

NEW TAX SYSTEM PRICE EXPLOITATION CODE (WESTERN AUSTRALIA) BILL 1999

Introduction and First Reading

Bill introduced, on motion by Mr Shave (Minister for Fair Trading), and read a first time.

Second Reading

MR SHAVE (Alfred Cove - Minister for Fair Trading) [12.30 pm]: I move -

That the Bill be now be read a second time.

The object of this Bill is to assist in the prevention of price exploitation under the Commonwealth Government's new tax system. As part of its new tax system, the Commonwealth has introduced a New Tax System (Trade Practices Amendment) Act 1999. The purpose of the commonwealth Act is to prevent suppliers from profiteering, either by failing to pass on to consumers the benefits of lower taxes on goods and services, or by unjustified price increases.

The commonwealth Act inserted a new Part VB into the Trade Practices Act 1974. It also created a schedule version of Part VB which was modified to refer to "persons", rather than "corporations". The schedule version of Part VB, combined with the other relevant provisions of the Trade Practices Act, form the basis of the New Tax System Price Exploitation Code.

Although the Trade Practices Act will apply to activity within the Commonwealth's legislative power - for example, conduct by corporations, or interstate trade and commerce - certain activities, such as transactions involving individuals or partnerships, may fall outside the scope of the Act. Accordingly, state and territory legislation is required to ensure that the code applies across the entire economy. The Western Australian Bill is designed for this purpose; that is, to overcome limitations of the legislative power of the Commonwealth Parliament.

At a special Premiers Conference on 13 November 1998, and at the Premiers Conference on 9 April this year, all states and territories signed an intergovernmental agreement and undertook to introduce legislation to implement the price exploitation code. Owing to protracted negotiations in Federal Parliament over the GST legislation, it was not possible for States to implement the code by 1 July 1999 as initially intended. However, all States and Territories are taking action to introduce such legislation, and it is anticipated that Australia-wide legislation will be in place by early December 1999.

Under the code, price exploitation will be prohibited where a corporation or person supplies a good or service at a price that is unreasonably high, having regard for the new tax system changes. The code empowers the Australian Competition and Consumer Commission to take action to prevent price exploitation by publishing guidelines on when prices will be unreasonable; issuing notices that specify the maximum price that should be charged for a particular product; prosecuting suppliers guilty of price exploitation and seeking fines of up to \$10m for bodies corporate and \$500 000 for individuals; obtaining injunctions against suppliers who engage in price exploitation; and orders to cap prices and require refunds.

The code empowers the ACCC to monitor and report on prices in the 12 months leading up to, and in the two years following, the introduction of a goods and services tax. The ACCC can require the disclosure of information as part of this monitoring role. While the GST will not commence until July 2000, the commonwealth code commenced on 9 July 1999 for the following reasons -

Wholesale sales tax on certain luxury items was reduced from July 1999 - the code will apply to prices charged for these items from this period; and

the ACCC needs to monitor prices from July 1999 to set benchmarks for prices after the introduction of the new tax system.

In addition, state legislation is needed to empower the ACCC to compel the provision of information by businesses which would otherwise be outside the legislative power of the Commonwealth. The prohibition on price exploitation applies only to transactions within two years of the introduction of the GST. The Commonwealth Act, with complementary legislation in States and Territories, will establish a national scheme for the administration and enforcement of the codes of the various jurisdictions, as if they were a single law. This will allow the various codes to be administered consistently and in the same manner as the new Part VB of the Trade Practices Act.

To give effect to this national scheme, state and territory Bills contain specific provisions on the administration and enforcement of the New Tax System Price Exploitation Code. The code and the Western Australian Bill have an important

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part in the new tax system. In most markets, competitive forces will be sufficient to prevent unscrupulous traders exploiting consumers and business; however, the Commonwealth and State Governments have agreed that legislation is warranted on this occasion to provide that extra level of protection.

The Western Australian Bill, in conjunction with the commonwealth Act, will ensure that Western Australian consumers and business receive the full benefit of lower prices under the new tax system by protecting them from price exploitation. I commend the Bill to the House, and I congratulate the Government on its initiative.

Debate adjourned, on motion by Mr Cunningham.

Cognate Debate

MR SHAVE (Alfred Cove - Minister for Fair Trading) [12.24 pm]: I move -

That leave be granted for the New Tax System Price Exploitation Code (Western Australia) Bill 1999 and the New Tax System Price Exploitation Code (Taxing) Bill 1999 to be considered cognately and that the New Tax System Price Exploitation Code (Western Australia) Bill 1999 be considered the principal Bill.

In addition I table explanatory memorandums on each of the Bills for the information of members.

[See papers Nos 246 and 247.]

Question put and passed.

Second Reading

Resumed from 23 September.

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [12.25 pm]: I strongly support the Bills.

Mr Osborne: Good speech.

Mrs van de KLASHORST: Thank you. The member for Bunbury said that because he knows I will give a good speech.

As we are all aware, the Commonwealth Parliament has passed a new tax system that will affect prices consumers will pay for goods and services. Under this new system, commencing 1 July, wholesale sales tax will be abolished and replaced by a goods and services tax of 10 per cent. Although I and most Australians support the introduction of the goods and services tax and almost all businesses will be upfront and honest and not use the new tax system as an opportunity to exploit consumers, the State and Commonwealth Governments appreciate that a minority of businesses might - I emphasise might - use the new tax charges as an opportunity to exploit consumers. We must be careful not to suggest that everybody will do this. However, some people may not fully understand the system and some people may not be as upfront as they should be. We must be proactive to protect consumers, especially in the light of the many changes that will occur from 1 July.

In conjunction with the Commonwealth Government's legislation, the State Government has drafted this legislation to ensure that price exploitation does not occur. I commend the Federal and the State Governments for this proactive stance. Once the Bills are passed, they will afford protection for the people of Western Australia.

In his second reading speech, the minister referred to the fact that, although the commonwealth legislation will prevent suppliers from profiteering by failing to pass on to consumers the benefits of lower taxes and by unjustified price increases, it does not cover all activities in Western Australia, especially transactions involving individuals or partnerships. With respect to Western Australia, this Bill will rectify what is seen as a limitation in the commonwealth legislation.

These Bills will prohibit price exploitation, especially when a corporation or person supplies either goods or services at an unreasonably high price when taking into account the new tax system. Both the state and commonwealth legislation combine to allow and fully cover actions that can be taken to prevent price exploitation. They provide for the publication of guidelines limiting unreasonable charges and prosecution of suppliers who indulge in price exploitation, who could face fines of up to \$10m. I hope that this significant penalty will be a major deterrent.

In addition, those who exploit the new tax system can be asked to refund moneys to the people they have exploited. Most traders will not attempt to exploit the new tax system. However, consumers will look to government to protect them against those traders who do. We can be sure that market forces will keep prices down, and will force many traders to pass on the savings they receive from the new tax. However, if there are isolated cases of exploitation, this Bill will be important. The Government wants to ensure a strong level of protection for consumers, and this Bill will put that in place. I strongly support the Bill. I commend the Government on the Bill and ask all members in this House to support it.

MR McGINTY (Fremantle) [12.30 pm]: This legislation is welcomed by the Opposition, although it has some doubts as to the extent to which it will be effective. Having said that, this Bill will at least ensure that when the new goods and services tax comes into operation, we have some statutory mechanism by which those people who seek to exploit the new tax system to make windfall profits or to charge unfair prices can be brought to task.

The provisions of this legislation will enable the Australian Competition and Consumer Commission to take action to prevent price exploitation in a number of ways: Firstly, by publishing guidelines on when prices will be considered to be unreasonable; secondly, by issuing notices that specify the maximum price that should be charged for a particular product; and thirdly, by prosecuting suppliers guilty of price exploitation and seeking fines of up to \$10m for bodies corporate and \$500 000 for individuals. The ACCC will also have the power to obtain injunctions against suppliers who engage in price exploitation and may also make orders to cap prices and require refunds in certain circumstances.

As the minister said in his second reading speech, this legislation is substantially a mirror of legislation which has already been passed by amendments to legislation in the Commonwealth Parliament, principally, the Trade Practices Act. I compliment the people responsible for drafting this legislation, because it is a clever way of the Commonwealth and the State cooperating to achieve a nationally uniform outcome. It does this in a number of ways. Basically, it enacts the provisions of the commonwealth Trade Practices Act, as amended by counterpart commonwealth legislation, as state law, but makes them a breach of commonwealth law. In that way, the Bill incorporates the appeal mechanisms and the administrative law requirements of commonwealth law as applicable to breaches of this state law, and also empowers the Commonwealth to do a range of things in respect of this law as though it were a breach of commonwealth law.

