

TAXATION LEGISLATION AMENDMENT BILL 2014

Consideration in Detail

Resumed from 19 August.

Clause 12: Act amended —

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clause 13: Section 41 amended —

Mr W.J. JOHNSTON: Again, I do not want to go over too much old ground. I look forward to dealing with clauses 4, 11 and 16, but I wonder whether the minister can tell us whether there is any chance of progress before we get into further debate.

Mr D.C. Nalder: Is the member referring to clauses 4, 11 and 16?

Mr W.J. JOHNSTON: Yes. I wonder whether the minister could tell us anything by way of interjection.

Mr D.C. Nalder: We have been trying to work with it to see what we can do. The problem around employer groups and all those bodies is that it is not specific because there is not a registered body such as a union. When the member for Cannington came up with this last clause, we took that away to see whether we could do anything, but it still refers to chambers. It can create some uncertainty with the law and there is a real risk that it requires some interpretation. It is still very difficult for us to deal with that and we need a list of specific ones that the opposition wants us to exclude to see whether we can do that to progress this debate. That is where we are at with it.

Mr W.J. JOHNSTON: We will think about it. Clause 13(2) inserts proposed subsection (3A), which states —

However, a charitable body or organisation that is a relevant body cannot be given an exemption by the Commissioner under subsection (2).

“Relevant body” refers only to those bodies listed in proposed section 42A(a), (b), (c), (d), (e) and (f). Again, the minister still retains the capacity to give relief to the body as long as it is covered by proposed paragraphs (c), (d), (e) and (f). Can I have that confirmed?

Mr D.C. NALDER: That is correct; I confirm that.

Clause put and passed.

Clause 14: Sections 42A, 42B and 42C inserted —

Ms R. SAFFIOTI: This clause relates to the issue of the minister and the Treasurer’s powers to accept an appeal from a body that has not been granted an exemption. It is very similar to clauses that we have dealt with previously, but, of course, this clause deals specifically with payroll tax. I foreshadowed that I would talk about the general policy issue and how these decisions are made public. This clause requires that a decision about the exemption of any body from payroll tax is made public in the *Government Gazette*. This goes to the point that should a body appeal a decision about a payroll tax exemption, it can appeal to the minister. The minister makes a decision, with the concurrence of the Treasurer, and then that decision is published in the gazette. I move —

Page 23, after line 14 — To insert —

- (11) A determination under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (12) Section 42 of the *Interpretation Act 1984* applies to and in relation to a determination made under this section as if the determination were a regulation.

As I have stated in this place before, we on this side of the house do not believe that the minister of the day should have the power to exempt any organisation from this series of taxes. We have made that clear on a number of occasions. We do not understand why this power is being given to the minister for some organisations and not for others. A trade union will not have the ability to appeal to the minister if it is not given an exemption, but other organisations under the fourth limb will have the power. We do not understand the lack of fairness with that. The key point I keep making is about this side of the house putting in safeguards for the minister through this amendment to the clause. As I said, this amendment would mean that any decision by the minister to exempt a certain body from paying payroll tax would become a disallowable instrument of Parliament. The minister’s decision and recommendation to the Parliament would have to be tabled and it could potentially be disallowed. This creates a safeguard and a proper process to deal with this issue. Under the proposed regime, the decision to exempt a body is purely the decision of the minister in concurrence with the

Treasurer and the public is informed through the *Government Gazette* after the fact. This ensures that the Parliament of the day will look at who the minister believes should be given an exemption and decide whether to approve it. This amendment provides a safeguard. I will give the example again because I think it is worthy to do so.

Mr W.J. JOHNSTON: I am very interested in the contribution of the member for West Swan and I would appreciate hearing further from her.

Ms R. SAFFIOTI: To give an example, a minister may be at a 500 Club function in the company of representatives of an organisation upon which the government may be relying for third party support for a particular initiative. Those representatives may come up to the minister and say that they believe that their organisation should be exempt from paying payroll tax. The minister would have a beautiful safeguard if he had the right to say, “Look, I agree with you, but Parliament would not permit it. I would have to get it through Parliament.” Instead, the current provisions create a tense situation because representatives of a body could go to the minister and ask for an exemption and the minister would have to say yes or no. This amendment would ensure that legitimate groups—I give the example of the Salvation Army—would not have an application for payroll tax exemption rejected by the Parliament, but the Parliament might have some serious questions and concerns about others that may have access to the minister through the 500 Club. My understanding from the briefing was that this would be tabled in Parliament, but my understanding of the legislation as it stands is that decisions will be published purely in the *Government Gazette*. We will have a problem if we provide the minister of the day with all this power to make organisations exempt from paying these taxes. This amendment would provide safeguards in the legislation to ensure that bad decisions are not made into the future.

Mr D.C. NALDER: I note that the member for West Swan moved similar amendments to the corresponding provisions in clauses 6 and 9 and that the amendments were rejected by the government. The government’s position on this matter remains unchanged for the reasons previously given.

Mr W.J. JOHNSTON: This is the problem. We appreciate what the minister said. The minister is effectively saying, “We told you no.” The problem is that no reason is provided by the government. We are not going to delay this legislation unnecessarily; we understand the numbers in the chamber. However, it would be nice if once the government actually explained what is wrong with providing accountability in the system. This is about protecting the minister from being accused of doing a dodgy deal. I will make some points here. The minister has agreed, or at least has not demurred from the fact, that he will be potentially subject to lobbying at a 500 Club dinner. He has not demurred from the fact that as a guest of an organisation he could be lobbied about these matters at the football. He has not demurred from the fact that he could be lobbied anywhere in the state or outside the state to provide this benefit to a taxpayer. He has got himself in knots about the idea that he cannot define an employer union but he can define an employee union, which is just bizarre! He has got himself in knots about all these things. The minister should do something reasonable for once. I understand his position and I understand that he has no capacity to make his own decisions in responding to this debate, but he should at least provide some comfort. He could respond, even if he were able to stand and say—this is what I would love him to say—“I will ensure that the Chamber of Commerce and Industry of Western Australia and any other organisation that represents employers in the industrial system will not be allowed to be granted fourth-limb standing.” He could say that in the same way that he is providing no opportunity for trade unions to get fourth-limb standing. All I am asking the minister to do is treat everybody in the same way. He is not prepared to stand and say that. So, guess what? We are nervous about it.

Mr D.C. NALDER: We have stated from the outset that the purpose of undertaking these amendments to the legislation is to deal with the case that was lodged by the Chamber of Commerce and Industry of Western Australia, and we have no desire for the Chamber of Commerce and Industry to be exempt from paying payroll tax. That is the whole reason we are amending the legislation. However, if people are worried about ministers of the Crown being lobbied and therefore influenced, I think this is one of the most transparent and accountable positions that exist in the state, and I take on the responsibility of performing my role with the utmost integrity. We have no intention of allowing the Chamber of Commerce and Industry to be exempt from the state taxation laws, and that is the purpose for doing this. I have gone through the reasons. We have put the process in place. It needs to be done in concurrence with the Treasurer, it needs to meet the public interest test and it needs to be published. If I make a decision, it will be published in the *Government Gazette*, and if that decision cannot be upheld, I assume that this chamber will hold me to account for it. I am therefore quite comfortable in saying that the way these clauses are written will provide a degree of security, comfort and openness for everybody to be able to investigate any decision that will be made in this matter. I will say that I believe any decision will be the exception rather than the rule. The legislation is designed to pick up an organisation that may be unintentionally captured and that everybody would agree remains a charity. I think they will be few and far between. I hope that this provision, like a lot of other provisions that exist that give power to the minister, is exercised on a rare occasion. However, we are leaving the provision open so that if some get through with unintended consequences,

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Dr Tony Buti; Dr Kim Hames

we will have the ability to regulate to ensure that they will not be exempt from the tax laws. We have debated this provision over and over again, but I am very comfortable with the way we have covered this matter, and I stand by the current clause.

