

GENE TECHNOLOGY AMENDMENT BILL 2005

Third Reading

HON KIM CHANCE (Agricultural - Minister for Agriculture and Food) [9.13 pm]: I move -

That the bill be now read a third time.

HON MURRAY CRIDDLE (Agricultural) [9.14 pm]: Mr Deputy President, you would be well aware that during the committee stage of the Gene Technology Amendment Bill I moved some amendments that were ruled out of order. Although I have no problem with that, I do have a problem with the charges or fees being made a tax. That is a point I want to develop. I wish to quote the minister so we do not get it wrong. He said -

If the amendment were not out of order and we were able to proceed with it, the only outcome of its adoption would be to make the bill irrelevant.

I can see that that is a factor. He went on to say -

This bill exists only as a result of section 46(7) of the Constitution Acts Amendment Act 1899, which provides that a bill imposing taxation shall deal only with the provision of taxation.

Then he said -

It is not a tax, but I will get to that. It is a belts and braces issue. Its introduction is perhaps over-cautious; however, it is a safeguard to ensure the charges referred to in this bill remain valid, even in the event of a future change in definition. However, by current definitions, this charge is not a tax. That is not to say that at some time in the future - it could be six months hence -

Hon Kim Chance: Was this in the debate on the Energy Safety Levy Bill?

Hon MURRAY CRIDDLE: This is the debate on the Gene Technology Bill.

Hon Kim Chance: I made the same argument twice lately.

Hon MURRAY CRIDDLE: The minister continued -

the definitions of a charge or a fee for service, and what barriers separate that from what is accurately deemed to be a tax, might change. Retrospectively, it would sweep away the validity of many of the charges and fees that were deemed to be charges and fees and not taxes. It is even worse than I suggested. The Gene Technology Bill and a range of other legislation could be deemed to be invalid because of the way the definition has changed. It could be judged that what was taken to be a charge at the time and was, therefore, included in the main bill, was not included in the special tax bill. That would make the whole bill invalid.

I take it that that is the Gene Technology Bill -

That is why parliamentary counsel adopts the safeguard mechanism. Members will have observed this operating over recent years:

I know of one -

where a charge is imposed, they take the same approach to that charge as if it were a tax. That is the reason that wording is used.

Obviously the minister spoke about my amendment then. He went on to say that this is a belts and braces issue. The point I want to make is that the fact that we are imposing a tax will in my view allow a situation which could be way over and above the amount of money that is required for the licence, which is being drafted. Therefore, without any cap, we are going to use some sort of policing mechanism to control the industry. If we are to impose a tax like that, it should be in the budget as a budget item rather than a licence fee.

I take the minister to section 45A of the Interpretation Act 1984, which in my view is very broad and allows the opportunity to raise quite an extensive amount of money in terms of a fee or a licence. It states -

45A. Fees for licences

(1) A power conferred by a written law to prescribe or impose a fee for a licence includes power to prescribe or impose a fee that will allow recovery of expenditure that is relevant to the scheme or system under which the licence is issued.

That is very, very broad. It continues -

(2) Expenditure is not relevant for the purposes of subsection (1) unless it has been or is to be incurred -

- (a) in the establishment or administration of the scheme or system under which the licence is issued; or
- (b) in respect of matters to which the licence relates.

Once again, that is a very broad interpretation -

- (3) The reference in subsection (1) to a fee for a licence includes reference to a fee for, or in relation to, the issue of a licence and a fee payable on an application for the issue of a licence.

It goes on to say that “fee” includes charge, “issue” includes grant, give or renew and “licence” includes registration, right, permit, authority, approval or exemption. They are the definitions. The point I make to the minister is that without having a tax, the government still has a very wide scope to raise money. In the context of a licence, in my view, that is a very liberal way of going about it, to put it in those terms, without having a tax. My argument is that, as far as the Gene Technology Amendment Bill 2005 is concerned, we really do not need to approach it by installing a tax. That was the reason for my amendment in the first place.

HON RAY HALLIGAN (North Metropolitan) [9.20 pm]: We have heard a number of arguments about the Gene Technology Amendment Bill 2005 and the reason it should remain. I would like to provide an alternative argument showing why it should not be read a third time. The argument is that the bill is required to enable the government to charge a fee or a licence of an amount over and above the cost of issuing that licence, but that power is available to the government under the bill that this house has just agreed to; that is, the Gene Technology Bill 2005. In division 8, “Annual charge”, clause 72A of that bill states -

- (1) A person who is the holder of a GMO licence at any time during a financial year is liable to pay a charge for the licence in respect of that year.
- (2) The amount of the charge for a financial year is such amount as is prescribed by the regulations.

That bill provides the government with an avenue of prescribing a regulation and of including a charge in that regulation. Whether that charge is over and above the cost is, at this point, somewhat irrelevant. The point is that the government has the ability to charge that licence fee by way of the bill that this house has already read a third time - the Gene Technology Bill 2005. We are now discussing a further bill; an amendment bill that adds two further subclauses to clause 72A. The proposed subclauses read -

- (3) The amount of the charge prescribed for a financial year may be in the nature of a tax and not be related to the cost of providing any service.
- (4) To the extent that a charge referred to in subsection (3) may be a tax, this section imposes the tax.

I cannot think of any other words to use, but I believe that this is a backdoor method of generating income. As far as I am concerned, the whole tenor of this bill is to do with the relevance of this chamber. If governments are able to impose charges of any amount, then it is possible for the government to continue to argue a case that clauses such as those in the Gene Technology Amendment Bill be in every piece of primary legislation, in which case all fees and charges, whether cost recovery or amounts well in excess of cost recovery, would go through by way of regulation.