I would like to place on record that this measure of cooperation between the Commonwealth and the State in order to overcome the constitutional limitations on the legislative power of the Commonwealth Parliament is something that we should look at doing more frequently. I say that because of what occurs in a range of areas. Most people in this place would think that the family law arrangements in Western Australia were the best in the Commonwealth. In some respects that is the case because we have adopted a cooperative arrangement between the Commonwealth and the State. However, the difficulty with the existing family law is that any changes in the federal law must then be enacted into Western Australian law - often as late as 18 months afterwards - and we do not have constant uniformity throughout the whole of the Commonwealth of Australia in the implementation of family law. That is one example about which people have come into my electorate office and written to me in recent months and complained that the state Family Court Act has not been amended to pick up amendments to the Commonwealth Act that were made some considerable time ago. That is acting to the detriment of children and of separating couples in Western Australia. This legislation does not suffer from those detriments.

We need to look constantly at ways in which we can have a far greater integration of commonwealth-state law and different mechanisms to achieve that. This is particularly the case following the decisions three months ago in the High Court in the Wakim cases, which have thrown into doubt a number of the previously existing cross-vesting laws of both the Commonwealth and the States in respect of enabling courts of different jurisdictions to deal with both state and federal matters. It is an area of great complexity that is calling out for a new approach to be adopted in these matters. From what I have seen of this scheme it is a neat arrangement.

As has been said, the purpose of this legislation is to ensure that, throughout the Commonwealth, there is uniform action to prevent suppliers from profiteering either by failing to pass onto consumers the benefits of lower taxes on goods and services or by unjustified price increases. It is an anti-profiteering measure. The problem arises because, in introducing its new tax system, the Commonwealth has power to legislate in this way only in respect of commerce and trade, and corporations. It does not have the power to legislate to control the activities of individuals and partnerships, and because of this deficiency the commonwealth law will apply to only part of the commercial sector. In particular, it will not apply to a significant number of non-corporations which engage in trade and commerce within the limits of the State. This legislation is necessary in order to pick up the lower end of the corporate spectrum.

The legislation is good in the sense that it also incorporates into Western Australian law in a unique way the administrative law provisions from the Commonwealth Legislature. As members will be aware, dating from the Whitlam era in the first half of the 1970s, the Commonwealth has had a detailed system of administrative law which makes provision for decisions that affect the rights of individuals to be reviewed as to their merits in the Administrative Appeals Tribunal when a question of law is involved, subject to the provisions of the Administrative Decisions (Judicial Review) Act.

One of the interesting aspects of this Bill is that it fully incorporates the provisions of commonwealth administrative law into the law of Western Australia for the purposes of this legislation. That is an encouraging step forward. I refer in particular to clause 27 of the legislation which will apply the commonwealth administrative laws as laws of Western Australia for matters arising under the code of this jurisdiction. A matter arising under the code of this jurisdiction is taken to be a matter arising under a law of the Commonwealth and not a law of Western Australia. Clause 28 will make commonwealth laws as laws of Western Australia for matters arising under the code and other participating jurisdictions, and a matter arising under the code of another jurisdiction is taken to be a matter arising under a law of the Commonwealth and not a law of that jurisdiction. Two remaining clauses apply commonwealth administrative law to Western Australian law under this piece of legislation. Clause 29 ensures that any power conferred on a commonwealth officer or authority by the commonwealth administrative laws, as applied by clauses 27 and 28 of this legislation, is exercisable in relation to a matter arising under the Western Australian code or the code of a participating jurisdiction. Clause 30 prevents a Western Australian officer or authority from exercising any power that is exercisable by a commonwealth officer or authority under the proposed division. In respect of the administrative laws of the Commonwealth, we are legislating essentially to deem this to be commonwealth legislation and all that flows from that, including that the administrative laws of the Commonwealth will apply as though the Commonwealth had legislated in those areas involving individuals and partnerships that do not fit within the commonwealth corporations power or its trade and commerce power. It is a neat way to address a problem of overlapping jurisdiction to ensure we have uniformity.

Division 3 of this legislation provides for a range of offences that will be committed by people who engage in price exploitation, and I will refer to those provisions briefly. Clause 21 provides that it is an offence against the code of this and other participating jurisdictions, and it is to be treated as though it were an offence against a law of the Commonwealth, even though it is a breach of state law. Clause 22 applies commonwealth laws as being laws of Western Australia to offences against the code in this jurisdiction, and an offence against the code of this jurisdiction is taken to be an offence against the Commonwealth and not against a law of Western Australia. As I said, these provisions are unique. It is not every day that we pass a law to say that a breach is not an offence against the law of this State, but is to be treated as though it is a breach of commonwealth law.

Clause 24 provides that any powers conferred on commonwealth officers or authorities by a commonwealth law, as applied by clauses 22 or 23, is exercisable in relation to an offence against the Western Australian code or the code of another participating jurisdiction. Clause 25 prevents a Western Australian officer or authority from exercising any powers that are exercisable by a commonwealth officer or authority under the proposed division.

A combination of both the offences, on the one hand, and the adoption of commonwealth administrative law and the general scheme, on the other hand, is something that we should be looking more towards. The days when the state boundaries required very much a states' rights approach to these issues, when people would argue that somehow or other Western Australia was different, are diminishing. As Western Australia becomes a part of the international economy, as the world shrinks in terms of communications and the impact of the international economy, the significance of state boundaries is receding and the significance of jurisdictional battles between the Commonwealth and the States should also be diminishing, in my view. For those reasons, I welcome the fact that we are, firstly, adopting the commonwealth scheme to stop profiteering and price exploitation arising out of the goods and services tax; and, secondly, using our legislative power to fill a hole in the commonwealth legislation to ensure the uniform application of these laws to all people engaged in commerce and industry throughout the entire Commonwealth, for those who do not fit within the commonwealth power and to ensure uniformity with the other States and Territories. For those reasons, we are happy to indicate our support for this legislation.

MR MCGOWAN (Rockingham) [12.44 pm]: A system is being put in place to attempt to prevent some increases in prices that will arise as a result of the introduction of the goods and services tax. At the outset, I think there will be a substantial increase in the consumer price index as a result of the goods and services tax. The Senate conducted inquiries last year and earlier this year. Last year it found that the estimates provided by the commonwealth Treasury and Treasurer in relation to the inflationary impact of a goods and services tax, being a 1 to 2 per cent increase in the consumer price index as of 1 July next year, were incorrect. We could say that there will be some overheating in the economy leading up to the introduction of the goods and services tax. That would mean price increases in the lead-up to its introduction as a result of inflationary expectations on the part of the consumers, rather than the introduction of this tax.

Some prices will go up naturally; for instance, insurance policies that go over the threshold period might be signed now or extended for a year or two, and a goods and services tax component will be installed into them. The estimate, which was provided by the commonwealth Treasury in the lead-up to the last federal election campaign, of an increase in the consumer price index of between 1 and 2 per cent has been shown, comprehensively, to be incorrect.

At the moment throughout the world there are continuing jitters. The twelfth anniversary of the 1987 stock market crash was either yesterday or is today. The corrections to, and falls on, the stock market happen mainly in October. In past decades, November and October have been the months to watch out for, because these things do not operate necessarily according to -

Mr Shave: I hope you are not scaring all those capitalists out there.

Mr MCGOWAN: I think this minister is socialist. I listen to his comments every day. He stands in question time and every day lauds the impact of LandCorp's investment in something or other, the amount of money it is making on behalf of the Government, or the investment in land around Western Australia by the Government.

Mr Shave: I was complimenting the minister.

Mr MCGOWAN: That is not something we would be caught doing. According to the definition I learned when I studied - maybe it has changed in the past few years - that is socialism. It is interesting to hear the minister talk about capitalists - he looks like a socialist, he acts like a socialist, he walks like a socialist; therefore, by definition, he must be a socialist!

Mr Shave: A few of my socialist friends would have a very poor view of the member, having made those comments.

Mr MCGOWAN: It distresses me to call the minister a socialist! I am sure it also distresses the member for Fremantle.

Mr McGinty: He used to be a member of the Labor Party. The member for Alfred Cove was a good socialist when he was a member of the Labor Party. I think he has lost his way lately.

The SPEAKER: Order! I think we will return to the Bill!

Mr MCGOWAN: I agree, Mr Speaker. I ask the member for Alfred Cove not to provoke me with some of his socialist utterings in question time in the future.