Mr W.J. JOHNSTON: I will ask one further question. The minister said that there has to be a proper public interest test. The minister said that the minister and the Treasurer have to concur if an exemption needs to be given and that it must be done in the public interest. Will that decision be subject to review by the courts?

Mr D.C. NALDER: No, it will not be subject to review by the courts.

Division

Amendment put and a division taken with the following result —

Ayes (16)

Ms L.L. Baker	Ms J.M. Freeman	Ms S.F. McGurk	Mr C.J. Tallentire
Dr A.D. Buti	Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley
Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Ms J. Farrer	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)

Noes (33)

Mr P. Abetz	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mr B.J. Grylls	Mr J.E. McGrath	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic (<i>Teller</i>)
Mr V.A. Catania	Mr A.P. Jacob	Mr N.W. Morton	
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	
Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder	

Pairs

Mr D.J. Kelly	Mrs L.M. Harvey
Mr B.S. Wyatt	Mr M.J. Cowper
Mrs M.H. Roberts	Mr J.M. Francis
Mr J.R. Quigley	Mr T.R. Buswell

Amendment thus negatived.

Division

Clause put and a division taken with the following result —

Ayes (33)

Mr P. Abetz	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mr B.J. Grylls	Mr J.E. McGrath	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic (<i>Teller</i>)
Mr V.A. Catania	Mr A.P. Jacob	Mr N.W. Morton	
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	
Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder	

Noes (16)

Ms L.L. Baker	Ms J.M. Freeman	Ms S.F. McGurk	Mr C.J. Tallentire
Dr A.D. Buti	Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley
Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Ms J. Farrer	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)

Pairs

Mrs L.M. Harvey	Mr D.J. Kelly
Mr M.J. Cowper	Mr B.S. Wyatt
Mr J.M. Francis	Mrs M.H. Roberts
Mr T.R. Buswell	Mr J.R. Quigley

Clause thus passed.

Clause 15: Schedule 1 amended —

Ms R. SAFFIOTI: I tried to ask this question under clause 12, but the minister redirected me to when we would be discussing clause 15. There are eight organisations that are no longer paying payroll tax and that have received an exemption under the existing legislation. Once this bill is enacted, what is the process by which these eight organisations will commence once again to pay payroll tax? What are the lags, and what is the process that will be involved?

Mr D.C. NALDER: The process is similar to that for land tax, with the exception that the preliminary notice issued to the taxpayer will specify the day upon which any revocation is to take effect. That day must be at least two months after the day on which the notice is issued.

Ms R. SAFFIOTI: I want to step through that process. Let us assume that a couple of weeks after this legislation is enacted, the Office of State Revenue sends out the notices to the eight organisations and they are told that in two months' time, or whatever the case may be, they will have to start paying payroll tax. Will they then be able to appeal first of all to the Commissioner of State Revenue, and then to the State Administrative Tribunal? What is the process?

Mr D.C. NALDER: The first notice is the notice advising that the commissioner is considering revocation. When the commissioner has decided on that revocation, he then sends out another notice, and the organisation can then appeal to the commissioner at that point in time. That sets up the appeal process. The first process is that the commissioner sends out a notice to the organisation that it is under consideration for revocation, which gives it that two-month delay; and, following that, the organisation will receive a final notice that it has been revoked, at which point it can appeal.

Mr W.J. JOHNSTON: There has been a two-year delay to get to this point today, and when the legislation has gone through this place, it will go to the other chamber, which will be a further delay. The bill may then go to the Governor in Executive Council, with further delay, and it will then become law. The commissioner will then give the organisation the notice, and, two months' later, it might appeal. Will it start to pay payroll tax during the appeal process or will it be able to wait until after the appeal process has finished?

Mr D.C. NALDER: Once it has been revoked, the organisation has to start paying whilst it goes through the appeal process.

Mr W.J. JOHNSTON: Does the commissioner have advice that the passage of this legislation will remove the fourth-limb exemption for all those eight organisations or does the commissioner have advice to say that one or more of those organisations will continue to be given an exemption as a fourth-limb charity?

Mr D.C. NALDER: We do not know the eight, so we cannot —

Mr W.J. Johnston: Does the commissioner know?

Mr D.C. NALDER: What is the member asking?

Mr W.J. Johnston: Does the commissioner have advice that this law will effectively end access to the fourth-limb provision for all eight organisations?

Mr D.C. NALDER: Yes. Each individual case will need to be fully assessed by the commissioner, so we do not know at this point in time.

Mr W.J. JOHNSTON: Let me get this straight. We have pointed out for the last couple of days that this legislation has more holes in it than a piece of Swiss cheese and the minister does not have any advice to say that it will actually fix the problem that was created by the Chamber of Commerce and Industry of Western Australia's appeal. The minister does not have any advice that this stops any of those eight organisations remaining as fourth-limb bodies. It is just extraordinary. Is the minister honestly telling me that he does not know whether this will even fix the problem that he has raised with us? What is the minister saying?

Mr D.C. NALDER: We believe that we are covering all of them. We have specifically targeted the CCI, so we know that we are picking up the CCI. If there are any other bodies similar to the CCI, or those other areas that we have identified, they will be captured. We believe that the bill captures all eight. Although we do not have any specific understanding of who those eight are, we believe we have targeted the areas we need to target in that fourth limb to cover it to ensure that they cannot claim that exemption.

Mr W.J. JOHNSTON: Sorry, I will have to ask the same question that I asked a couple of moments ago: does the commissioner—not the minister—have advice that the legislation that has been presented to Parliament will ensure that all eight organisations will cease to have access to the fourth-limb benefits? If the minister does not have that, does his advice say that any one, or more than any one, of those eight organisations will continue to have access to the fourth-limb benefits despite the passage of the legislation?

Mr D.C. NALDER: We are confident that the provisions cater for all of those that are there, but we do not have any specific advice because we do not know the specific individuals. We are confident that this covers those areas.

Mr W.J. Johnston: But does the commissioner have advice? I understand the minister does not.

Mr D.C. NALDER: We have not received any advice from the commissioner to that effect.

Mr W.J. Johnston: But does he have that advice?

Mr D.C. NALDER: I cannot answer that at this point.

Mr W.J. Johnston: But you can ask him.

Mr D.C. NALDER: I cannot tell the member.

The SPEAKER: One speaker at a time.

