative Council standing committees—with Henry VIII clauses. It is vitally important that government departments actually provide a rationale in the explanatory memorandum for why they are introducing a Henry VIII clause, because they know that Parliament in the main objects to and frowns upon Henry VIII clauses. Therefore, if the government wants to persuade members in this house that we should support a Henry VIII clause, it really does help if some rationale is provided for that. Of course, because our committee has only a 30-day reporting time line, the sooner we can get that information, the quicker we can get on with reporting on the legislation.

There are two provisions in the bill that the committee has made recommendations on—namely, proposed sections 40 and 43. I will not go through them now; I will deal with them once we are in the Committee of the Whole stage.

Again, I would like to put on the record on behalf of committee members their sincere thanks to the committee staff for their support in getting this report to the house together very quickly. I also thank my committee members for their assistance with the report.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.28 pm] — in reply: I thank members for their support for the Trade Measurement Legislation (Amendment and Expiry) Bill 2010. I am fascinated to hear about the National Measurement Institute, which I must confess I had never heard of until today.

Hon Ljiljanna Ravlich: Saturday night at six o’clock!

HON NORMAN MOORE: I shall be looking at that with great interest!

Hon Ljiljanna Ravlich: I shall be looking at that with great interest!

However, Hon Ljiljanna Ravlich is quite right: the issue of measurement is in fact extremely important, particularly given the global economy and the fact that Australia needs to have real integrity in the way in which it goes about measuring things, whether it is by weight, distance or whatever, so that when people buy or sell goods they know that it is weighed in such a way that it is in fact an accurate weight and that the dimensions are as one would expect them to be. She also indicated that that would be best done at the national level. Although I generally do not always agree that the national level is the best place for things to be done, I have no problem with this legislation, which has been agreed to by the Council of Australian Governments and accepted by all the states and territories.

I thank the Greens for their support for the bill. Finally, on the matters raised by Hon Adele Farina, I need to say to her that I agree entirely with the comments that she made. When I read the report and found that there was some difficulty in getting information, I thought to myself that that is simply not good enough. We have a time limit on uniform legislation bills, so it is very important for the government to provide as much information as possible to the committee as soon as possible to assist the committee in being able to reach a conclusion about its views on the bill within the 30-day limit. The explanatory memoranda ought to be available immediately. In fact, they generally are available when the second reading speech is given. However, if there is any delay, would members please let me know.

Hon Adele Farina also talked about Henry VIII clauses. I do not know what it is about parliamentary counsel and some government agencies, but they just do not seem to recognise what Henry VIII clauses are, and it is not unusual for us to discover them in this chamber. Indeed, I have discovered a few since I have been in cabinet. I have a general view that we should not have them. I do not think we should be able to change an act by regulation. I think there is a fundamental problem with that. However, there have been occasions in the past when Henry VIII clauses have been unavoidable. I remember that on one occasion when we identified one such clause in the Mining Act, the previous government went away and came back and said, “We simply can’t do it any other way than to do it with a Henry VIII clause, but it will have a time limit, and it will expire after one year”, I think it was. On the basis of that explanation, I agreed on that occasion that we would allow the bill to go
through. But, as a general rule, we should not have them, and I agree entirely with the view that if there is going to be one, a justification needs to be provided to the committee and to the Parliament. The only worry I have about that is that I am not sure that people drafting legislation actually know that they are doing it. That might be very unfair to parliamentary counsel, but ever since I have been in this place they have been coming through on a regular basis, and no matter how many times this house knocks one back, it does not seem to make any difference to the thinking of those people who are drafting legislation. Hopefully, out of this there will be another little nail in the coffin of Henry VIII clauses, but it is not going to put him in the ground yet by a long shot!

On the basis of that, and having read the Henry VIII clauses that the committee has identified, the government is happy to accept the recommendations for amendments that are advocated by the committee, and we will deal with those in the committee stage.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Helen Morton) in the chair; Hon Norman Moore (Leader of the House) in charge of the bill.

Clauses 1 to 7 put and passed.

Clause 8: Part 7 inserted —

Hon ADELE FARINA: I move the following committee recommendation —

Page 6, line 28 — To insert after “person” —

cannot be

Effectively, proposed section 43 provides a very wide regulation-making power. We are dealing here with Henry VIII clauses, and this amendment will ensure that a person cannot be charged on or after the transition day with an offence unless, at the time the person was charged, the act or omission constituting the offence would constitute an offence under the National Measurement Act. It brings about the very matters that the Leader of the House has spoken about, so it is not retrospective and a person can be charged under only one of the acts.

Hon NORMAN MOORE: The government supports the amendment moved by the committee chair.

Amendment put and passed.

Hon ADELE FARINA: I move the following amendment also standing in the committee’s name —

Page 6, lines 29 and 30 — To delete —

cannot be punished for the offence

I think I spoke to this when I spoke to the first amendment, so I will not repeat it all because they are connected.

Hon NORMAN MOORE: Again, the government accepts the amendment.

Amendment put and passed.

Hon ADELE FARINA: I move the following amendment standing in the committee’s name —

Page 8, line 31 to page 9, line 19 — To delete the lines.

This amendment deletes some of the regulation-making power provisions that we have already gone through in relation to transitional regulation-making power.

Hon NORMAN MOORE: The government supports the amendment recommended by the committee. I want to put on the record our appreciation to the committee for finding these issues and raising them. Hopefully, governments will always respond positively when these issues are raised.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 9 and 10 put and passed.

Title put and passed.

Bill reported, with amendments.