We have, admittedly, a joint standing committee of the Parliament that considers those regulations. However, because there are so many regulations, the eight members of that committee cannot be expected to look at each and every regulation. Therefore, the committee has three staff members who look at the voluminous amount of regulation and law that must go through the committee. The committee members rely on the staff to provide information to them. If a committee member happens to miss something or has other urgent parliamentary business that takes the member away from a committee meeting, it is possible for something to slip through. Once the last date for disallowance of a regulation has gone by, there is nothing anyone can do about it. To me that is totally and utterly wrong. If members want to go down that path, they will be suggesting that they have no relevance to this chamber, other than the ability to participate in a talkfest and that they have no control over or opportunity to debate regulations to impose taxes that a government of any persuasion may introduce. This is the house of review that should inquire into and provide alternative arguments to taxes imposed by such regulations. If the government wins the day, then those taxes will be imposed. That is the way of this house; it is the way of this Parliament. This house provides members the opportunity to review those taxes, particularly those who are not members of the committee. There are two members in this chamber from the Greens (WA) who are not members of the committee, and who would not otherwise be provided with that opportunity, unless another member brought it to their attention by way of a motion for disallowance. If a charge, assuming it was over and above cost recovery, came through this chamber, those members would know. They would hear from the proponent - the government - why it was being imposed, they would know the amount, and they would have

an immediate opportunity to respond. As I said before, if this bill goes through this house and becomes law, it will allow the government to charge what it likes. Even the Joint Standing Committee on Delegated Legislation would be advised by the committee staff that the principal legislation allowed that to happen and that there was nothing the committee could do about it. Unless an individual member of the committee came into this chamber and moved a motion to disallow the regulation, again the Greens and even Hon Murray Criddle would not necessarily be aware of what was happening and would not have an opportunity to express an alternative view.

I believe it is incumbent upon this chamber - this house of review - to do its job and make this government open and accountable. I suggest that this government, in trying to pass an amendment bill of this nature in this house, does not want to be open and accountable. The primary bill, the Gene Technology Bill 2005, in its current form allows the government to charge what it likes. The house is not stopping the government from charging what it likes by way of regulation. By disagreeing to the amendment bill, the house would be allowing the committee to do its job. If we agree to this amendment bill, we would not be allowing the Joint Standing Committee on Delegated Legislation to do its job because that committee will be made irrelevant, just as this chamber will be made irrelevant. It would then be up to individual members to move a motion of disallowance. I have said before that if the amendment bill was not passed by this place, it would make no difference whatsoever to the government's position. However, it does make the government far more open and accountable. That is the position that I believe this government must place itself in. If it has no wish to place itself in that position, it is incumbent upon other members to ensure that that is the case. When the question is asked that the bill be read a third time, I urge members to vote no to that proposition.

HON BRUCE DONALDSON (Agricultural) [9.30 pm]: The opposition has studied these bills and their implications, and we will oppose the third reading. The second paragraph of the explanatory memorandum of the Gene Technology Amendment Bill under the heading "Clause 3 - Section 72A amended" states -

This clause will insert subsections (3) and (4). Subsection (3) will specifically provide that the charge prescribed may be in the nature of a tax and not be related to the cost of providing any service. Subsection (4) will provide that to the extent that a charge referred to in subsection (3) is a tax, this section imposes the tax.

This will set a precedent. I cannot remember ever seeing legislation of this type, although I may be corrected on that. Fees for service and charges are usually set by regulations from the principal act, which gives the secondary legislation the power to do that. It is then subject to scrutiny by the Joint Standing Committee on Delegated Legislation. It receives a copy of the full explanatory memorandum. Often members of that committee will call in the relevant agency to give evidence. This amendment bill will change the Gene Technology Bill in such a way that it will give open slather to the imposition of a tax. A couple of years ago the Department of Fisheries did not have a management plan when the government wanted to impose a fishing boat licensing fee that was increased from \$0 to \$640. The government was imposing a tax. It was not a fee for service because there was no management plan. The then minister, the Leader of the House, had to call in the Department of Fisheries to work through those issues with the Western Australian Fishing Industry Council. The provision had been rolled over by a High Court ruling of what was deemed to be a tax and what was deemed to be a fee for service. The introduction of a bill to impose a tax without providing a service diverges from the principle of the way in which fees and charges are assessed for the services provided by an agency. It is for these reasons that we feel there are other ways and means of setting these fees and charges. Hon Ray Halligan pointed out that the act prescribes that regulations can set fees and charges. Why do we move into a situation which, if members think about it, could apply to other legislation that may be already enacted or introduced in the future? The government would be able to say that it would be all right and it did not have to worry about a management plan because it would raise a tax. The tax could be completely irrelevant to holding a genetically modified organism licence. There is one flipside in this legislation for those people who would like gene technology introduced into the agricultural industry. The bill suggests that down the track licences will be issued. There is a correct way to go about it, and this particular Gene Technology Amendment Bill is not the way to go. I understand the minister will relate to the house some of the issues involving gene technology. However, whatever he has to say will not affect the Gene Technology Bill 2005 that has been passed, and it will not require the Gene Technology Ministerial Council to have six out of nine ministers sitting around the table to approve this amendment bill. I indicate to the house that the opposition will not support the Gene Technology Amendment Bill 2005.

Debate adjourned, on motion by **Hon Matt Benson-Lidholm**.