Ms R. SAFFIOTI: The member for Cannington asked a pretty basic question. Legislation has been introduced to try to fix a problem. The question is: will this fix the problem? There are eight organisations that sought and received exemptions after the State Administrative Tribunal's determination. Is it expected that all eight organisations will be picked up by this legislation, and has the minister received that advice or otherwise? I know we cannot find out their identities such as where they live and where their kids go to school; I know we cannot have all that information. We are trying to find out whether this legislation is likely to stop these eight organisations from seeking an exemption. That is all the member has asked. Given the minister has introduced this legislation to try to close a loophole, I am sure the minister would have asked his agencies, "Does this close the loophole?" That is all we are asking.

Mr D.C. NALDER: It does close the loophole. In addition, we have left the flexibility to enact regulations. If any organisations that we intended to catch get through, we can then regulate specifically to knock them back out. We have a backstop for that situation. The provisions are very broad, but they try to make sure we cut off those areas that we do not believe should be exempt from state taxes. We are comfortable that this legislation will pick them up. We have a backstop to regulate specifically for anyone who may slip through the cracks, per se.

Mr W.J. JOHNSTON: Will an application made under proposed section 42B be in a prescribed form? Will it be done in a prescribed manner? Is there a prescribed process?

Mr D.C. NALDER: There are no prescribed forms but there are likely to be administrative forms.

Mr W.J. JOHNSTON: Thank you very much—there are no prescribed forms. Will there be a prescribed process? Will it be dealt with in a prescribed manner?

Mr D.C. NALDER: By definition of "prescribed", we take it the member means by regulation. There will not be any specific regulation regarding the application process; however, there will be processes in place whereby these things are considered individually, on their merits and in the public's best interest.

Mr W.J. JOHNSTON: When the Minister for Finance receives applications under proposed section 42B, what are the expected obligations about the way in which information will be received by the minister? We know that the minister cannot ordinarily receive information about a taxpayer, but clearly he will have to on this occasion. Indeed, he might be advised by the commissioner; for example, the minister has to know that the commissioner has rejected an original application. The minister might also receive information from the taxpayer. What will be the parameters around which the minister receives that type of information?

Mr D.C. NALDER: As part of the process for consideration, both ministers—the Treasurer and the Minister for Finance—will be reliant on the information that comes from their respective departments. That will be part of that process. They will be guided by the advice that they receive.

Mr W.J. Johnston: Will the taxpayer be able to make direct submissions to the minister?

Mr D.C. NALDER: The application will be made directly to me, but the process that comes into play will rely on the advice that comes from the departments of those two ministers.

Mr W.J. Johnston: Surely natural justice says that they will be able to put information to you.

Mr D.C. NALDER: Yes. They need to be able to give permission that the commissioner can hand over the information —

Mr W.J. Johnston: But they might —

The SPEAKER: One speaker at a time, otherwise Hansard cannot follow.

Mr W.J. JOHNSTON: I was actually trying to keep things moving a little faster, but anyway.

They make an application to the minister. The minister gets information from the commissioner, because obviously he cannot process the claim without information. Natural justice requires that the minister also has to consider what information they want to present. They will not present all the information via the commissioner, clearly.

Mr D.C. Nalder: Correct.

Mr W.J. JOHNSTON: I am asking about the second part of the limb, which is the process about the taxpayer providing information to you. When I say “you”, I do not mean you as an individual person but, rather, the Minister for Finance, whoever that is. What procedures will the Minister for Finance have to handle the information coming directly from the taxpayer?

Mr D.C. NALDER: My understanding, which has just been confirmed, is that the application and the reasons for the application will be made to the minister. The minister will seek advice from the department and look at what information has been provided by the commissioner for those decisions to be made. If the minister feels that there is a case, he has to seek concurrence from the Treasurer at that point. That will go down through into his department to provide advice to the Treasurer. It is only after the point at which both of them are comfortable that there is a case that a decision will be taken. The process is pretty clear, but the application that the applicant makes will need to cover the detail of why they believe they should be considered for exemption.

Mr W.J. JOHNSTON: How will the minister handle the need for natural justice? I understood the minister said that the applicant will need to provide information to the minister and he will take advice from the Commissioner of State Revenue, the Treasurer and from his department. Before the minister makes a decision, whether it is favourable or unfavourable, surely he will have to tell the taxpayer what advice the minister has received from the agency, whether it is Treasury for the Treasurer or the Commissioner of State Revenue for the Minister for Finance. There must be information coming from the taxpayer as well. That is what I am trying to establish. What procedure is going to be used to invite and take that information from the taxpayer?

Mr D.C. NALDER: In making a decision I will provide reasons for my decision to the taxpayer. I reinforce that we are not expecting very many of these at all because we believe that they will be captured, and when they are not, we will regulate until we knock them out. These really should be only rare occurrences and those that I think all of us would agree should be charitable and exempt. I am not seeing that we will need to exercise this very often, but there is the potential that we will. As I said before, once an application has been knocked back by the commissioner, they can appeal directly to me. If they appeal, they provide an application and outline the details of their application as to why they believe they should continue to be exempt, and on that basis, as Minister for Finance, I will seek advice from my department, which I will take into consideration, as well as the information from the commissioner, so I can understand the reasoning behind his views. If I feel they have a case, I will take it to the Treasurer and he will get advice from his department. If at that point he concurs with my position, or if he disagrees and it does not proceed, either way, I will provide reasoning back to the applicant for why we think it should or should not proceed.

Clause put and passed.

Clause 16: Glossary amended —

Mr W.J. JOHNSTON: As the minister knows, we have four amendments to this clause on the notice paper. They are in the same relevant format as the ones we have for postponed clauses 4 and 11. Sorry; we have already dealt with the amendments to clause 11.

I understand that the minister said it was a matter of definitions and that employer associations are too hard to define. I am not quite sure how he came to that conclusion. The definition I provided to him through these amendments do exactly what he says cannot be done. Let us take the Industrial Relations Act 1979 as the starting point. We can quite easily define what a “trade union” means in respect of employers under the Industrial Relations Act because they are registered under section 64 of that act. There is a registrar of the Industrial Relations Commission that maintains a list. It is no harder to define a trade union of employers than it is to define a trade union of employees under sections 53 and 54 of that act. That is not particularly hard. In terms of proposed paragraph (b), it is deadset simple; associations of employees are registered under the commonwealth legislation, and associations of employers are registered under the federal jurisdiction. It is exactly the same; all we need to do is add those couple of extra words. In paragraph (c) we have trade unions registered in another state or territory. Those states, almost universally—I suppose not the Northern Territory or the Australian Capital Territory, because they do not have their own legislation but refer their powers to the commonwealth government—have a system for registering unions of employees and an identical provision for the registering of employer associations. I just do not understand the minister’s answer in respect of proposed paragraphs (a), (b) and (c). Proposed paragraph (d) tries to capture any other association of employees, and again, exactly the same wording would cover associations of employers that are acting in the exact same way as an unregistered union. I do not know of any unregistered unions in Western Australia but I do know of some in other states. Famously, Broken Hill went for 100 years as a place where everything was done through the Barrier Industrial Council and it had a common law contract rather than coverage through the Industrial Relations Act, but that is all finished and it is now all under the Fair Work (Registered Organisations) Act. In Victoria there was a tiny little union in the printing industry with the old *Herald and Weekly Times*, but again, that union has been gone for at least 20 years. If there is an association of employees that is not registered, it is covered there: there is a clear, simple definition to make sure that the association of employees is covered. All that is needed is to increase the definition to include an association of employers that is operating for the same principles. There is actually no problem in providing the definition. It is not because it cannot be done, because it can, and I have shown the minister how it can be done.