I return to the inflationary impact of the goods and services tax. At the moment it appears that the world share market may go through some corrections. There is some speculation that a major correction, which might equate to a crash, is coming down the line. In this context, there will be a tightening of monetary policy to prevent inflationary consequences. Most economists envisage that a goods and services tax will have a bigger inflationary impact. The Senate inquiry held earlier this year also found there would be a bigger inflationary consequence as a result of the imposition of the goods and services tax, than was envisaged. In that context, we shall have a tightening of monetary policy which means that interest rates will go up. The introduction of the goods and services tax may have some very negative consequences for the Australian economy and Australian families, particularly if interest rates rise and we see a shock in the world stock markets. To introduce a change to the taxation system of such breadth at this time is very dangerous. We will observe what takes place until July of next year but the Australian economy will be going through a very risky course of action. Inflation has been squeezed out of the system over the past 15 years.

Mr Shave: It will be like heaven: Once you come out of the tunnel, it will be all bliss.

Mr McGOWAN: Having listened to the member for Alfred Cove over the past week, I would have thought that heaven to him was Russia in 1918 when the socialist revolution took place. That would have been his dream economy, because the land was liberated from private individuals and put into the hands of government.

Inflation has been squeezed out of the system, but an inflationary tax like this will come in as interest rates go up, which will naturally have an effect on the consumer price index. When this involves corrections in the share market, it will be very dangerous. Although I do not support the GST, if we are to have one, we must make efforts to prevent profiteering and unnecessary price-jacking on the part of businesses around Australia. I find it difficult to grasp how the 1.7 million businesses which will be imposing a GST on the people of Australia will be watched over by somebody. I do not see how the Australian Competition and Consumer Commission can possibly police such a wide-ranging tax which will be imposed by so many businesses around Australia. The vast majority of businesses are not corporations. At the moment the competition and consumer code is administered by the ACCC. It applies to corporations under the corporations power of the Commonwealth.

The vast majority of businesses are not companies. The people involved do not seek the benefits of company tax rates, which are 36¢ in the dollar. They do not see the need for incorporation and limited liability because that may not give them taxation benefits. An enormous load will be put on the ACCC in administering this code. With 1.7 million businesses, I do not see how it can possibly police a code like this. When this tax is brought in on 1 July, we will see enormous increases in prices across a whole range of industries. We will also see that the ACCC's task of policing this tax will not be effective. It is admirable that some effort is being made, but I feel that the effort will be in vain owing to the scope of the task that has been put on those who are required to enforce this.

In past weeks I have raised problems relating to local government, which is one of my shadow portfolio areas. The goods and services tax will be imposed on a number of local government activities. It will increase their costs and they will have barely any assistance in the administration of the GST. I have raised the problems of sporting groups - sport being another of my shadow portfolio areas - and the fact that they will have a GST imposed on their sponsorships, which I am sure will be very hurtful for them.

I have also raised various problems relating to small businesses and the impact that the GST will have on their operations through the administrative time and expense that will be imposed on them. Overall, the GST will be a very negative tax for all those groups. From 1 July of next year, despite all of these efforts, there will be a great deal of chaos amongst the businesses and groups that are required to put this regressive tax into effect.

MR KOBELKE (Nollamara) [12.55 pm]: Although we support these two Bills, it needs to be clearly stated again that the Labor Opposition is totally opposed to the goods and services tax in principle. The GST is a regressive and unfair tax. Despite the huge amount being spent by the Government in trying to promote and sell the package, we believe that, on the whole, the tax will disadvantage Australia and will be more costly to administer and more easily evaded than is the current system. Although the GST has advantages in some areas, the overall result will be a negative impact on the national economy and the economy of this State. Those are matters for political debate which do not relate specifically to the matters in this Bill.

The GST legislation has now passed through the federal Parliament and is a fait accompli. The Parliament of Western Australia is left to look after some of the mechanics that must be correctly administered to ensure that the interests of this State and its people are protected as far as possible. These two Bills seek to protect Western Australians and people doing business in Western Australia against exploitation. The Commonwealth has passed laws and has a code by which it will seek to minimise and eliminate exploitation in the form of increased prices and other rorts which may occur through the implementation of the new tax system. The commonwealth legislation cannot apply to two areas. Therefore, these Bills extend the regulatory regime and protective system, which the Commonwealth has put in place, into the state jurisdiction. In fact, in one of the Bills the word "jurisdiction" is used synonymously with "State", so when we talk about the law applying to this jurisdiction, we mean to the laws of the State of Western Australia.

People will be ripped off through the implementation of the GST in two distinct areas, one of which is through genuine errors. Because of the complexities of implementing the new system and the considerable costs which will impinge on a whole range of industries, particularly in the small business area, operators will simply try to cover their costs by increasing prices. It may be that, in a technical sense, they will have acted in error and will have placed an additional price on goods or services and that may be found to be not proper or appropriate. In that sense they may contravene the code and the regulations which are covered by this legislation. There is room for genuine error that can lead to price increases that will not be judged to be reasonable and proper in accordance with the application of the GST. On the other hand, some operators will see in the uncertainty of the changes taking place the opportunity to increase prices improperly and to obtain windfall profits. There will be no argument from members that there should be a law that can effectively minimise, and hopefully prevent, that sort of deliberate exploitation of customers. We all know that certain elements in our community will seek to exploit any situation regardless of the rights of others. We need laws of this nature to protect the public.

In areas as complex as this, we can create major problems for those people trying to run their businesses properly. I refer to people of integrity and standing and who do not in any deliberate way attempt to trick and exploit people. We must always face this balancing act. I am not familiar enough with the code that we are implementing to know how well that balancing act is being done. I accept on the Government's recommendation and given that it has been looked at by the Commonwealth and all the States that it will achieve a reasonable balance. I simply must take it on faith; I do not have the expertise to make an informed judgment.

Mr Bradshaw: Have you done any research about what happened in New Zealand? I have not. Was there exploitation when its GST was introduced?

Mr KOBELKE: I do not know. It is difficult to compare countries because they are moving from different systems to tax arrangements that differ internally and between countries. I cannot provide any extra information about New Zealand.

I have grave doubts about how effective this legislation will be. It is a difficult area in which to work. In trying to be wary of that balance and appropriately not wishing to be too harsh on the majority of companies that will do the right thing, the Commonwealth Government has left too big a gateway for the small number of people who have no respect for the rights of others to get away with whatever form of exploitation they may seek to pursue. It is difficult to ensure that legislation of this nature is effective. In some areas the Australian Competition and Consumer Commission has been like a dog with a bone; it has been very determined and pushed a hard line. Its public utterances have suggested that it will be very vigilant and forceful in achieving the objectives of the code. Whether it will be effective, only time will tell.

I refer members to the New Tax System Price Exploitation Code (Taxing) Bill. The Bill is unusual in that its effective content is shorter than the long title, which is -

A Bill for

An Act to impose certain fees referred to in section 34(2) of the *New Tax System Price Exploitation Code (Western Australia) Act 1999* to the extent that any such fee may be a tax.

The short title has 34 words. Clause 3, the only effective clause in the Bill, is headed "Imposition of tax" and it provides -

To the extent that any fee referred to in section 34(2) of the *New Tax System Price Exploitation Code (Western Australia) Act 1999* may be a tax, this Act imposes the fee.

That is 32 words. It is extraordinary; we have a long title longer than the effective clause in the Bill.

I turn now to the more substantial piece of legislation - the New Tax System Price Exploitation Code (Western Australia) Bill. The first comment I will make relates to the nature of the Bill, which adopts commonwealth legislation. I will go through a couple of parts of the Bill to point out some aspects of its structure and some points that I wish to emphasise. In brief, it simply takes the commonwealth code from the Trade Practices Act and attaches it as an appendix to the Bill. The procedures in the commonwealth legislation are simply given effect within the State of Western Australia.

As the member for Fremantle said, all the administrative procedures that apply in the Commonwealth then become applicable to matters in the jurisdiction of Western Australia. We are simply handing over an area of jurisdiction holus-bolus to the Commonwealth. There appears to be no other way to go. The member for Fremantle suggested that the structure and drafting had much merit. However, with this measure, the move to support the GST and the new taxing regime, the Government is placing Western Australia in a position of even greater subservience to the Commonwealth Government. We are abdicating more responsibilities and legislative, financing and taxing powers to the Commonwealth. This Government has crowed about supporting States' rights. It wants to stand up for the rights of Western Australia and not allow the Commonwealth to assume more and more powers over our state parliamentary system. This Bill is another clear example of the Government's handing to the Commonwealth responsibilities which were and are in the jurisdiction of the Western Australian Government.

