

**TAXATION LEGISLATION AMENDMENT BILL 2014**

*Second Reading*

Resumed from 26 June 2014.

**MS R. SAFFIOTI (West Swan)** [4.12 pm]: With great delight, I rise to speak on the Taxation Legislation Amendment Bill. There is nothing like getting back into parliamentary debate on some more taxation legislation! A lot of taxation legislation has come through the doors of this Parliament under this government, particularly this year. I see the advisers so many times to be briefed on new taxation legislation that I feel as though I know them as well as I know my own family. This is a bill the Labor opposition will support, but we have some questions and some concerns that I will outline in my contribution today, as will many of my colleagues in their contributions.

As is described in the second reading speech, this bill seeks to amend four pieces of taxation legislation: the Duties Act 2008, the Land Tax Assessment Act 2002, the Payroll Tax Assessment Act 2002 and the Taxation Administration Act 2003. This legislation seeks to ensure that some bodies in Western Australia that have claimed or will potentially claim exemption from state taxes are compelled to pay their state taxes. I will go through some of the background to this bill. As we were briefed and as has been outlined in this place, there are four common law definitions under which charity organisations can be exempt from paying state taxes: the relief of poverty, the advancement of education, the advancement of religion, and other purposes considered beneficial to the community. I understand from briefings that the fourth limb is the contentious area. The fourth limb, “other purposes considered beneficial to the community”, was created to be a sort of catch-all for organisations that undertake activities that benefit the community as a whole. Under the common law definition and existing legislation, they are exempt from paying a number of state taxes, primarily land tax, payroll tax and stamp duty. A number of years ago, the Western Australian Chamber of Commerce and Industry challenged the fact that they were paying these taxes.

**Mr D.J. Kelly:** Extraordinary—honestly!

**Ms R. SAFFIOTI:** It is extraordinary. I will go through the State Administrative Tribunal determination in a minute. Basically, the CCI claimed that it is a charitable institution and SAT agreed. As a result, the CCI was not only not required to pay these taxes, but also it was reimbursed.

Several members interjected.

**The ACTING SPEAKER (Mr I.M. Britza):** Thank you, members.

**Ms R. SAFFIOTI:** As my colleague outlined, the CCI was not required to pay these taxes prospectively; it was refunded taxes it had paid since 2004 and even received interest payments, so it was reimbursed quite significantly. We understand that since that decision, a number of professional associations or bodies that promote trade or commerce have come forward to seek a similar exemption. The state was faced with payments leaving the consolidated fund and therefore putting holes in the government’s revenue base, with the potential for its revenue base to become smaller as more organisations came forward to seek the exemption.

I contrast the government’s dealing with the environmental issue, member for Gosnells. I refer to the flaw in the recycling levy legislation, amendments to which were rushed through the Parliament within three days to try to prevent a hole from occurring in the state budget. From my reading—I am not a lawyer—the key part of this decision was handed down in July 2012 and only today are we dealing with this legislation. During that period, organisations such as the CCI have not had to pay tax. I understand also that a refund amounting to \$56 million has been paid to not only the CCI, but also other agencies, and that has impacted on the last two budgets, although it reflects activity that has occurred over the past eight years. The opposition questions the length of time it has taken to bring this issue to account given the process that occurred with the amendment to the landfill levy legislation, which, as I recall, was dealt with within two or three days to prevent a hole in the state budget.

I will go through the State Administrative Tribunal determination because its impact has been both interesting and significant. As I said, the determination was delivered on 18 July 2012, and I will read it to the chamber, because it has not been read yet. It is stated under “Summary of Tribunal’s decision” —

The Chamber of Commerce and Industry of Western Australia sought exemption from the payment of payroll tax on the basis that it came within the definition of a charitable body or organisation for the purposes of the *Pay-roll Tax Assessment Act 2002* (WA). The Commissioner of State Revenue rejected the application for exemption, arguing that the main (or at least equally important) purpose for which the Chamber carried on its operations was to provide services to its members rather than any purpose which was directed to the benefit of the public generally.

2. The Tribunal examined the constitution of the Chamber, and the activities which it carried on. Having regard to the general law definition of charitable purpose, and taking an holistic view of the Constitution and activities of the organisation, the Tribunal concluded that the Chamber was carried on mainly for a purpose beneficial to the community in the sense included with one of the classifications of charitable purposes, and accordingly was entitled to exemption.