Ms R. SAFFIOTI: Mr Speaker, I am interested in what the member for Cannington is saying and I would like for him to continue.

The SPEAKER: Member for Cannington, before you carry on, I understand that you are going to move a number of amendments. You have to seek leave to move them en bloc if you so wish; otherwise, you can move them one at a time.

Mr W.J. JOHNSTON — by leave: I move —

Page 27, line 13 — To delete “section 53” and insert —
sections 53 and 54

Page 27, line 14 — To delete “employees” and insert —
or employers

Page 27, line 18 — After the words “section 53” to insert —
or employers

Page 27, lines 21 to 24 — To delete paragraph (d) and insert —

- (d) an association of employees or employers a principal purpose of which is the protection and promotion of the members’ interests in matters concerning their employment or the employment of their employees;

I am demonstrating that under clause 16 it is actually dead easy to provide the definition. In fact, the minister could simply remove the words “section 53” from proposed paragraph (a) and the paragraph would then automatically cover both registered employer associations and registered employee association. Likewise, if he were to remove the words “of employees” from paragraph (b), it would again pick up all those registered employer associations. Again, going to paragraph (c) and removing the words “of employees” would also automatically cover all the employer associations as well as all the employee associations. The only paragraph that would require any wordsmithing is (d), because that is to cover people who are not registered, and because there is no simple system, there would have to be a slightly larger definition, but I have already provided details in the notice paper on page 16 of the wording that could be used. That is not the reason that the minister is not

defining “employer unions”, but we have not yet got to the bottom of why he does not want to include them. It is not about definitions, because I have just gone through and explained how the minister can fix this up to cover employer associations.

These words will do what the minister wants. Alternatively, he could do it in the way that I have just outlined and simply leave it as “registered organisations” under each of the paragraphs, and amend only paragraph (d) in the way I am proposing. There are alternatives to the words that I am proposing; for example, paragraph (a). Adding “section 54” is all that needs to be done, and then we will know who they are, because there is a list. The registrar of the WA Industrial Relations Commission has the list. It is that easy. There is no complexity and there are no problems. That, of course, is exactly what will have to be done to work out whether someone is an employee union. The commissioner is going to ask the industrial registrar for the list under section 53. He has two lists. What is the problem? Why does the minister not want the commissioner to look at those two lists? There is no commonsense logical reason to resist this. If the minister simply wanted to remove section 53, that is all he would have to do to fix paragraph (a). If he does not want to include section 54, he should simply remove section 53 and everything will be fixed.

Ms R. SAFFIOTI: I will add some quick words to support the amendments. As the opposition has outlined, it can see no reason why this amendment would not be supported. The Minister for Finance has provided no reason why it should not be supported. Again, it appears that the minister is saying no for the sake of saying no and is not analysing the issue on its merits. Oppositions sometimes put forward amendments that are very, very good, and this is one of them, and good governments and good ministers take those amendments on board. The opposition cannot understand why the amendments will not be accepted. The opposition believes that the amendments will strengthen the legislation. Again, the opposition is disappointed that the minister will not take these amendments on their merits.

Mr D.C. NALDER: I want to add a couple of things, because this was discussed over and over during debate on a couple of other amendments. I am sympathetic to some of the issues the opposition has raised about employers, but the government has some difficulty defining it so that it does not create additional problems and require a lot more work. The government also does not know whether there are similar arrangements under federal industrial relations legislation. That also needs to be considered. However, it is likely that most of these organisations are already excluded from the exemption by reason that they also have as a purpose the promotion of trade, industry or commerce and have activities beyond representing their members for industrial relations purposes. I think we are basically capturing within the legislation the employer groups that the member is talking about. I am sympathetic to the opposition’s suggestions, and the government would be prepared to work further with the opposition on this matter as it travels between the houses, but, as much as we would like to do it, individual names cannot be added. The government is saying that it cannot create uncertainty in the law because of the lack of specificity around it, so the government is not going to support these amendments.

Mr W.J. JOHNSTON: Minister, that is an argument to oppose proposed paragraph (d). I am not asking the minister to specify a name. Do not look at the words that I have written; look at the words that the minister is presenting to the chamber. Paragraph (a) states —

an organisation registered under the *Industrial Relations Act 1979* section 53;

If it did not include the term “section 53”, all employer associations that are registered under the Industrial Relations Act 1979 would automatically be covered. The minister is the one narrowing the field. He keeps saying that we need to be specific. Yes, let us be specific. That is why I have proposed to include “section 54” in the amendment, because there is no doubt and there is not a single person in the entire universe who does not understand what that means. It means exactly what section 53 means. There is no difference between the definition of section 53 by itself or section 53 and section 54. Everybody knows what that means; if they do not, the minister’s words would be incapable of being properly interpreted as well. Simply removing “section 53” would fix the problem. Paragraph (b) states —

an association of employees registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

If “of employees” was taken out, there would not be any issue either, because they are registered; they are set down on a list. There would be no room for interpretation because we would know what it means. It is the same with paragraph (c). I accept that paragraph (d) has created a problem, but that is an argument to eliminate paragraph (d); it is not an argument not to extend paragraph (d) to include employer associations. Even if the government wanted to leave in paragraph (d) without picking up the amendment I am suggesting, none of the arguments that the minister has proposed is relevant to the amendments I am suggesting to paragraph (a), (b) and (c). They are clear amendments. They are not open to interpretation. They refer to specific sections of existing legislation. In the classic behaviour of a Liberal minister, the minister floated the argument that the government does not know what the commonwealth legislation states. If that is the minister’s argument, why is he talking

about it? If it is so unknown to him, why the heck did he put it in the legislation? How ridiculous! The problem is that the minister has been told to do something. He knows it has nothing to do with logic; it is about a decision of cabinet. The government is nearly two years in and finally it gets a chance to shut the door after all the money has run out; \$56 million has been given back. Almost a million dollars a month is going to these aid organisations, bleeding off the taxes that should be used for schools and hospitals in this state, and the minister comes in here and makes ridiculous comments such as, “We don’t know what the commonwealth legislation says.” If he does not know what the commonwealth legislation states, why is the minister referring to it in this bill? How stupid are you, minister, for crying out loud!

Mr D.C. Nalder: I beg your pardon!

Mr W.J. JOHNSTON: How stupid are you, minister? I am asking you a question.

Mr D.C. Nalder: I was referring to the amendment that you were putting up.

Mr W.J. JOHNSTON: My amendment is exactly the same words.

The DEPUTY SPEAKER: Member for Cannington, I think you should watch your language. You should not be using that language in Parliament.