That is very different from what members opposite did in opposition. There was a clear agreement across all States in 1990 that the Corporations Law had to be nationalised; there was no logical argument against it. On 20 October 1987, we had a huge crash on the stock market. At that time we also had enormous growth in information technology and computers and the start of e-commerce. All those things were happening on a national and international scale. It made no sense not to have a national Corporations Law applying to companies at a state level. There was no credible, logical argument for not having a national Corporations Law. This State, along with the other States, agreed to hand those powers to the Commonwealth. However, we had the ludicrous situation of the Liberal-National Party Opposition's opposing that move on the basis that we could not give any powers to the Commonwealth and in so doing reduce the legislative powers of the State. We got to the absurd situation in which every State in Australia except Western Australia was working with the Commonwealth to have those laws effective from 1 January 1991. Late in 1990, because the opposition parties then had the majority in the Legislative Council, they blocked that legislation. That legislation was similar to these Bills in that it ceded to the Commonwealth certain powers that apply to the Western Australian jurisdiction. The other five States and the Commonwealth were working together, and Western Australia was out on a limb.

Once the opposition Liberal and National parties blocked the legislation, they realised, through the pressure of the business community, how absolutely stupid that move was. We had the unprecedented situation of Parliament being recalled between Christmas and New Year's Day. We came back and sat on 27 December 1990 to fix the stupid decision made by the Liberal and National parties to block the implementation of the Corporations Law in Western Australia. Now, the Government has no problem handing legislative power to the Commonwealth through the Bills before the House. The next time government members cry about being State's righters and not allowing the Commonwealth to have any more power over the States, they should realise it would be hypocritical in light of this legislation. The point must be made that Western Australia can no longer stand alone in a range of areas. We must take a national approach. Even this week the Premier is still playing with the silly idea that Western Australia could somehow secede from the Commonwealth. There would be no net advantage if Western Australia went down that road. It is a way of playing to a very small audience about Western Australia's problems in dealing with the Commonwealth. There are major problems looking after the rights of Western Australia because of the powers the Commonwealth can use to dominate it, particularly in the area of finance. However, these problems should be

addressed in a way which produces results and not by grandstanding on the issue of State's rights and then handing over holus-bolus a whole range of financial powers to the Commonwealth simply because it suits the political agenda of the current Government. The current Government wishes to back its Liberal colleagues in government at the national level.

I have grave misgivings about the approach being taken. That is not meant as a criticism of the Government. Once the State is locked into the goods and services tax, these things have to be put in place. However, the State will end up with a complex set of laws whereby commonwealth laws are applied to state laws. If there is cooperation and everything is working well, Governments will not run into any real problems with that legal structure. However, as soon as things go wrong and someone takes a challenge to the High Court that knocks out a piece of the law or the Commonwealth and State Government are at loggerheads, this complex structure of interposing laws of the Commonwealth and the State is ripe for the creation of a legal morass. More problems will be created. I make that very clear. In a few years' time we shall see whether my words prove to be true or if I am being over-pessimistic. I do not think this will suddenly pop up in two or three years. The legal structure being created means that commonwealth law applies to the States and the States will cede certain powers but still retain their basic powers under the Constitution. This will lead to major problems when there are disputes that shift those boundaries. It will work well while there is a cooperative approach, but without that approach, this style of legislation opens up a Pandora's Box. That may not be such a big problem with these particular Bills. My understanding is - the minister can correct me if I am wrong - that the Bills have an effective sunset clause. The Bills only apply up until 1 July next year when the GST is fully implemented, and for the next two years. I understand the Bills have no effect after that.

Mr Shave: That is my understanding, but I will confirm that.

Mr KOBELKE: I will go through some of the provisions within the New Tax System Price Exploitation Code (Western Australia) Bill. Clause 22 is headed, "Application of Commonwealth laws to offence against New Tax System Price Exploitation Code of this jurisdiction". It states -

- (1) The laws of the Commonwealth apply as laws of this jurisdiction in relation to an offence against the New Tax System Price Exploitation Code of this jurisdiction as if that Code were a law of the Commonwealth and not a law of this jurisdiction.

"Jurisdiction" is defined in the Bill as this State. My understanding of that, and what the minister said in his speech, is that the Commonwealth's New Tax System Price Exploitation Code will apply as a Western Australian law. It will apply to any areas in which people seek to use the GST changes as a means of exploiting or overcharging people and seek to make windfall profits by charging a higher price for goods and services under the guise of the tax change. The Bill's intention is to give those powers to the Commonwealth. Those powers are not fully set out other than as they have already been alluded to. The Bill's appendix is the relevant part of the Trade Practices Act. That Act does not form part of the Bill and will not be part of the law. Clause 3(4) states -

The Appendix at the end of this Act does not form part of this Act.

The appendix is in the Bill for the information of members and the general public who pick up a copy of the Act when it is law. However, it is not part of the State's law. It remains with the Commonwealth, but has application to the Western Australian jurisdiction. I am not clear on the application and the potential retrospectivity of the legislation. The Minister for Fair Trading said in his second reading speech -

The code empowers the ACCC to monitor and report on prices in the 12 months leading up to . . . the introduction of a goods and services tax.

That period is from 1 July this year until 30 June 2000. The minister also said -

While the GST will not commence until July 2000, the commonwealth code commenced on 9 July 1999 . . .

I take it that when these Bills become law, the commonwealth laws and its power will apply to Western Australia from 9 July 1999. Is this legislation retrospective?

Mr Shave: Again, that is my understanding. That is appropriate. Once the legislation is passed it applies from that date.

Mr KOBELKE: At this stage I do not mount any criticism because it is retrospective. I just want to be sure that it applies. It opens up questions about the effectiveness of the legislation for that period. Part of the process is monitoring prices, giving advice where a particular business may operate in a way that is seen as exploitative and then actually taking action to fine or prosecute where there is a clear case of exploitation or overpricing. One wonders how the Australian Competition and Consumer Commission will handle a case where someone has improperly applied a GST prior to that date. Will they simply get a warning and be told not to do it again or is there now a basis for taking stronger action? I am not sure whether the Minister for Fair Trading has jurisdiction over that matter because it will be for the Australian Competition and Consumer Commission to decide how it will implement that. The retrospective application of this code raises problems. I am not perfectly clear about the way the code will be applied. It may be a largely administrative matter with the ACCC. In the appendix of the code, section 75AU of the Commonwealth Trade Practices Act is headed "Price Exploitation in relation to New Tax System changes." Clause (1) states-

A person contravenes this section if the person engages in price exploitation in relation to the New Tax System changes.

The definition of price exploitation is one which will come down to fine detail. I do not have time to tease that out. The commonsense interpretation is that if someone suddenly put up a price on the excuse of the GST and could not justify it, it would be accepted as price exploitation.

The first clause which makes the code applicable to state government instrumentalities is clause 13 of the Bill headed "Application law of this jurisdiction". It states -

The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.

My understanding of that is that it is clear that AlintaGas, Western Power and other Government instrumentalities and departments that provide a service have to comply with the Commonwealth code. They could have action taken against them if they were seen to be taking actions that were exploitative over the introduction of the GST. That should be taken in the context of clause 16 which indicates that the Crown is not liable to pecuniary penalty or prosecution. However, subclause (3) states-

The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

That means an authority of the State of Western Australia is not liable for penalty or prosecution because it is the Crown. To my reading of that, instrumentalities are required to act in good faith and be careful that they do not increase prices in the changes to be implemented simply to earn extra income. I have a specific example which I hope the minister will follow up. I hope that if we can get some publicity for this issue, people who have been affected may come forward. A person came to see me this week. I will not name her because she may not be ready to go public. However, if she wishes to go public, I will give her details to the minister so that he can pursue the matter. The woman rang Pinnaroo cemetery at about 11.00 am on Friday, 15 October because she was seeking a niche in a wall for the ashes of a relative. She was told that the niche in the wall cost \$430 plus a GST of \$43. On Monday, having agreed in discussions with members of the family that they wanted it, she rang again and this time spoke to an administrator at Karrakatta cemetery. It was confirmed that the cost of the niche was \$430 plus a 10 per cent GST of \$43. The woman is involved in a company and has had discussions about how the company will implement the GST. She therefore thought that it was improper for a government instrumentality to impose a GST on a niche in a wall that had already been constructed. She raised her concerns with me as it was not in keeping with the law. The GST does not start until 1 July 2000. She was told that she had to pay it. However, if later it was found that she did not have to pay the amount, it would be refunded. The people at the Cemeteries Board were clear that she had to pay the 10 per cent GST now. When she said that she would take the matter to her member of Parliament, she was told in a later phone call that she did not have to pay the GST. The lady was concerned that although she had discovered that she did not have to pay it, how many other people have been caught by it and have paid for something not due at this time?

