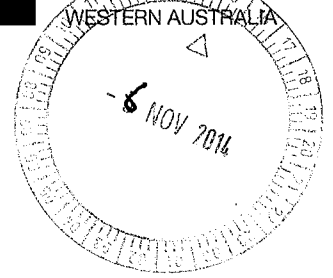




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WESTERN AUSTRALIA



6 November 2014

Mr Mark Warner  
Committee Clerk  
Standing Committee on Legislation  
Legislative Council  
GPO Box A111  
Perth WA 6837

By Email – [lccl@parliament.wa.gov.au](mailto:lccl@parliament.wa.gov.au)

Dear Mr Warner

### **Submission in response to the Taxation Legislation Amendment Bill 2014**

The Australian Institute of Management of Western Australia (AIMWA) welcomes the opportunity to provide a submission to the Standing Committee on Legislation Inquiry into the Taxation Legislation Amendment Bill 2014 ("the Bill").

AIMWA would like to share its concerns with the committee in relation to the impact the Bill will have on its charitable operations, specifically around the proposed amendments to the Pay-roll Tax Assessment Act 2002 and the Taxation Administration Act 2003.

### **Background**

In Western Australia, AIMWA operates two charitable organisations.

Australian Institute of Management WA (AIMWA) is a fourth limb charity which operates to promote the management profession in Western Australia. By promoting the science, study and practice of management, AIMWA delivers benefits to the Western Australian community as a whole through elevated general and technical knowledge and preserve and maintain ethical standards.

Australian Institute of Management Human Resources Development Inc (AIMHRD) is charitable as its primary purpose is the advancement of education. It is not a fourth-limb charity as its sole or dominant purpose is education which is separately identified at common law as being a charitable purpose.

Both AIMWA and AIMHRD are charitable bodies endorsed by the WAOSR.

As a result of the payroll tax grouping provisions, AIMWA and AIMHRD form a payroll tax group.

### **Comment on the Bill**

AIMWA would like to express its concern in relation to the operation of the payroll tax grouping provisions in the Bill.

Under the present drafting of the Bill, given the all-encompassing definition of 'professional association', AIMWA may be considered a relevant body and therefore lose its payroll tax exemption under section 42A(c). (We note that while AIMWA may have an object to promote the interests of its



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members, its sole or dominant purpose isn't the promotion of its members but the industry as a whole. However, the current definition of 'professional association' requires only one object or activity to be the promotion of the interests of its members of any profession).

Further, due to the broad definition of 'industry, trade or commerce', AIMWA could also be considered a relevant body under section 42A(d).

By designating AIMWA as a relevant body, in addition to adding costs back to the operation of a not-for-profit organisation following the removal of its payroll tax exemption, AIMHRD is likely to also inadvertently be affected by this.

AIMHRD is not a fourth limb charity, and would not in its own right be considered a relevant body under section 42A of the proposed Bill. AIMHRD is a charity by virtue of the educational activities it undertakes, as previously recognised by the WAOSR. In context of the overall AIMWA group, education is the primary activity undertaken, representing the majority of the income of the group. As such, the resources of the AIMWA group are predominantly allocated towards the educational activities that AIMHRD undertakes.

Having said this, and despite the fact that AIMHRD is not a fourth-limb charity, but charitable under the Advancement of Education limb, by virtue of the proposed section 42A(f) of the Bill, AIMHRD will also be considered to be a relevant body under the Bill. This is on the premise that AIMHRD would be a member of a payroll tax group which a body referred to in another paragraph is also a member.

We note that the stated intention of this Bill, as outlined in the Minister for Finance's second reading speech and the accompanying EM to the Bill, is to restrict 'fourth-limb' charities from accessing state tax concessions. The impact on AIMHRD is an example of an unintended consequence of the Bill, where a body which is entirely charitable as an educational institution will be caught by the amendments to the fourth limb charity definition.

Further, we stress that the payroll tax grouping provision could result in a disadvantage for AIMWA compared to other educational charities who, unlike AIMWA, do not form part of a payroll tax group. These charities would be entitled to payroll tax exemptions under the 'advancement of education' limb and not be considered to be relevant bodies.

AIMWA would request that amendments be made to the Bill to remove section 42A(f) so that at minimum, the restrictions from state tax concession are only placed on the group of fourth-limb charities the Bill is intending to target.

### **Ministers Determination**

AIMWA also takes this opportunity to raise concerns with the process of the Minister's determination.

In AIMWA's case, to seek any relief from the impact the Bill will have on AIMWA's current payroll tax exemptions, it will be required to rely on the Minister of Finance's determination. Any submission to the Minister for Finance would be at the expense of AIMWA and involve considerable resources.

Given there is little guidance around what the Minister would consider to be in the public benefit, this creates uncertainty for AIMWA around its position going forward. Should guidance be provided in legislation, this would create greater certainty that an educational charity like AIMHRD could seek relief from being caught by provisions designed to capture fourth-limb charities. We expect that



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such guidance should also provide clarity as to whether AIMWA would be an 'appropriate' charity to receive payroll tax exemptions, despite a purpose of promotion of trade, industry or commerce.

In addition, we also take this opportunity to raise our concern that any decision of the Minister would be non-reviewable.

AIMWA would be happy to discuss the implications of these amendments further with you and welcome any questions or requests for further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Byala', is written over a circular stamp or seal.

Peter Byala

Deputy Chief Executive Officer Corporate Services