Mr W.J. JOHNSTON: This is a genuine question. The minister’s defence is that he does not know what the Fair Work (Registered Organisations) Act 2009 states. Why is he asking the opposition to refer to it if he does not know what it states? If the minister does not like my amendments, he should just eliminate “of employees” in that first sentence. That would fix the problem and I would have no complaint. But the minister should not come in here and run the rubbish that he does not know what his own legislation states.

Mr D.C. Nalder: Do not try and be self-righteous.

Mr W.J. JOHNSTON: What does it say?

Mr D.C. Nalder: You’re trying to be self-righteous at the moment.

Mr W.J. JOHNSTON: I am not being self-righteous; I am just not being stupid. That is what I am doing. Minister, tell me what is an association of employees registered as an organisation or recognised under the Fair Work (Registered Organisations) Act 2009? Name one organisation that paragraph (b) refers to.

Mr P.B. WATSON: I would like to hear more from the member for Cannington.

Mr W.J. JOHNSTON: Could the minister tell me, because we want to make sure that we are clear on what we are talking about? The minister is the one who says that we need to make sure that we do not make mistakes and get things wrong, so name one organisation that is covered by paragraph (b) of the definition of a trade union. Tell me one organisation that is an association of employees registered as an organisation or recognised under the commonwealth Fair Work (Registered Organisations) Act 2009. Please tell me one.

Mr D.C. Nalder: I don’t have that information here.

Mr W.J. JOHNSTON: Does the minister not know?

Mr D.C. Nalder: No.

Mr W.J. JOHNSTON: Could the minister tell me the name of one organisation that is registered under section 53 of the Industrial Relations Act 1979? Does the minister know any organisation that is registered under that act?

Mr D.C. Nalder: No.

Mr W.J. JOHNSTON: Can the minister tell me the name of one organisation that is an association of employees, registered or recognised as a trade union, however described, under the laws of another state or territory?

Mr D.C. Nalder: No.

Mr W.J. JOHNSTON: Is the minister saying that we should not amend this legislation because we do not know what it will capture, but he cannot tell me what the law will cover? Is the minister telling me that he does not know the name of one organisation that is referred to in these three acts? The minister is saying that he does not want to change the definition because he does not know what it would capture, but he cannot name one organisation covered by these provisions.

Mr D.C. Nalder: The definition of trade unions is generally understood, so it is fairly obvious what we are trying to capture.

Mr W.J. JOHNSTON: Is the minister aware that generally speaking, under the Industrial Relations Act 1979 and the fair work arrangements of the commonwealth, a reference to “registered organisation” means both employer and employee associations?

Mr D.C. Nalder: This clause is focused on employee associations.

Mr W.J. JOHNSTON: The point is that the minister is seeking to capture only employee associations.

Mr D.C. Nalder: No.

Mr W.J. JOHNSTON: If that is the case, what is the reason for this paragraph?

Mr D.C. Nalder: As I said, paragraph (d) picks up organisations that are involved in “trade, industry or commerce”.

Mr W.J. JOHNSTON: Paragraph (d) of this clause reads —

an association of employees a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment;

Mr D.C. Nalder: I was referring to proposed section 42A(d).

Mr W.J. JOHNSTON: I am not talking about that section; I am talking about the definition of a trade union in this clause. What is the reason that, in this provision, the minister wants to change the normal arrangement of industrial relations laws so that employer associations are not bound by the same rules as employee associations? There is no logic in the minister saying that he does not know which section 54 parties are covered.

Mr D.C. Nalder: I have been very clear that this clause covers trade unions, and “employees” is a commonly understood term.

Mr W.J. JOHNSTON: The commonly understood definition is that it is a registered organisation, which is why I keep saying this. The minister cannot have it both ways. If the minister says that the reason he wants this definition is because he wants to cover only employee unions, I get that; and that is the reason the minister needs to change this definition. The opposition disagrees; we want employer unions covered too.

Mr D.C. Nalder: I understand the member’s amendment.

Mr W.J. JOHNSTON: Is the minister going to stand up?

The DEPUTY SPEAKER: Order, minister and member for Cannington! I have given a bit of leeway here, but we need to return to a proper question-and-answer format.

Mr D.C. NALDER: We have debated this issue in previous clauses. I have said that the government is willing to try to work on this in the time between now and this bill going to the other place. However, the definition of “trade union” in this clause specifically focuses on employees. We pick up in other parts of the bill any other body that exists to promote trade, industry or commerce. Those bodies are covered in another part of this bill. This part of the clause covers employees, and the government is comfortable with that. The member has put his amendments forward. The government is happy to continue to work on this between houses, but it feels it has covered this appropriately and the bill will capture only those people who should not receive an exemption from paying payroll tax.

Mr W.J. Johnston: Does the minister know that the Chamber of Commerce and Industry of Western Australia is not a registered organisation under the Industrial Relations Act?

Mr D.C. NALDER: I know that it is there to promote trade, industry or commerce, so it is picked up in another part of the bill. We are exempting that organisation. We are not dealing with that part of the bill, and I am comfortable that this clause covers an area that we do not believe should be exempt from paying payroll tax. It is as clear and as simple as that.

Mr W.J. JOHNSTON: Can the minister tell me how many section 54 organisations are covered by the definition that he previously referred to in proposed section 42A(d), which reads —

a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce ...

I am not aware of any organisation registered under section 54 of the Industrial Relations Act that is covered by the definition at paragraph (d). There could be an association—I suspect this is the case with most section 54 organisations—that does not have the promotion of trade as one of its objectives. The objectives would be focused on the industrial rights of its membership. The problem is that the minister does not know what section 54 parties are or whether any of them are covered by the definition provided at paragraph (d) of the “trade, industry or commerce” provision. We are not talking about organisations that promote trade, industry or commerce; we are talking about employer associations in the same way as we are talking about employee

associations. I hate to point out to the minister that everybody in the industrial relations world—not everybody in the community would know—who goes to the Industrial Relations Commission knows that trade unions include employer associations. That is why the act always refers to a “registered organisation”. In that way, the commission deals with both section 53 and section 54 organisations. The Chamber of Commerce and Industry will not be covered by the amendments that I have proposed to paragraphs (a), (b) and (c) in the definition of “trade union”; and I very much doubt it would be covered by the proposed change at paragraph (d). I have not proposed a change to the definition of those organisations that promote trade, industry and commerce. I am simply trying to include in the bill the same set of definitions for employer associations as for employee associations. The idea that somehow my amendments will capture organisations by accident, given that the minister does not know and cannot tell me one organisation that is covered by the definition of “trade union”, proves the emptiness of his argument. If the minister is saying that he will fix this between the houses, he has to stand up here today and give me a commitment that he is trying to solve the problem, instead of trying to paper over it and ignore it. The minister cannot behave like this.

Mr D.C. Nalder: This is your amendment; you name one organisation.

Mr W.J. JOHNSTON: The Shop, Distributive and Allied Employees Association of WA is a section 53 organisation.

Mr D.C. Nalder: You are asking me to respond and provide names on your amendment.

Mr W.J. JOHNSTON: I am asking the minister to tell me one organisation that is covered by paragraph (a) of this clause.