The people implementing the scheme may have got it wrong and they should apologise and correct the mistake. I hope that someone at the Cemeteries Board is not trying to run something on the side to help bolster the coffers of the instrumentality by introducing the GST well ahead of the due introduction date. I am concerned that a government instrumentality is not doing the right thing. It should be pulled into line and have the facts explained to it. I accept that this was an error in good faith and that someone has not done his homework properly. It emphasises the complexity of the issue for so many small businesses and companies. People are being confronted by a range of new requirements - many agencies and businesses are struggling to survive. They are trying to make ends meet in competitive markets, although I am not sure how competitive the Cemeteries Board is because there is not much choice. Many small businesses are stretched to the limit trying to keep business running and make a profit. The extra cost involved in employing consultants and accountants to advise them, to commit their own time, to read the information and to understand what is required will provide more opportunity for people to get it wrong.

It does not mean that we can allow consumers to be exploited. It will be a difficult balancing act and I think the Minister for Fair Trading will have to play a major role in upholding standards and ensuring people are educated about the requirements involved in implementing the new system.

MR SHAVE (Alfred Cove - Minister for Fair Trading) [1.26 pm]: I thank the members for their contribution to the debate. As was stated in the second reading speech, the objective of the Bill is to prevent price exploitation under the Commonwealth Government's new tax system. The purpose of the New Tax System Price Exploitation Code is to prevent suppliers from profiteering in the transition to the new tax system. A number of issues have been raised by members. The member for Fremantle talked about the benefits arising from the Federal Government controlling price exploitation. I concur with that. It is necessary because people are buying and selling across boundaries in Australia and internationally. Unless federal legislation controls it, it will be very difficult to control it at the state level. The member for Rockingham pointed out that he was concerned about price increases from 1 July 2000. The Government has agreed to a \$12b cut in personal income taxes from that date. That will be beneficial to everybody who pays income tax. The tax-free threshold will increase from \$5 400 to \$6 000 and the lowest marginal tax rate will be cut from 20 per cent to 17 per cent. That will affect a lot of low income earners. The marginal rate for middle income earners will be cut to 30 per cent from 34 per cent or 43 per cent. That is a significant reduction. The extension of family assistance with the withdrawal of family benefits will be cut from 50 per cent to 30 per cent. The income threshold will be increased to \$28 200. Pensions will be increased and self-funded retirees will receive new savings bonuses. Pensions, allowances and benefits will be increased by 4 per cent in nominal terms and the increase will be indexed to maintain its real value. This compensation will be increased as required to guarantee a 2 per cent increase in real terms. A one-off, untaxed bonus of up to \$1 000 will be provided to aged persons and \$2 000 to self-funded retirees.

Mr Kobelke: I assume these measures are intended to compensate people for the extra costs incurred by the goods and services tax?

Mr SHAVE: Yes.

Mr Kobelke: Not compensation measures for the expected exploitation?

Mr SHAVE: No; perhaps I should have made that clear. The member for Rockingham, in his eloquent speech, said there would be a price rise. He was referring not to exploitation but, rather, to his belief about the damaging effect of the GST.

Mr Kobelke: Do you pride yourself on being close enough to small business to know how things are going and what they are thinking?

Mr SHAVE: Yes.

Mr Kobelke: Are you honestly picking up vibes from small businesses, in the political line that you and the Federal Government are running, about tax incentive credits actually helping to balance out most of the tax increases and the low level administrative costs? That is not what I am getting.

Mr SHAVE: There will always be scepticism. It is incumbent on the Federal Government between now and 1 July next year to clearly outline the paperwork that small business will have to produce as there will always be that concern. Unless people are absolutely certain of what government agencies are saying to them, there will always be a level of scepticism. People will be concerned until they are given the guidelines on the type of form that they will have to fill in, which is natural with small businesses because traditionally they are effectively government tax collectors; and they resent that. I used to resent it, as a small business proprietor prior to coming into this place. If I were sitting in the marketplace now and people were saying, "It will be easy; trust me, I am from the Government" I would believe it when I saw it. The proof will be in the pudding. If the Federal Government does not ensure that it is an easy process and small business is able to handle it in a reasonable fashion, it will pay the political price for its actions.

Mr Kobelke: You would rather characterise it as a healthy scepticism than as a well-founded concern that the impact on small businesses could be detrimental?

Mr SHAVE: I am assured by my federal colleagues that by 1 July any concerns that some of my small business constituents might have will be fully addressed.

In answer to the member for Rockingham, all of these elements of the tax reform package will compensate taxpayers. The Commonwealth has estimated that the GST increase will be around 2 per cent and it will be a one-off increase. For the interest of the member for Nollamara, I did some general sums for a hotel by adding on the 10 per cent increase and giving a credit on the cost. I also worked it across a range of businesses. It will affect some businesses differently from others. It is simple for a wholesaler working on a small margin where the cost of the product in is very close to the cost of the product out. However, when running a hotel or a motel where a liquor product is bought in and sold through bars and accommodation is sold through hotel rooms, the cost of the product in for the rooms is different from the cost of the product in and out of the bottle shop. Therefore, people with a diverse business will want to be assured by the Federal Government that it will not be too difficult. The hotel and tourism industries at a national level have some concerns. A 10 per cent increase on hotel rooms of \$200 to \$250 a night will add \$20 to \$25 to the standard rack rate. Those establishments have expressed their concerns to the Federal Government. Some people would say that people who can afford to stay in a room at \$250 a night can afford to pay anyway. That is not an argument to which I totally subscribe. It will have an effect on a great number of businesses, including government agencies, in their sending people to conferences. I will not include politicians attending conferences, because people do not care too much about politicians. However, I do not deny that there is concern about government spending in other areas and it will be up to the Federal Government to ensure that it addresses those issues at the appropriate time.

I will address a couple of comments of the member for Nollamara about retrospectivity. I am told that the legislation will not be retrospective in every State. It will be the responsibility of the fair trading or consumer affairs departments in those state Legislatures to take action when unfair pricing occurs. I welcome the example given by the member for Nollamara. If the Ministry of Fair Trading receives a complaint of exploitation, it will take appropriate action against those responsible where it occurs under the Fair Trading Act. I take the point made by the member for Nollamara that some people may add the GST figure in error; I would like to think that is right. However, if it is not right and retailers are not prepared to acknowledge those errors, we will continue to make them aware of the fact that it is improper to apply a GST. If people take action to exploit the public, the Ministry of Fair Trading will take action where it can. However, I point out that in many instances since 1 July this year prices have not increased but have decreased because of the reduction in sales tax on goods being applied to many businesses. I would like to think that many of those businesses have passed on that decrease already to the consumers.

Mr Kobelke: Something you just said has opened up another question. Your suggestion is that the Ministry of Fair Trading will be involved in this area. I assumed that it would have no powers of enforcement of the code. Can you explain how the Ministry of Fair Trading will work cooperatively with or as an integrated part of the Australian Competition and Consumer Commission in these matters?

Mr SHAVE: If we receive a complaint after the legislation is passed, we will hand it over to the ACCC because the powers are clear. The ACCC is not empowered to take action until the legislation is passed. We will therefore not be working jointly with the ACCC up to the point of the legislation being passed. Currently, if someone is clearly exploiting a consumer, a number of options exist under the Fair Trading Act to resolve those issues. One of our last options is to name someone. For example, if the Pinnaroo Memorial Park was charging a GST, we would contact the people responsible and tell them that it is improper and that they should not be doing it as the GST is applicable from 1 July next year, and we would

encourage them to refund the money. If they did not refund the money, one of our strong options is to name the business. A great deal of damage can be done by the Ministry of Fair Trading exposing a business for falsely charging people by causing them to believe they must pay the GST. That is not an action we like to undertake regularly, because it could be a bill of \$100 and it could cost a business \$100 000. We have done it; I have named a couple of businesses at times. It has caused those businesses to go into liquidation and become defunct. It is not something we do lightly, but it is an option. Under the Fair Trading Act certain fines are applicable for people who act improperly. Our best way of controlling these people is to say that we will name them unless they desist from what they are doing. That usually creates a very quick response from people who tend to take advantage of other people.