That decision caused this legislation to be introduced to this place. Not only was the CCI content with the fact it would no longer pay these taxes, there was also the issue of course of any retrospective refunds. I understand that in the original application to the Office of State Revenue there was no expectation or request for a refund of its past payments, but in relation to its application to the State Administrative Tribunal, it actually applied for retrospective payments of taxes paid. Then, too, there was the amount of interest it was owed by the Office of State Revenue. Not only was the CCI no longer liable to pay, it received retrospective payments and interest payments applicable to the payments made. In July 2012, the State Administrative Tribunal made a finding that the commencement date of the reassessment period in relation to the payment of interest on the refund of payroll tax as a result of the applicant's exemption from payroll tax liability was 10 June 2010.

The CCI was quite aggressive and was ultimately successful in determining that it was a charitable institution and should not be paying these state taxes to the consolidated fund of Western Australia. That happened a number of years ago, but it is only today that we are dealing with this legislation.

We have been advised that up to eight entities have sought and received that exemption, but there is potential for a number of other entities to come forward. The exposure to the state is significant. Payroll tax revenue in itself can be up to \$10 million per annum. Out of the three types of taxes that this bill deals with, payroll tax is the most significant amount, given that it is a recurrent payment and is driven by the number of employees. It is a significant issue and an issue that needs to be addressed. The opposition understands this is a very difficult area of taxation law. Like all bits of taxation law, once one bit is created, people try to find ways to exploit or try to maximise —

**Dr G.G. Jacobs:** Find a loophole.

**Ms R. SAFFIOTI:** "Loophole"—nice word.

We understand it is a very difficult bit of legislation. We have some concerns, as we always do, and we hope this legislation has no unintended consequences. After a briefing with the advisers, whom I see quite regularly now, they have given me some reassurance. I am sure the minister will also reassure this house that there will not be any unintended consequences—that actual charities and people who legitimately undertake charitable work will not be hit by this legislation. We hope and trust that that is the case.

Because of the keenness of some organisations to try to recreate their company or organisation structure, other elements have been put into this legislation to try to prevent a restructuring in order to avoid paying taxes. As it was put to me, there could have been a situation involving one part of the company continuing to undertake its business-type activities and another part created as a charitable institution. Those business activities would again be exempt. I understand that this legislation attempts to try to prevent that from happening. We trust that there will not be any unintended consequences. We have been given information to suggest that that will not be the case.

In relation to the impact on the forward estimates, this revenue has been booked in the forward estimates. The forward estimates were worked on the basis that this loophole would be closed. Without any action, there would be an impact, yet again, on the government's forward estimates. The financial impact, while not hundreds of millions of dollars, is not insignificant today.

In relation to commencement, we are told the Duties Act is not an ongoing taxation payment; it occurs when there is one type of activity. These organisations will start paying duties once this legislation is passed.

In relation to the Land Tax Act, because the duty is applied to property that was owned and was liable for land tax as of 30 June, we understand that entities such as the CCI will not pay land tax until the 2015–16 financial year because 30 June has already passed for the 2014–15 year assessment.

In relation to payroll tax, organisations have two months after this legislation is passed to respond to whether they pay payroll tax. They can continue to use the existing avenues of appeal in relation to whether they are liable to pay tax. I expect there may be further appeals related to this new legislation.

A key thing that caught my interest after reading this legislation the other evening relates to exemptions. This legislation tries to prevent some exemptions. This bill tries to exclude some organisations that are exempt from paying taxes under current law. It is a very interesting part of the legislation that allows particular organisations or bodies to apply to the Minister for Finance to be specifically excluded. For example, body A will now be

liable to pay these sets of taxes under this legislation. This legislation gives them the ability to apply to the Minister for Finance, who, in consultation with the Treasurer, has the ability to extend the exemption to this body. I was quite interested by this concept when I was briefed on it and when I read it in the legislation. From what I know about the taxation system on a federal and state basis, it is generally the case that these sorts of responsibilities and powers are not given to any minister of the day. The Commissioner of State Revenue and the Commissioner of Taxation have powers in relation to the exclusions or inclusions of people paying tax. As I understand, this legislation is not unprecedented, but it is not the usual practice to give ministers of the day the ability to exempt a particular organisation from paying tax. I can understand the logic behind such a provision being in this bill. This is a very complex area, and we do not want to tax bodies that we did not intend to. I can understand the theory behind this bill, but we do not want to see a situation in which a body can lobby a minister of the day, who can then exempt that body from paying taxes. This opens the door to particular lobbying from particular sectors, to which ministers of the day should not be made vulnerable, and it is not something we want to see happening regularly. I understand the theory behind it, but I do not believe it is something we should be seeing in this place, and it is an unusual part of this legislation. Quite interestingly, today a colleague of mine referred me to some comments made by Pro Bono Australia in one of its news articles. The headline was “WA Charities Open to Political Intimidation”. It is quite an interesting article, and it was posted on the organisation’s website today, after I presented the recommendations to my colleagues. The article states—

Proposed legislation in Western Australia aimed at removing some charitable organisations from state tax exemptions will leave them vulnerable to political intimidation, law experts have warned.

