

TAXATION LEGISLATION AMENDMENT BILL 2014

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Peter Collier (Leader of the House)**, read a first time.

Second Reading

HON PETER COLLIER (North Metropolitan — Leader of the House) [5.11 pm]: I move —

That the bill be now read a second time.

This bill seeks to amend the Duties Act 2008, Land Tax Assessment Act 2002, Pay-roll Tax Assessment Act 2002 and Taxation Administration Act 2003 to improve the efficacy of existing state tax exemptions for charitable institutions. As announced by the former Treasurer in the Legislative Assembly on 15 May 2013, the amendments are in response to a decision of the State Administrative Tribunal that found the Chamber of Commerce and Industry of Western Australia to be a charitable organisation, and therefore eligible for state taxation exemptions. The state government is concerned with the precedent created by that decision, including the potential extension to other organisations for which a state taxation exemption is considered inappropriate.

By way of background, the common law definition of “charity” encompasses organisations that promote the relief of poverty, the advancement of education, the advancement of religion or other purposes considered beneficial to the community, the last of which is commonly known as a fourth-limb charity. Broadly, the amendments contained in this bill seek to narrow the scope of the existing payroll tax, transfer duty and land tax exemptions as they apply to fourth-limb charities. They do this by excluding any fourth-limb charity that has been established and carried on for the promotion of trade, industry or commerce, unless the sole or dominant purpose of that charity is the relief of poverty, the advancement of education or the advancement of religion. The amendments also exclude professional associations. I stress that these amendments will affect only professional associations and those fourth-limb charities that promote trade, industry or commerce. Other charities will not be affected in any way by these amendments; nor will they experience any additional burden or red tape.

Although trade unions and political parties do not currently fall within the common law definition of a charity, the legislation will specifically exclude these organisations from obtaining an exemption in the event of any future expansion of the definition of a charity to these classes of organisations. In addition, a regulation-making power will allow other classes of organisations to be excluded from the exemptions. This will allow the government to quickly respond to any continued expansion of the fourth-limb charity category to other types of organisations for which a state tax exemption is considered inappropriate. It is expected that these amendments will result in only a very small number of fourth-limb charities being excluded from receiving a state tax exemption.

For organisations that have been granted an exemption but will become taxable under these amendments, the legislation will operate to remove the exemption prospectively. For payroll tax and land tax, this will be from a date advised to each affected organisation. Duties apply to one-off transactions. As such, the amended provisions will apply to transactions that take place after the date of assent. Safeguards have been built into the proposed amendments to enable the Minister for Finance, in consultation with the Treasurer, to reinstate the exempt status of an organisation, other than a trade union or political party, which has been excluded from the relevant category of exemptions because of the operation of these amendments. In order to apply to have its exempt status reinstated, an organisation must have concluded all appeals against the decision that it is an organisation to which the relevant state tax exemptions do not apply. Alternatively, an organisation can choose to relinquish its appeal rights to expedite the process for making an application to the minister. The minister must be satisfied that it is in the public interest to reinstate the exempt status of an organisation before doing so. Any exemptions reinstated by the minister will be published in the *Government Gazette*. For affected organisations that have already been granted an exemption under the current arrangements, any reinstatement of their exempt status will take effect from the date it ceased. This will ensure a seamless continuation of their exempt status, with any tax paid in the intervening period being refunded to the organisation. Any determination made by the minister to reinstate the exempt status of an organisation will apply across all three taxes.

The amendments also legislatively authorise the current discretion of the Commissioner of State Revenue to limit payroll tax refunds for charitable organisations to the beginning of the financial year in which the application for exemption was made. This restriction is intended to limit the exposure of the revenue to retrospective refund claims. It is expected that these state taxation integrity measures will have an immaterial or no impact on the budget forward estimates.

Extract from *Hansard*
[COUNCIL — Thursday, 21 August 2014]
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Hon Peter Collier

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 1802.]

Debate adjourned, pursuant to standing orders.

House adjourned at 5.17 pm