Mr Kobelke: Has the ACCC given you any undertaking as to the level of staffing or resources it will put into WA?

Mr SHAVE: I assume that it has. I do not have the detail, but I will get it for the member for Nollamara. I have quite a number of detailed notes in relation to it. However, I do not have those specific figures in front of me. Obviously, if we know that what the Australian Competition and Consumer Commission is proposing is inadequate, we will approach it about that. In regard to exploitation, a number of publications have been put out. If members would like copies of the ACCC publications on exploitation and advising small businesses of what they should and should not do, I am happy to provide those for members.

I have covered most of the issues that were raised. I thank the members of the Opposition for their contributions. If, at any time between now and when the Bills are passed, members have any specific issues or constituents bring them clear examples of people trying to exploit the situation, I would welcome that information. The Ministry of Fair Trading will certainly take the appropriate action to rectify any exploitation. We have not had a lot of complaints of the sort raised by the member for Nollamara.

Mr Kobelke: Have you had some?

Mr SHAVE: Not to my knowledge. I have not seen any direct letters. They may have come into the department and been handled at a departmental level, but my advisers have indicated that they have not received any complaints. Once again, I will check that for the member and give him some details of whether the Ministry of Fair Trading has received anything at a departmental level and whether anything has come into my office over the past two or three months. I am a little cautious. I read my mail. Everything is photocopied and put into a file, but over the past five or six days I have not looked at the letters that are going through the system in my office. Until that time I had not received any advice.

Mr Kobelke: Would you be willing, not necessarily to table a report, but to provide us with a short report as to the number of complaints received relating to potential exploitation under the goods and services tax by category, if there are broad categories?

Mr SHAVE: If they are in categories and that is practical, I am happy to give the member that information.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: The New Tax System Price Exploitation Code text -

Mr KOBELKE: Clause 4 gives status to the New Tax System Price Exploitation Code of the Commonwealth, which is a schedule version of part VB of the Trade Practices Act; it is that part of the code which is attached as a schedule to the Bill. When the Commonwealth Government changes that law of the Commonwealth, as it has the right to do, by legislative or regulatory means, is there any established practice whereby the States will be consulted or are we handing the whole thing over to the Commonwealth and the State will have no say on and no responsibility whatsoever for what may be the applicable law here under the code?

Mr SHAVE: I am advised that under clause 6 of the Bill we have the power to either accept or reject the amendments. If the Commonwealth does not consult and we are not happy, we can reject the code.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Future modifications of New Tax System Price Exploitation Code text -

Mr KOBELKE: The minister says that, under clause 6, the State can reject changes made by the Commonwealth. I am not sure how effective that would be. I accept the legislative powers, as the minister has stated. In terms of the functioning of the code and the protective processes, if the ACCC is doing it as a national body, and we are looking at a seamless approach right across Australia, can the State have a code which applies to Western Australia in a different way from that which applies to the rest of Australia? I cannot fathom how that would be workable. I would appreciate the minister's commenting as to whether the code applying to WA could be different from that applying to the rest of Australia. What are some of the implications of that? Are we locked into a situation in which we must accept the code, unless we can get all the States to gang up on the Commonwealth and do something across the States which is at variance with the wishes of the Commonwealth?

Mr SHAVE: The point the member makes is correct. The problem is that much of this purchasing and selling will be across boundaries interstate and we need agreement; it will not be possible for an individual case to apply to Western Australia. If the Commonwealth were being unreasonable, I anticipate that the various state jurisdictions would get together and gang up on the Commonwealth - as they should and as has happened in the past, particularly at Premiers Conferences. That is the only way to effectively resolve the issue. If it is to be controlled by the Federal Government - the member for Fremantle commented that it will essentially be handing over powers to the Federal Government - it cuts both ways. The Federal Government needs our acceptance to make its changes. Western Australia must agree to any changes and make those changes work.

I understand the member's concerns, but in practical terms this will be administered as a federal jurisdiction and the power will be taken out of our control. I am not totally opposed to that, because it would be very difficult for a state jurisdiction to monitor what is being charged in Queensland, New South Wales and so on. Also, although the cost involved should not be the primary consideration, it is a consideration. I am comfortable with the Federal Government being responsible for these costs. In fact, it is commonwealth legislation and, whether a Labor or Liberal Government were in office, I anticipate that if WA did not get a fair go, the matter would be taken up with the Commonwealth. The member raised the point about the staff numbers and what has been offered in administrative capability in Western Australia, and I will check that.

Mr KOBELKE: The minister said that the Commonwealth needs the agreement of the State for these changes. Does that amount to a full power of veto for the State in respect of any changes proposed by the Commonwealth?

Mr SHAVE: It is not a veto as such but if WA does not agree, the change does not happen. It is a practical process but indirectly WA has the capacity to ensure that what is happening is reasonable.

Mr KOBELKE: Does it come down to a clear undertaking as part of the intergovernmental agreement that the State's approval will be sought or is it a clear legislative requirement that the State must concur with any changes before they can be enacted?

Mr SHAVE: No, it is neither of those; it is just a practical issue in the agreement.

Mr KOBELKE: The minister also indicated that the Commonwealth through the Australian Competition and Consumer Commission would pick up all the costs of running this regulatory and policing regime. We are aware from the other GST Bills debated yesterday and last week that a major cost is involved in administering the GST. I am not sure whether the funding required for the ACCC's role is totally divorced from those administrative costs, or whether there are some common elements. I want to be clear that the costs for the ACCC policing this legislation are separate from the administrative costs, provided by the Treasurer, which the State must pay the Commonwealth. Are there potential areas of overlap which could lead to cost shifting by the Commonwealth, which would mean the State paid for some of the costs of the ACCC and the powers it is given under this legislation?

Mr SHAVE: I am advised that the ACCC will receive separate funding - not from the State Government but from the Commonwealth.

Mr KOBELKE: That does not answer the question. It may be the Treasurer's responsibility and perhaps the minister cannot easily provide the answer at this stage. It is important that we understand what financial arrangements the Commonwealth has made for the ACCC. We accept that the Commonwealth will finance those aspects of the operations of the ACCC which relate to compliance in Western Australia with the laws now being passed. The issue is whether the Commonwealth then will bill the States for all or part of the role the ACCC plays when policing this legislation. We know that the State must contribute to the administration costs of the GST to the Commonwealth. That is part of the intergovernmental agreement. We understand that relates to the collection side of the GST. It may also relate to the enforcement side and the operations of the ACCC. Does the legislation require the State to meet those costs or have they been excluded from the charges which the Commonwealth will levy against the States?

Mr SHAVE: I understand that the costs incurred by the Australian Taxation Office are met by the State.

Mr Kobelke: Are none of the costs of the ACCC in respect of compliance with this legislation included in those figures?

Mr SHAVE: No. I am advised that they are not.

Clause put and passed.

Clause 7: Interpretation of New Tax System Price Exploitation Code -

Mr McGINTY: My question relates to the provisions of clause 7(2)(a) which deem the provisions in this Bill to be commonwealth law. Can the minister give an example of where this has occurred in the past and a state law has in its own terms been deemed a commonwealth law? It seems to be a neat way of proceeding in this matter, so I do not raise it in a critical sense in any way. I am interested in any precedent and where this approach has been adopted in the past to better integrate commonwealth and state laws.

Mr SHAVE: The two examples I have been given are the Corporations Law and the competition policy code. There are others. If the member would like details of those other examples, I am happy to provide them.

Mr McGinty: Yes, I would like the details.

Clause put and passed.

[Questions without notice taken.]

Clauses 8 to 15 put and passed.**Clause 16: Crown not liable to pecuniary penalty or prosecution -**

Mr KOBELKE: I wish to get the minister's comments on the record in terms of the effect of this clause. It is titled "Crown not liable to pecuniary penalty or prosecution". Subclause (3) states-

The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

I take it from that that if an authority of the Government of Western Australia were liable for a pecuniary penalty or prosecution, it could flow through to the Crown in terms of the Crown standing behind it, but the Crown itself could not be subject to the penalty. Let us take the hypothetical case of a government agency of little substance, a very small instrumentality, which gets things totally wrong, incurs a major penalty and has a problem paying. I assume the Crown would stand behind that instrumentality. The hypothetical case I am raising is a long shot, but I want to be sure as to the effect of clause 16. In a situation like that, if action were taken against a government instrumentality, the clause would have effect and the penalty would have to be paid - there is no way it could get out of it by any other loophole - but one cannot take action against the Crown itself with respect to the provisions of the code. I seek the minister's clarification of those points.

