

CHARITABLE TRUSTS AMENDMENT BILL 2010

Second Reading

Resumed from 23 February.

MR W.J. JOHNSTON (Cannington) [3.31 pm]: I am not the lead speaker for the opposition; I was not sure whether the lead speaker had spoken yet. The lead speaker, of course, is the high-quality member for Mindarie. We all know about the superb contribution he makes to Parliament, and we are all very excited about the contribution he is about to make. In the 60 seconds I will allow myself on the Charitable Trusts Amendment Bill 2010 I make the point that this legislation will allow a range of vehicles to be provided for charitable donations in accordance with federal taxation legislation. A problem we have in Western Australia is that although we have a very high level of income, we have a low level of philanthropic activity in comparison with other states. The Committee for Perth has a paper on this topic on its website, and I encourage members to read it. It marks out by metropolitan region the charitable rates of contribution, and it is quite an interesting observation to make that it is not always the most wealthy areas in the state that are the most generous. Given that it is divided into local government areas, I was very pleased to see that in my community the City of Canning, not all of which is in my electorate, is one of the reasonably generous areas. It is also interesting to think about the importance of contributions to charities, including those related to homelessness, which is a very important issue that is very dear to my heart. It is an area of charitable activity that this state needs to pay proper and decent respect to. The issue of homelessness was today highlighted by a number of homeless people from the City of Perth area who came to Parliament House, and I was pleased to go out and talk to some of them at the end of question time. These are important issues and we should not make light of them; those who choose to do that are condemned by what comes out of their own mouths. With those few words, I commend the bill to the house.

MR B.S. WYATT (Victoria Park) [3.34 pm]: I am not the lead speaker, either; I will spend a couple of minutes on the Charitable Trusts Amendment Bill 2010, which the opposition will support.

The second reading speech outlines quite concisely the purposes of the bill, one of which is to amend the Charitable Trusts Act to make charitable giving easier for the community. The second reading speech states —

The entire Australian philanthropic sector made up of more than 1 200 trusts and foundations is estimated to distribute up to \$500 million a year to charities.

There has lately been some talk about the fact that Western Australians in particular, but Australians generally, give less in charity than the international average, which is interesting. Western Australia is a wealthy state that has very wealthy individuals and, by and large, high average incomes, and we know that the Perth consumer price index is high, driven by a surging economy, yet on a comparative basis with other states, our philanthropic giving is low, as is Australia's on a per capita comparison with other developed nations around the world. That is something of a concern, bearing in mind that this government has said that it intends to put more of what has traditionally been the state government's responsibility on the shoulders of the non-government organisation sector—namely, the areas that traditionally rely, to a certain extent, on charitable giving. As a result, our laws that encourage and support giving—mainly at the federal level, but certainly, in the case of this bill, at the state level—ensure that people and organisations that give are rewarded as such, not only in terms of the good outcome that they receive by generously donating their money, but also by the fact that there are, of course, taxation benefits to giving. The second reading speech outlines the deductible gift recipient status of various organisations.

In Western Australia we have an increasing number of people wanting to access services due to homelessness, and people are falling further and further through the cracks due to surging fees, charges and other government imposts. As every member of Parliament knows, one of the key roles we play is to represent the individuals who have fallen through the government cracks in our community. As I often say, government in Australia—state or federal—is very good at dealing with the people as a large group, but it is very poor at dealing with individuals, and certainly those individuals who have to call on the generosity of charities or who call on the largesse or generosity of governments to help them in various very trying and very difficult situations. This is a brief contribution, but I make the point that although, of course, the opposition will support this bill because it serves a good purpose, we note that by and large we are a rich state in a rich country, yet many people rely on charities and the generosity of others and the philanthropic sector to get through life in a way that the rest of us simply take for granted.

With those few words, I conclude my comments and emphasise the point that the opposition will indeed be supporting this bill.