Mr D.C. Nalder: You just gave one.

Mr W.J. JOHNSTON: What was it?

Mr D.C. Nalder: The shop distributors and allied employees union—isn't that what you just said?

Mr W.J. JOHNSTON: No. Can the minister tell me one union covered by this provision?

Mr D.C. Nalder: I am not going to get into this debate.

Mr W.J. JOHNSTON: That is the problem. The minister has already told us that he does not know the name of one organisation that is covered by any part of these four paragraphs.

Mr D.C. Nalder: I don't have that information.

Mr W.J. JOHNSTON: That is right; the minister does not know, yet he is arguing that we cannot include section 54 because it could cover bodies that he does not know about. Guess what? The minister is covering bodies he does not know about. That is a ridiculous argument. The minister needs to use a bit of logic in what he is doing here. The fact that the minister will not get up and speak on this amendment is condemnation enough. The minister does not know what he is doing. The only thing the minister is here to do is what he has been told by cabinet. Cabinet said, “Get this done!” That is what the minister is here for. The fact that the minister has been told to do something that is unreasonable and unfair does not trouble him. It troubles me; it troubles the Labor Party and it troubles decent people in the state. If the minister wants to cover trade unions, he should cover all trade unions and not just some of them. The minister does not know what he is doing with this clause and he should not continue with that behaviour. All the minister needs to do is delete the words “section 53” and insert “sections 53 and 54” in the Industrial Relations Act 1979, and delete the words “of employees” in paragraphs (b) and (c). I will not even ask the minister to change paragraph (d), as I would be happy if he does everything else. The minister said he did not know what bodies would be captured.

Ms R. SAFFIOTI: I am interested in what the member for Cannington says and I would like him to continue.

Mr W.J. JOHNSTON: If the minister is saying that we might capture somebody we do not know with these amendments, we would capture only registered organisations. They are on a list and the list is publicly available. There would never be any confusion because we could just go to the registrar and get the list, and if their name were on that list and they had applied for the exemption, they would not be allowed to get it. It is that simple. It is exactly the same process that would be used for employer organisations. And guess what? The Chamber of Commerce and Industry of Western Australia still would not be covered.

Ms R. SAFFIOTI: Again, in relation to the amendments, I find it incredible that the minister cannot give us examples of trade unions covered under paragraphs (a), (b), (c) and (d) of clause 16. He seems to be getting a bit angry and irritated, but the questions asked by the member for Cannington were not extraordinary. Frankly, given that the minister has brought in legislation to deal with trade unions—I admit that I am not an expert in this field; it is not my background—and he is debating people in the Labor Party such as the member for Cannington, who has a long history in the union movement and a deep knowledge of the relevant legislation, I would have thought that he would be a bit better prepared. I suspect that if we were in his shoes and we brought in legislation

that treated the CCI in one way and unions in a different way, we would probably be up to scratch on the CCI and all the issues related to it. I cannot believe that the minister did not try to get to the bottom of this issue, particularly as we have put it on the agenda day after day after day. The minister has had time to get a proper briefing. His advisers might not have the information now, but it is up to the minister to do that; it is his legislation. The member for Cannington, the member for Mirrabooka and I have raised this issue time and again. For the minister to not be able to justify adding employee organisations and not outline —

The DEPUTY SPEAKER: Member for West Swan, are you getting to asking a question of the minister?

Ms R. SAFFIOTI: I am speaking to the amendments. It is ridiculous for the minister to not be able to justify rejecting the member for Cannington's amendments. As I have said, this issue has been on the table since last Tuesday, as I recall. The minister has not been properly briefed and does not fully understand the implications of what he is doing. I still do not think the minister believes that this legislation treats unions differently from the way it treats the CCI. I still think the minister has not got to that point. Is that the member for Cannington's understanding?

Mr W.J. Johnston: That's exactly right.

Ms R. SAFFIOTI: I think he still does not believe that this legislation treats trade unions in one way and other bodies such as the CCI in another way. That has been the whole point of this. I know that the minister did not initiate this legislation, but it was initiated by cabinet and his predecessors. Frankly, the further we have delved into this legislation, the more questions and concerns that we on this side have raised. I believe that the minister is carrying out certain directions that were given initially, but he should have been across the issue in this chamber so that when we ask basic questions, he can answer them. Frankly, ministers should do their research. If the Minister for Finance wants to talk about trade unions, and some members on this side are ready to have a debate with him about that issue, he should be across it. I am sure that if I were in his shoes and I brought in some banking legislation, he would be across it. The Minister for Finance should be prepared, particularly when he brings in legislation to single out trade unions in relation to other bodies such as the CCI.

Division

Amendments put and a division taken, the Deputy Speaker casting her vote with the noes, with the following result —

Ayes (16)

Ms L.L. Baker	Ms J.M. Freeman	Ms S.F. McGurk	Ms R. Saffioti
Dr A.D. Buti	Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire
Mr R.H. Cook	Mr F.M. Logan	Mr P. Papalia	Mr P.C. Tinley
Ms J. Farrer	Mr M. McGowan	Ms M.M. Quirk	Mr D.A. Templeman (<i>Teller</i>)

Noes (33)

Mr P. Abetz	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mr B.J. Grylls	Mr J.E. McGrath	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hutton	Ms A.R. Mitchell	Mr A. Krsticevic (<i>Teller</i>)
Mr V.A. Catania	Mr A.P. Jacob	Mr N.W. Morton	
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	
Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder	

Pairs

Mr D.J. Kelly	Mrs L.M. Harvey
Mr B.S. Wyatt	Mr M.J. Cowper
Mrs M.H. Roberts	Mr J.M. Francis
Mr J.R. Quigley	Mr T.R. Buswell

Amendments thus negated.

Mr W.J. JOHNSTON: Now that we are dealing with the minister's words and not mine, can he provide a list of organisations covered by proposed section 96A(a), (b), (c) and (d) of his legislation?

Ms R. SAFFIOTI: I was going to ask about political parties, if that is okay.

Mr W.J. Johnston: Yes.

Ms R. SAFFIOTI: This issue was raised earlier in the debate about whether the definition could be amended to include terms of associated entities. As I recall, the minister was going to seek further advice on that issue. I wonder whether the minister has sought that extra advice and can provide the house with that information.