Mr SHAVE: The comments the member made are correct inasmuch as it would be liable and my view is that the Government would be required to stand behind that authority as a matter of course.

Clause put and passed.**Clause 17: This Part overrides the prerogative -**

Mr KOBELKE: The question I wish to ask on this clause is referred to in a number of clauses where the issue of "other jurisdictions" is raised. I am unsure as to the intention of the legal wording. According to the explanatory memorandum, clause 17 is intended to make -

it clear that where, by virtue of this Part, a law of another participating jurisdiction binds the Crown in right of Western Australia, that law overrides any prerogative right or privilege of the Crown (eg. in relation to the payment of debts).

Other provisions also relate to this jurisdictional crossover or extra-territoriality. Are we talking about matters which relate to trade across the States and making sure they are captured or does the provision relate to instances other than just interstate trade?

Mr SHAVE: Normally one cannot override legislation of a State in its own province. However, if we had a trading concern operating, for example, in South Australia, this legislation provides for that State's legislation to apply to our body.

Mr KOBELKE: I take it that this clause and the other clauses which relate to "other jurisdictions" are designed to make the ACCC's management and assurance of compliance with the code under this legislation seamless across the States. Whether it is South Australia's jurisdiction applying to Western Australia or Western Australia's jurisdiction applying to the other States, where a case arises which has cross-state boundary implications it must not fall over on a technicality, and these clauses seek to cover such potential situations.

Mr Shave: Yes.

Clause put and passed.**Clauses 18 to 33 put and passed.****Clause 34: Fees and other money -**

Mr KOBELKE: I will make a brief comment on this provision for the record. We find here that fees and other moneys that arise from taxes or penalties relating to the enforcement of the new code go to the Commonwealth. Given that the Commonwealth is meeting the costs, that seems appropriate and the minister confirmed that earlier; but it needs to go on the record because it was not raised in the second reading speech or debate that the ACCC, as a Commonwealth entity, is the recipient of any fines or penalties that arise from enforcement and clearly if the ACCC collects these moneys, they go to the Commonwealth. That reflects that we are dealing here with a whole range of procedures which rest totally with the Commonwealth. It is state jurisdiction that we are ceding to the Commonwealth. It is not only commonwealth law over which the Commonwealth has control, but also the costs of enforcement relating to the ACCC will be met by the Commonwealth and, conversely, the collection of all fees from penalties and fines will also flow through to the Commonwealth.

Mr SHAVE: The points the member made are correct. My interpretation of the clause is as the member has put it.

Clause put and passed.**Clause 35 put and passed.****Clause 36: Regulations relating to administration and enforcement -**

Mr SHAVE: I move -

Page 22, after line 25 - To insert the following -

"federal court" means the Federal Court of Australia or the Family Court of Australia.

Page 23, after line 20 - To insert the following -

- (4) Without limiting subsection (2) -
- (a) this Act is not to be regarded as conferring jurisdiction on a federal court, either directly or indirectly; and
 - (b) applied provisions that would exclude the jurisdiction of any or all State courts are to be regarded as being modified so as not to have that effect.
- (5) Paragraph (a) of subsection (4) does not operate to the extent that, but for that paragraph, a federal court could validly exercise jurisdiction (such as accrued jurisdiction) in connection with this Act or applied provisions.

Mr Kobelke: I seek some explanation from the minister.

Mr SHAVE: The advice from parliamentary counsel is that these amendments are necessary as a result of a recent High Court decision that prevents state jurisdiction being given to the federal court. The price exploitation code legislation is similar in all States and is close to template legislation. The suggested amendments will have the same effect as those in other States, such as the amendments in the Price Exploitation Code (New South Wales) Bill 1999. The definitions of "Federal Court" and proposed subclause (4) are self-explanatory. Proposed subclause (5) seeks to ensure that a Federal Court can still deal with issues under the State Act and code where general legal principles would also allow it to do so. Under the principles of accrued jurisdiction it is proper for a Federal Court to deal with an issue that would normally be outside its jurisdiction, if it does so in order to deal with the "whole" of a matter, at least one aspect of which is within its jurisdiction under chapter 3 of the Commonwealth Constitution. This is a practical doctrine aimed at enabling different claims arising out of common transactions to be dealt with as one matter if the claims are so related that the determination of one is essential to the determination of the other. Its continued operation was reaffirmed by the High Court in the Wakim decision.

Mr KOBELKE: I think that is as clear as mud!

Mr Shave: Absolutely. If you understand it better than I, God bless you. Would you like my shortened version?

Mr KOBELKE: I would appreciate the minister's helping me to make sense of what he said.

Mr SHAVE: My general view is that the amendments are aimed at strengthening the legislation to ensure that lawyers who might like to see their clients avoid paying the appropriate penalties through state jurisdictions, or any other areas, are encapsulated under the legislation.

Mr KOBELKE: I am happy to admit that I did not understand the long explanation given by the minister, possibly because of my lack of legal training and, I suspect, because of that High Court decision which has thrown into some confusion the transferring of jurisdiction between state and commonwealth to various courts. Did a part of the answer address that jurisdictional problem arising from the High Court decision?

Mr Shave: Yes.

Mr KOBELKE: Can the minister say whether this is a solution or the best possible holding position at this stage, given that constitutionally the matter is still being sorted out?

Mr SHAVE: The member for Nollamara's assessment of the situation is correct; it is an interim solution until further legislation and changes are made.

Mr KOBELKE: There is one final matter under clause 36 which also relates back to clause 35; that is, we are giving the power to make regulations in clause 35, and clause 36 refers to regulations relating to administration and enforcement which is what we are dealing with and which the minister is amending. I will pass over the amendments moved by the minister relating to the application to the Federal Court and the Family Court of Australia and ask what are perceived to be the areas where the State needs to make regulations? I again put on the record that we are dealing with a commonwealth code to be enforced by a commonwealth agency which has commonwealth administrative procedures behind it and is a totally commonwealth operation. I am, therefore, not clear about why we need the regulating power. Is it just a safety catch? Is it necessary and is it clearly envisaged that there are some areas relating to the courts, or relating to federal officers pursuing matters of investigation, where there is a need to use regulations to provide for administrative means or powers?

Mr SHAVE: Clauses 27(3) and 28(3) of this Bill are two examples of the capacity to modify the commonwealth laws so that they fit in with our jurisdiction and provide the flexibility that we are endeavouring to achieve.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 37 put and passed.

Title put and passed.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (WESTERN AUSTRALIA) BILL 1999

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Max Evans (Minister for Finance), read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [5.00 pm]: I move -

That the Bill be now be read a second time.

The object of this Bill is to assist in the prevention of price exploitation under the Commonwealth Government's new tax system. As part of its new tax system, the Commonwealth has introduced a New Tax System (Trade Practices Amendment) Act 1999. The purpose of the commonwealth Act is to prevent suppliers from profiteering, either by failing to pass on to consumers the benefits of lower taxes on goods and services, or by unjustified price increases.

The commonwealth Act inserted a new part VB into the Trade Practices Act 1974. It also created a schedule version of part VB which was modified to refer to "persons", rather than "corporations". The schedule version of part VB, combined with the other relevant provisions of the Trade Practices Act, form the basis of the New Tax System Price Exploitation Code.

Although the Trade Practices Act will apply to activity within the Commonwealth's legislative power - for example, conduct by corporations, or interstate trade and commerce - certain activities, such as transactions involving individuals or partnerships, may fall outside the scope of the Act. Accordingly, state and territory legislation is required to ensure that the code applies across the entire economy. The Western Australian Bill is designed for this purpose; that is, to overcome limitations of the legislative power of the Commonwealth Parliament.

At a special Premiers Conference on 13 November 1998, and at the Premiers Conference on 9 April this year, all States and Territories signed an intergovernmental agreement and undertook to introduce legislation to implement the price exploitation code. Owing to protracted negotiations in Federal Parliament over the GST legislation, it was not possible for States to implement the code by 1 July 1999 as initially intended. However, all States and Territories are taking action to introduce such legislation, and it is anticipated that Australia-wide legislation will be in place by early December 1999.

Under the code, price exploitation will be prohibited where a corporation or person supplies a good or service at a price that is unreasonably high, having regard for the new tax system changes. The code empowers the Australian Competition and Consumer Commission to take action to prevent price exploitation by publishing guidelines on when prices will be unreasonable; issuing notices that specify the maximum price that should be charged for a particular product; prosecuting suppliers guilty of price exploitation and seeking fines of up to \$10m for bodies corporate and \$500 000 for individuals; obtaining injunctions against suppliers who engage in price exploitation; and orders to cap prices and require refunds.