MR J.R. QUIGLEY (Mindarie) [3.39 pm]: It is with great pleasure that I rise as the shadow Attorney General to formally give the opposition's support to this important piece of legislation. The Charitable Trusts

Amendment Bill 2010 will amend the Charitable Trusts Act in several important ways that will promote philanthropy in Western Australia. When I was a teenager back in the 1960s, one would hear the word “philanthropy” or read of it in the newspaper but usually by reference to America, because there was and still is a great tradition of philanthropy in America. Many of the great universities over there are the beneficiaries of such generous giving. In Australia, in the 1960s and 1970s charities were supported more by government and by public raffles. We used to have the charities commission, which is now the Lotteries Commission. Every week we used to have the two and sixpence lottery in the newspaper. The Acting Speaker (Ms A.R. Mitchell) is probably too young to remember it—she is not old like me—but we used to have a two and sixpence lottery with a \$3 000 prize to generate money for charitable purposes. Over time, however—I am going back 20 years—a culture of philanthropy has been slow in developing in Western Australia. I would not like my following remarks to exclude from credit all of those business people and organisations that have given so much to charitable causes—and they are many. They are often the richer of our community. They are not the only givers. A person on a pension who gives \$100 to Telethon might be seen to be proportionally giving more of their annual income than someone who has inestimable wealth and gives \$1 000 to Telethon.

The research programs and other charitable causes in this great state of ours really need a considerable amount of money. It is often spent in areas that are neither high profile nor, if I can use colloquial language, sexy in that it will attract immediate accolades to the giver. The philanthropist’s purpose of course is not to seek recognition, but to genuinely promote within our community those areas that support our community in very many ways.

I had the pleasure of attending the last Telethon dinner at Burswood; I think the honourable member for Vasse was present, and I know the Premier was. I had the pleasure of blowing the froth off a couple with the host, Mr Stokes, and his good friend Mr “Twiggy” Forrest. I came to learn—not that they were promoting themselves to me, but we were talking about different areas of need in the community—of their philanthropy and what drives their philanthropy, and it is most admirable. It is not that they are just givers; it is the example that their giving sets for others. This has a snowballing effect in the community. Before meeting these two great charitable givers, my personal experience of philanthropy had been with a friend, whom I shall not claim as a close friend, but nonetheless a precious friend. He is our Governor-designate, Mr Malcolm McCusker, AO, QC.

Mr T.R. Buswell: He was here today.

Mr J.R. QUIGLEY: Was he?

Mr T.R. Buswell: Yes, he was at the function we had with the Salvation Army.

Mr J.R. QUIGLEY: There we are: wherever there are people in need, Mr McCusker, AO, QC, will not be found far from the drop of the ball. He was preceded of course by his late father, Sir James, who started off as a Commonwealth Bank manager. He ultimately founded Town and Country Building Society, together with his son Malcolm McCusker, AO, QC, who was then a partner at the law firm that I was at, Kott Gunning. He started up his own firm—McCusker and Harmer, I think it was called in those days. Right from the early days of father and son entering into business, before the ANZ bank took over Town and Country and more money came into their family organisation, they were charitable givers.

Mr T.R. Buswell: Member, you might note for the record of the house that the Governor-designate has indicated that his Governor’s salary will pass straight through to a number of charities.

Mr J.R. QUIGLEY: I thank the honourable member. I read that in the newspaper on the publication of his appointment. That is just another example. Other people in the community, when they are appointed to these positions, may think, “Hang on; if Mr McCusker can do that, then I can contribute something.”

Mr T.R. Buswell: Has he inspired you to make a similar gesture?

Mr J.R. QUIGLEY: He has, but I have to do mine in kind and not in money, honourable member, so I try to give —

Mr T.R. Buswell: You give of yourself.

Mr J.R. QUIGLEY: I give of myself; otherwise, I would have sell my foot and then donate the money.

He is inspirational. I am sure that many business people in Western Australia would have read that story and been struck by the Governor-designate’s generosity and have thought, “What contribution can I make?” Therefore, the ball starts rolling.