Mr D.C. NALDER: The amendments sought by the member for Cannington earlier, addressed in a generic provision are proposed sections 96A(f) of the Duties Act, 38AA (f) of the Land Tax Assessment Act and 42A(f) of the Pay-roll Tax Assessment Act. Those amendments seek to provide that anyone who is a member of the same payroll tax group of which a political party, trade union, professional association, a fourth-limb charity or prescribed body is a member or is a related body as defined in the Corporations Act to a political party, trade union, professional association, a fourth-limb charity or a prescribed body or has its sole or dominant purpose or objective, the conferral of a benefit, whether financial or non-financial on a political party, trade union, professional association, a fourth-limb charity or a prescribed body is also an excluded body and not eligible for the exemption. Members will note that proposed paragraph (f) in each of these proposed sections is referenced to other categories of excluded bodies referred to in those sections to create the relationship. The payroll tax grouping provisions operate to group business in multiple ways, including controlling interests in the shareholding or directorships of corporations, interests in trusts, partnerships and common use of employees. A related body as defined in the Corporations Act also has wide application, including controlling interests in incorporations and associations. The amendment suggested by the member for Cannington is considered unnecessary and would lead to inconsistency insofar as the avoidance opportunity he refers to equally applies to trade unions, professional associations, fourth-limb charities and prescribed bodies. Hence the purpose of paragraph (f) in each proposed section. It is not as easy as the member for Cannington suggests in simply inserting the term “associated entity”. That term needs to be defined to give it meaning. In this respect proposed subparagraphs (i) and (ii) of paragraph (f) are linked to the grouping provisions in the Pay-roll Tax Assessment Act, and a related body is a defined term linked to the Corporations Act. We firmly believe that the provisions operate in a manner that addresses the member for Cannington’s concern. Furthermore, it is the most efficient way to deal with a matter that would otherwise require an amendment to each other category of excluded body and a separate definition of an associated entity.

Mr W.J. JOHNSTON: Thank you very much, I did not even seek the call and I got it. That is very kind of you, Deputy Speaker.

I wonder whether the minister can tell me what procedures will be used by the Commissioner of State Revenue to ascertain whether an organisation is registered under section 53 of the Industrial Relations Act 1979. What procedure will be used by the commissioner to ascertain whether an association of employees is registered as an organisation or recognised under the Fair Work (Registered Organisation) Act 2009? What procedure will the commissioner use to ascertain whether an organisation is an association of employees registered or recognised as a trade union however described under the laws of another state or territory?

Mr D.C. NALDER: The starting position will be an organisation being recognised as a trade union, but the commissioner would need to look at the constitution of the organisation.

Mr W.J. JOHNSTON: I asked how the commissioner would find out whether they are registered.

Mr D.C. NALDER: An organisation seeking to be considered as a charity will make an application. When the commissioner looks at it, if an organisation is recognised as an identifiable trade union, that will be the starting point. Beyond that the commissioner will need to consider the constitution of the organisation and its registration processes.

Mr W.J. JOHNSTON: What physical task will he do to ascertain whether it is a section 53 organisation?

Mr D.C. NALDER: That will be specified on the application forms the organisation gives to the commissioner.

Mr W.J. JOHNSTON: Will it ask that?

Mr D.C. NALDER: An organisation will make an application in the first instance. If it is a trade union, it will not be exempt, so I am not sure.

Mr W.J. JOHNSTON: The minister seemed to get confused about my question, so I will ask it again and will narrow it down to proposed paragraph (a). What mechanism will the Commissioner of State Revenue use to ascertain whether an organisation that applies for an exemption is in fact an organisation registered under section 53 of the Industrial Relations Act 1979? What process will be used by the Industrial Relations Commissioner to ascertain that information; for example, will the organisation consult with the registrar of the Industrial Relations Commission?

Mr D.C. NALDER: That is possible, but I think if it is a trade union, it will not be able to proceed any further, so if it gets beyond whether it is debatable whether it is or is not a trade union, it will potentially consult the other areas the member described.

Mr W.J. JOHNSTON: An organisation will consult with outside organisations, as may well be appropriate—I have no problems with that—to ascertain whether they are registered under section 53 of the Industrial Relations Act.

Mr D.C. NALDER: The Commissioner of State Revenue has the powers to ask anyone for any information ascertaining to those situations. He has the ability to go anywhere to seek the appropriate information.

Mr W.J. JOHNSTON: Absolutely; thank you very much. I make the point that that is exactly what we were proposing and Parliament has rejected it. I was suggesting exactly the same procedure. When we get back to clauses 4 and 11, I might make that observation. Does the minister understand that we are focused on these two provisions—political parties, which we want to make sure is as broad as possible, and trade unions, which we also want to make sure is as broad as possible—because those two classes of organisations are different from professional associations and organisations designed to promote trade, industry or commerce? Does the minister realise that notwithstanding that an organisation is a professional association, the minister will retain the power to grant an exemption to an organisation that is a professional association? Does he understand that he will also retain the ability to give an exemption to an organisation that promotes trade, industry or commerce but he will not have the power to grant an exemption to a political party or a trade union? Although these two organisations are being defined in this glossary, they are being treated differently in the legislation. There is a special class for professional associations and organisations that promote trade, industry or commerce and he will treat them preferentially over trade unions and political parties. We want all organisations under the legislation to be treated equally.

Does the minister understand that that is fundamentally the problem here? We want everybody to be denied access and the minister is reserving the right to grant access to professional associations and organisations that promote trade, industry or commerce and our argument is that that should not be available—none of these organisations should be able to get through the gate.

Mr D.C. NALDER: We have tried to explain about the definition of “employer” and we have tried to be as concise as possible to knock out those entities that should not have access. We have no intention of the Chamber of Commerce and Industry of Western Australia achieving exemption to this, and I have said this over and over again. The problem is that the definition is so broad that we do not want to capture and totally rule out something that might have unintended consequences. That is why we have left it in, so we can review this situation. If it has to come through to the minister, he has to seek the concurrence of the Treasurer, it needs to meet the public interest test and it needs to be published in the *Government Gazette*. We have put those processes in the legislation to give it transparency. I think the processes are fair and reasonable, but it is about when there are potentially unintended consequences. This provision should not be used that often; it should be quite rare, so we are quite comfortable that, in the circumstances, it is appropriate. I understand the concerns the member raises, but we have no intention of the CCI or any of those organisations being exempted. It will be public; it will be in the *Government Gazette* and I will be up for public scrutiny if I support any organisation such as that that seeks an exemption.

Dr A.D. BUTI: As the minister knows, there is a difference between his verbal intention and what the legislation states. It is fine for the minister to give the commitment that he has no intention while he is minister, but, of course, he will not always be the minister responsible for this legislation. The minister says that he will be up for scrutiny and any minister will be up for scrutiny, but they have not made that verbal commitment that this minister just made; they will not be as accountable in that respect. If it is to be ensured that something does not happen, it should be put into legislation. The member for Cannington said that he wants all these bodies treated equally. I am sure the minister fully appreciates and is well aware of the issue of law and how it is set by society and treated among society through its various members. If all these bodies are not treated equally, the minister will be accused of favouring certain groups, institutions et cetera. It is still difficult to understand why the certain relevant bodies have been prescribed, but not the CCI, which was a really big catalyst for this legislation. Yesterday the minister cited a newspaper article published in *The Age*. From my understanding that *Age* article was from last week, so, of course, it could not have been the basis of the drawing up of the legislation. Was the article published last week?

Mr D.C. Nalder: No, in January.

Dr A.D. BUTI: It was published in January. Was that the basis for this?

Mr D.C. Nalder: No.

Dr A.D. BUTI: It just provides some support, I understand.

It still seems strange after what we heard from the members for West Swan and Cannington, which seemed to be quite reasonable. They are not advocating for trade unions to be exempted; they are saying not to exempt trade unions, but that the CCI should also not be exempted. If it is found later on that there is some unforeseen circumstance, bring back amending legislation; that happens all the time.