The code empowers the ACCC to monitor and report on prices in the 12 months leading up to, and in the two years following, the introduction of a goods and services tax. The ACCC can require the disclosure of information as part of this monitoring role. While the GST will not commence until July 2000, the commonwealth code commenced on 9 July 1999 for the following reasons -

wholesale sales tax on certain luxury items was reduced from July 1999 - the code will apply to prices charged for these items from this period; and

the ACCC needs to monitor prices from July 1999 to set benchmarks for prices after the introduction of the new tax system.

In addition, state legislation is needed to empower the ACCC to compel the provision of information by businesses which would otherwise be outside the legislative power of the Commonwealth. The prohibition on price exploitation applies only to transactions within two years of the introduction of the GST. The Commonwealth Act, with complementary legislation in States and Territories, will establish a national scheme for the administration and enforcement of the codes of the various jurisdictions, as if they were a single law. This will allow the various codes to be administered consistently and in the same manner as the new part VB of the Trade Practices Act.

To give effect to this national scheme, state and territory Bills contain specific provisions on the administration and enforcement of the New Tax System Price Exploitation Code. The code and the Western Australian Bill have an important part in the new tax system. In most markets, competitive forces will be sufficient to prevent unscrupulous traders exploiting

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consumers and business; however, the Commonwealth and State Governments have agreed that legislation is warranted on this occasion to provide that extra level of protection.

The Western Australian Bill, in conjunction with the commonwealth Act, will ensure that Western Australian consumers and business receive the full benefit of lower prices under the new tax system by protecting them from price exploitation. I commend the Bill to the House, and I also table the explanatory memorandum.

I seek leave to table the document.

Leave granted. [See paper No 280.]

Debate adjourned, on motion by Hon E.R.J. Dermer.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (WESTERN AUSTRALIA) BILL 1999

Cognate Debate

On motion by Hon Max Evans (Minister for Finance), resolved -

That Orders of the Day Nos 6 and 7 be taken cognately.

Second Reading

Resumed from 21 October.

HON N.D. GRIFFITHS (East Metropolitan) [3.03 pm]: The Australian Labor Party supports both these Bills. These measures have been in contemplation for a considerable time; in fact, this Government is guilty of delay. I will not repeat what I said in my Address-in-Reply speech.

Hon Max Evans: Refer to the pages in *Hansard*.

Hon N.D. GRIFFITHS: I do not need to refer to the pages in *Hansard*. I note that on the day I delivered that Address-in-Reply speech, the Bill was introduced into the other place. The New Tax System Price Exploitation Code has two interesting elements: First, it is giving up a state function to the Commonwealth - nothing surprises me any more in respect of the great states' rights stance of the Liberal Party of Western Australia; second, we are engaging in a bit of price control, which I find very interesting, having lived in Western Australia for a number of decades. Once again the Liberal Party is saying one thing in the hustings and doing another. It is a very socialistic measure. I note Hon Murray Nixon blushing at the thought.

As the second reading speech correctly points out, the code empowers the Australian Competition and Consumer Commission - the ACCC as opposed to the ACC, which some people might think of from time to time - to monitor and report on prices in the 12 months leading up to, and in the two years following, the introduction of a goods and services tax. That is fascinating, because the GST will come into operation as at 1 July next year. Therefore, we have lost the best part of five months already.

In the second reading speech the observation is made that state legislation is needed to empower the ACCC to compel the provision of the information by businesses which would otherwise be outside the legislative power of the Commonwealth. Here, of course, we are dealing with non-corporations. If it were so necessary, one would think that the Government would have got off its collective backside months ago and introduced this legislation. There is no real reason that it was not introduced; it was done in Victoria. As far as I am concerned, the Government is guilty of a gross delay. I do not propose to delay the Bill any longer, other than to point out that the effects of a GST are already being felt in the community. One need only look at insurance policies which are being delivered. I had cause a couple of days ago to look at a motor vehicle insurance policy in the name of a member of my household. The insurer was charging pro rata for the GST, but the amount being charged was the full 10 per cent. So much for input; so much for the slackness of this Government. I will be true to my word: I will not do what this Government is guilty of; I will not delay the passage of this Bill.

HON J.A. SCOTT (South Metropolitan) [3.07 pm]: The Greens (WA) will support this Bill. However, as Hon Nick Griffiths said, a fair slippage has already occurred in a whole range of prices in anticipation of this sort of measure. The intent of the Bill to extend the powers of the ACCC and so on is very good. Unfortunately, the Government will need an awful lot of good luck with this measure. It will be a bit like putting a finger in the dike. If the Government can hold on to this, it can hold on to a handful of hydrogen.

Hon N.D. Griffiths: Sir Charles Court used to lecture the community on price control not working.

Hon J.A. SCOTT: It will be an extremely difficult task. I do not know how many people will be needed to carry it out. All I can say is good luck.

HON HELEN HODGSON (North Metropolitan) [3.09 pm]: The Australian Democrats support the two Bills to do with

the prices surveillance and monitoring function. One of the issues that has caused a great deal of public concern is the question of the potential inflationary impacts of a GST. When removing a wholesale sales tax of varying rates, depending on the types of goods, and replacing it with a flat 10 per cent tax, sometimes problems can be caused with consumers not knowing whether they are dealing with the impact of tax changes or a price hike built into the new prices.

To deal with this public concern, it was considered appropriate that a certain level of prices surveillance be built into the system. As has already been pointed out in the minister's second reading speech, the fact that we must deal with it here is a consequence of the difficulties with the way in which businesses are monitored, with certain functions being constitutionally the responsibility of the Federal Parliament and other types of businesses, specifically unincorporated businesses, being the responsibility of the State Parliament. To have a seamless operation, it is necessary that both Parliaments implement complementary legislation. On the question of who should be doing it, Hon Nick Griffiths has indicated that he believes this is another means of handing over state rights. The question comes down to whether one of the two potential bodies is given the power to act in a certain way with the surveillance function. It is pointless to duplicate the function depending on whether it is an incorporated body covered by the federal laws or an unincorporated body covered by the state laws, because we would then have people who wanted to complain not knowing where to go. It is far easier to ensure that it is handed to one or other of the bodies. This is essentially a federal initiative, and that is the reason it is being handled by the Australian Competition and Consumer Commission. It is an important part of the implementation of the goods and services tax to ensure that there is no problem with people being inadvertently charged higher prices than they should be charged. For that reason, it is a good piece of legislation and we will be supporting it.

HON MAX EVANS (North Metropolitan - Minister for Finance) [3.11 pm]: I thank all the parties for their strong support for this legislation. The word "exploitation" is an interesting word. It does not normally come up. In fact one wonders why the Australian Taxation Office does not use exploitation legislation sometimes.

Hon N.D. Griffiths: I thought the Act was exploitation.

Hon MAX EVANS: My interjection during Hon Nick Griffiths' speech about price control is interesting. I remember the Wheat Products Prices Commission and that twice a year in our office we had to check the price of bread and all the commodities going into it to control its price. This goes back to the 1950s when Sir Charles Court was the chairman. One of the last things to be controlled by price control was the price of bread. We had all the factors to see that the bakeries were under control. That just took me back down memory lane.

I commend the two Bills to the House and thank members for their support.

Questions put and passed.

Bills read a second time.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (TAXING) BILL 1999

Third Reading

Bill read a third time, on motion by Hon Max Evans (Minister for Finance), and passed.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (WESTERN AUSTRALIA) BILL 1999

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Max Evans (Minister for Finance) in charge of the Bill.

Clause 1: Short title -

Hon MAX EVANS: I apologise as a note should have been given to members that we are not proceeding with the amendment to this Bill.

Hon N.D. GRIFFITHS: I point out for the record that the reason I wished to go into committee is the amendment on the Notice Paper in the minister's name. Now that he will not proceed with the amendment, I have no reason to query him about it and I do not propose to say anything more in the committee stage. When the House reconvenes, I propose to go along with the proposition that we third read the Bill forthwith.

Clause put and passed.

Clauses 2 to 37 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Max Evans (Minister for Finance), and passed.

SENTENCE ADMINISTRATION BILL 1998

Assembly's Message

Message from the Assembly notifying that it had agreed to amendments Nos 1 to 21, 23 to 43, 46 and 47, and agreed to amendments Nos 22, 44 and 45 subject to the amendments made by the Assembly, now considered.