What was a remote rather than an alien concept back in the 1960s is now gathering pace at speed. It was Sir James and his son Malcolm McCusker, AO, QC, Governor-designate, who inaugurated the Lady McCusker Home for people with Alzheimer’s who need rest and respite. In later times, I know that Sir James and his son Malcolm met a young professor, Ralph Martins. Professor Martins at that stage was making some early studies

into the causes of Alzheimer's. When the McCusker family found out how Professor Martins was struggling for research funds in those early days, they set about raising funds to pay for research staff wages. The McCusker Foundation for Alzheimer's Disease Research got going, and I was delighted to be invited to a function on Tuesday evening, attended by Professor Martins, at which he spoke of the world-leading research into Alzheimer's disease. He was saying how now we all hear about beta amyloids building up in the brain and killing air in the brain. Twenty years ago no-one had even heard the term, but they have now been able, through the Alzheimer's research, to locate the cause. They have come up with some treatment modalities, or at least some treatments that will arrest its development. Indeed, Professor Martins spoke at the function about the usefulness and utility in taking certain antioxidants that will protect the brain against this terrible disease, and about the work done by the Alzheimer's research unit in Western Australia on the use of testosterone to start to wind back a little bit the advancing disease. From around the world—the United Kingdom, the United States—and certainly other universities in Western Australia, people turn to Professor Martins in Perth to find out the latest research and how the medical profession can attack this most debilitating of diseases. All of this goodness, all of this benefit to the community, started with the charitable giving of the McCuskers back in 1988 to support Professor Martins. That has grown into something much bigger now and, of course, Tonya McCusker, the wife of Mr Malcolm McCusker, AO, QC, is also a trustee of the McCusker Alzheimer's Research Foundation. Interestingly enough, Hon Dr Judy Edwards, who for many years sat in this chamber as a minister, since leaving is now the chief executive officer of that charitable trust. I had the opportunity of speaking to her and her barrister partner the other night, and they spoke of the wonderful fulfilment they have got—particularly Dr Edwards—in working for this charitable trust that is tackling Alzheimer's disease. We see this growth of philanthropy in Western Australia, which could not come at a better time. I hearken to the Premier's caution that this is not a boom, but we have the healthiest economy in the world! If there were ever an economy that should spawn philanthropists, it is the Western Australian economy in the first half of the twenty-first century.

What does this laudable bill brought in by the government seek to do? Under the old Charitable Trusts Act 1962, there was a limited class of organisations to whom charitable trusts could make donations. The Charitable Trusts Amendment Bill 2010 brought in by the Barnett government seeks to insert section 22A into the Charitable Trusts Act, which will set out a new definition of recipients. I would like to pause and read that definition, if I may, Madam Acting Speaker (Ms A.R. Mitchell), because it is now no longer confined to what is defined under the commonwealth legislation as restricted charitable purposes. That is because it might be seen that a medical research fund might not be charitable; it might be for a very worthwhile purpose without fitting into the original definition. The Barnett government's Charitable Trusts Amendment Bill 2010 extends that definition. It reads —

eligible recipient means a deductible gift recipient within the meaning of that term in the *Income Tax Assessment Act* —

I will pause and interpolate there. Immediately, the bill is incorporating within the range of eligible recipients any of those organisations that we can make a donation to and claim a tax deduction for. In that way, charitable trusts will now be able to disburse their funds to those sorts of recipients and not be limited to just charitable trusts. The definition goes on —

... whether or not the deductible gift recipient is a charity at law or ... is established for a charitable purpose or purposes;

There we have the kernel of the bill. It does not matter whether it is for a charitable trust established for that purpose; as long as it is an organisation, a gift to which would constitute a tax deduction, then the charitable trust can now disburse those funds to that organisation. The definition makes it perfectly clear, by unusually including in the definitional clause, that the effect of this definition is that a body can be eligible to receive a gift which will be deductible even though it is not a body normally recognised as charitable, provided it is listed as a deductible gift recipient in income tax law. This broadens in the most laudable and fantastic way the class of recipients that charitable trusts now can donate funds—this is a subject I have a particular interest in—to cancer research, and that a charitable trust now will be able to disburse money to art galleries if those art galleries fall within those forms of art galleries in respect of which deductions are available; that is, they are not private. I am not going to attempt in the constraints of this speech to go through the Income Tax Assessment Act definition and subsequent rulings as to what are eligible recipients, but they are all going to be included in this bill.

The next very important thing is that the bill defines what is a prescribed trust. It is defined to mean either a fund referred to in item 2 of the table of section 31–15 of the Income Tax Assessment Act, or a trust created and maintained for a charitable purpose or for a philanthropic purpose, and is of a class prescribed by regulations. Once again, the Barnett government has sought to broaden the definition of a charitable trust, having already broadened in a most laudable fashion the groups of organisations that can be the beneficiaries of philanthropy.