Mr D.C. Nalder: Were you here when we described the fact that there are regulations and that if some bodies get through the cracks, we have a regulation to deal with them and the flexibility to put in regulations to stop them getting through?

Mr W.J. Johnston: We are worried about the opposite. We are worried about them being let through because of the definitions you have provided.

Dr A.D. BUTI: Yes. The fact is that there are regulations, but the minister knows that the regulations do not have the same degree of parliamentary scrutiny as the piece of legislation. The fact is that the minister has seen fit to exclude trade unions, but he has not seen fit to exclude certain other bodies such as the CCI. I know the minister probably thinks this debate has been going around and around, and it probably has, but the arguments made by my colleagues seem to be reasonable and consistent with equality and assume that everyone is treated fairly and equally under the law.

Question to be Put

Dr K.D. HAMES: I move —

That the question be now put.

Division

Question put and a division taken, the Deputy Speaker casting her vote with the ayes, with the following result —

Ayes (31)

Mr P. Abetz	Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder
Mr F.A. Alban	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr M.H. Taylor
Mr G.M. Castrilli	Mr C.D. Hatton	Ms A.R. Mitchell	Mr T.K. Waldron
Mr V.A. Catania	Mr A.P. Jacob	Mr N.W. Morton	Mr A. Krsticevic (<i>Teller</i>)
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	

Noes (17)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr D.A. Templeman (<i>Teller</i>)
Mr R.H. Cook	Mr M. McGowan	Ms R. Saffioti	
Ms J. Farrer	Ms S.F. McGurk	Mr C.J. Tallentire	
Ms J.M. Freeman	Mr M.P. Murray	Mr P.C. Tinley	

Pairs

Mrs L.M. Harvey	Mr D.J. Kelly
Mr M.J. Cowper	Mr B.S. Wyatt
Mr J.M. Francis	Mrs M.H. Roberts
Mr T.R. Buswell	Mr J.R. Quigley

Question thus passed.

Consideration in Detail Resumed

Clause put and passed.

Clause 17 put and passed.

Clause 18: Sections 34A and 34B inserted —

Mr W.J. JOHNSTON: I just want to confirm with the minister that under these provisions we are providing to him in clause 18, notwithstanding that a body is covered by the definitions and on the surface is excluded from being given a fourth-limb recognition, and that such an organisation has applied for fourth-limb approval and been rejected, as long as they are not a political party or a trade union, the minister can then grant the organisation the fourth-limb benefits so they are exempt from the operation of the Taxation Administration Act.

Mr D.C. NALDER: Yes, I can exempt them. If that is the question, yes.

Mr W.J. JOHNSTON: Why is it that the minister believes that a body whose principal activity is as a professional association or its principal duty is to promote trade, industry or commerce should be given an exemption from these arrangements or could the minister give me examples?

Mr D.C. NALDER: That question is irrelevant to these clauses; it has been discussed in previous clauses.

Mr W.J. JOHNSTON: I am not quite sure why the minister says that the question is irrelevant. He is the one who is asking us to support this clause. I am unaware of whether he has even been asked the same question about the different taxation rules, but I am asking the minister under this particular provision, whether he can give me examples of situations in which a body that is a professional association or is designed to promote trade, industry or commerce should, nonetheless, be granted an exemption. He is the one who is asking for this power to provide exemptions for organisations, because I asked him and he described it. The organisation applies for an exemption and is refused that exemption by the independent Commissioner of State Revenue; nonetheless, it makes an application to the minister, and notwithstanding that it is ruled out by the normal words in the legislation, he is providing this special power to give an exemption. So what I am asking is: can the minister give me an example, or more than one example, of an organisation that is a professional association or an organisation that is designed to promote trade, industry or commerce but is worthy of these tax concessions?

Mr D.C. NALDER: Clause 18 is to do with the inability to object and when a determination is final, so I do not think it has a lot to do with the question. However, I did provide some public interest test factors in the past, which sort of described what we would be looking for and thinking about. To give a hypothetical response to the question to try to progress this matter, it could be a doctors' association that performs free medical treatments. That would be an example of an organisation that we may consider worthwhile exempting for that aspect.

Mr W.J. JOHNSTON: So to use the minister's example, he is saying that when a body is a professional association, but it pursues a charitable goal, and notwithstanding that he would ordinarily not allow an exemption, because the association has now created a charitable goal, that would be an example of when he would give an exemption. I think we all agree that education is important and something we should all support. Would an organisation that promotes trade, industry or commerce that has a goal to also provide, for example, free or low-cost training or other arrangements with training be an example, in his view, of when he would use the powers that he is asking for in this provision?

Mr D.C. NALDER: We covered all the aspects around the education and subsets of the Chamber of Commerce and Industry yesterday, so I do not think we need to go over this ground again. Clause 18 is to do with beneficial body determinations and the surrender of rights to objection or review, so we have covered those aspects in previous clauses.

Mr W.J. JOHNSTON: But the surrender of rights to objection or review is when organisations intend to make an application to the minister. That is why we are raising it with him. If they are otherwise covered by the rules, it is not an issue. This is when this special arrangement—notwithstanding these are relevant bodies that the minister is defining in the glossary—provides them the opportunity for exemption. I want to know what we are contemplating by doing that. Given that the minister is asking for this change, I would appreciate knowing some examples. He has given me one. I have asked him questions about other examples; he would not answer. Is that education objective something that the minister would consider sufficient to warrant the legislation that he is supporting?

Mr D.C. NALDER: I do not think I need to talk about hypotheticals here. The member's views on these issues are noted, but I will still talk about what this clause is about. We have discussed in the past the applications that are made by particular bodies. Now that we are getting to the other end of the process, the member for Cannington keeps going back to the application. I note his views, but I am satisfied with the government's position and not convinced by the member's arguments that need me to respond any further.

Clause put and passed.

Clause 19: Section 34 amended —

Mr W.J. JOHNSTON: I wonder whether the minister could just tell us what the context of clause 19 is. The proposed paragraphs state —

Extract from *Hansard*

[ASSEMBLY — Wednesday, 20 August 2014]

p5608c-5624a

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Dr Tony Buti; Dr Kim Hames

- (cb) a decision to make, or not to make, or to revoke or amend, a beneficial body determination;
- (cc) a decision which, under section 34B(2)(a), is not subject to objection under this Act;

What will be the effect of the proposed paragraphs on section 34?

Mr D.C. NALDER: This will just make sure that my determination is not subject to any further review.

Mr W.J. JOHNSTON: So we are excluding from review decisions made by the minister through a process of us not knowing what the procedures are that lead to his review. The minister says that he will publish his reasons, but he is not providing an obligation to publish his reasons disclosing the manner in which he receives such submissions. The minister is asking us to give him this unfettered right to make decisions that are not subject to review, are in secret, are in a manner we do not know about and use information we do not know the sources of, and that such decisions will be then beyond reproach. Is that what the minister is asking us to do?

Mr D.C. NALDER: What I am saying is that they cannot object to any decision that I make. That is proposed paragraph (cb). Proposed paragraph (cc) is to do with the applicants surrendering their rights to object to a decision.

Clause put and passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 5633.]