Not only has this legislation been brought in by the government at the very best of times—that is, when our economy is strong, and when philanthropy is starting to gather pace in our community in this strong economy as

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something that businessmen and wealthy people want to become involved in and associated with—it is also serendipitous. The Premier might even take the time to attend Executive Council for the sign-off on this bill because hopefully, by that time, Western Australia's best-known philanthropist, Mr Malcolm McCusker, AO, QC, Governor-designate, will have received his commission, and there could be nothing more appropriate than Western Australia's foremost philanthropist being attended upon by the honourable Premier of Western Australia, whose government is responsible for this laudable piece of legislation, and to have the foremost philanthropist in Western Australia, Mr McCusker, sign the bill into law as the Governor of Western Australia. It has all these wonderful serendipitous collisions.

In conclusion, should there be any accountants, businessmen, lawyers or others in the community who come to read this speech in the future, I hope that they take the lead of the philanthropists that are getting to the fore and donating in Western Australia to the institutions in Western Australia that are so in need of private support. For those reasons, the Western Australian opposition fully supports this bill and commends it to the chamber.

DR A.D. BUTI (Armadale) [3.59 pm]: I rise to add a few comments to those of the other speakers on the Charitable Trusts Amendment Bill. As the member for Mindarie says, we fully support the bill. It was interesting to listen to the member for Mindarie. I think he has been invited to more functions than have the all the opposition members together; he seems to have been to a function every night.

The charitable trust has a long history in the common law. It started many centuries ago in the Court of Equity in the United Kingdom, in the famous Bishop of Durham case. From that case it came down to four classifications of what could be a charity: an organisation for the relief of poverty, for the advancement of education, for the advancement of religion, or for some other purpose that is beneficial to the community. It also had to pass the additional test of being for a public purpose; that is, it could not be for a secret purpose and funds could not go to a private company. That would break the public purpose nexus that is required. While that created a broad range of activities that could be classified as charity, it left a weakness or vacuum in the scope because, as indicated by the member for Mindarie and other speakers before him, many worthwhile institutions or organisations are not classified as a charity under the common law and, therefore, do not derive the benefits that are available from being classified as a charity. In the end, in Australia, whether something will result in tax relief or be classified as a charitable trust or a charitable purpose or as certain private ancillary funds and other ancillary funds will come down to the Income Tax Assessment Act 1997.

There is the common law of charity, which comes from the Court of Chancery, the equity jurisdiction, which classifies the four heads of charity. That deals with the common law but, of course, legislation has then imposed other charitable bodies that receive a tax concession under the Income Tax Assessment Act. This legislation seeks to allow a number of Western Australian bodies to also be classified and achieve the tax relief that bodies can attain by donating to a so-called charitable organisation. That is laudable. We should be encouraging the citizens of Western Australia to donate to various bodies that have a public purpose. However, we must consider a flip side because, of course, every tax relief imposes a burden on the total taxation population of Australia because it reduces the tax income. Yes, we are encouraging—I think it would be silly not to—the donation of gifts to organisations that we consider to be beneficial to the Western Australian community, but we must also understand that there is always another side to that. That other side is the decrease in the total taxable pool which is received by the commonwealth government and some of which, hopefully, filters its way across the rabbit-proof fence.

As was said by the member for Mindarie, the lead speaker for the opposition, this is a laudable piece of legislation and probably long overdue because, in academic circles, there has been much written about the weakness of the four heads of charity under the Court of Equity determined by the Bishop of Durham case. Let us proceed with this legislation. The sooner it is operative, the sooner it will be beneficial to the state of Western Australia.

MR R.F. JOHNSON (Hillarys — Leader of the House) [4.04 pm] — in reply: On behalf of the Attorney General, I thank members in the chamber who have made very valuable contributions to this very important legislation for their support. The Attorney General will be delighted to know that this legislation will pass this house today and will be able to help those charitable organisations that need so much.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to the third reading.

Third Reading

Bill read a third time, on motion by **Mr R.F. Johnson (Leader of the House)** on behalf of the Attorney General, and transmitted to the Council.

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