I think the author was the Australian Charity Law Association, and I will go through its arguments. Basically, the article states that when ministers can make determinations about whether a body is exempt from tax, it can lead to possible intimidation of the charitable organisation itself. My view is that it leads to potential problems with lobbying and other issues about the minister’s performance. It goes on to say that the legislation is quite broad, and the authors believe that it could have been written in a more narrow way that would not require such levels of flexibility in the application of some of these taxes. The article further states —

Assistant Professor Ian Murray, from the Law Faculty at the University of Western Australia, has been following the Bill and has spoken to Not for Profits ...

Prof Murray said more generally the Bill risked politicisation of the concessions, which might render advocacy bodies more at risk.

...

“My interpretation of the Bill is that the exclusions it applies to charities are broader than is strictly required to deal with the WA Chamber of Commerce and Industry decision and like organisations.”

I would like to hear the minister address the claim that the bill is too broad. More generally, when I read the bill, I formed the view that that there should not be the capacity for a body to ask the minister for an exemption, and for the minister to have the power to grant it. I believe the power should be with the Commissioner of State Revenue, as has normally been the case. I have seen the application of taxation administration both federally and at the state level and, as I understand, decisions of this nature are normally made by the commissioner. That is something I wanted to raise specifically in this debate, and I would like the minister to address it in his response.

As I said, the opposition supports the concept. We believe, of course, that the Chamber of Commerce and Industry of Western Australia should be paying its fair share of tax to the consolidated account and to the taxpayers of Western Australia. It is quite interesting that an organisation that promotes limited regulation and legislation has made it necessary for us to legislate to overcome a problem created by the CCI. We are creating new laws, and possible new grey areas in a sense, because of a problem that has been created by the CCI. This new legislation has been inspired by the CCI.

I want to talk generally now about the taxation effort of this government and refer to a couple of things that have been said in the past couple of weeks about the revenue of the state. It has been a busy time for the taxation experts in the government and for us in the opposition debating taxation legislation that has been brought to this Parliament on a number of occasions. There is a need to make sure that there are no loopholes and to increase taxation. We have, on a number of occasions, gone through the reasons that the government is desperate to acquire this revenue. It goes to the state of the finances, and where the state is at in both an economic and financial sense. I was talking about this yesterday with my colleague the shadow Treasurer. We think the government has given up on the AAA credit rating, and even the concept of worrying about it. The government has given up in every sense on the need to be financially responsible. I believe that one of the reasons the government has made this judgement call is that it believes the public does not care about the state finances, and it does not believe that many of the commentators around the place worry about the level of debt. I am interested

in this debate, because I sit here watching decision after decision that basically worsens the state finances, and I see these people on television shows, such as 7.30 WA on Friday night, and the issue of debt is virtually never discussed, until an election campaign. Then, the Leader of the Opposition is asked all about how to solve the debt issue.

I think this government has made a call that the AAA credit rating has gone and will not be coming back in the short to medium term. Now it is retrofitting its arguments. Now it is saying it is all about job creation. This is basically an argument to retrofit to the situation in which the government finds itself; that is, it has blown the state's finances. Time and again, we have taken the opportunity in this chamber to talk about finances of the state, because of the amount of taxation legislation that has been introduced. The Acting Speaker (Mr I.M. Britza) just read out a list of bills that have been given assent, and a number of those were the taxation bills that were debated in the first half of this year. Again, we are here talking about the finances of this state. As I said before the winter recess, I do not have concerns only about the finance of this state; I have real concerns about the economy. I had a break over the winter recess, as many of us did, and I was surprised when I came back and read some of the articles that had appeared, particularly about what the Treasurer has been saying about the Western Australian economy, and about Tasmania. Everyone in Tasmania, he says, should get out of Tasmania and come to Karratha. If that is the level of economic debate we have in this state, and if that is the type of debate being led by the so-called economic guru, where is Western Australia going? At my last reading, there were 74 000 unemployed Western Australians. The member for Kimberley will know that there are many Indigenous unemployed people in the north. They have either abandoned or never cared about any of those programs to engage and employ Indigenous young people in the north, yet they stand and say, "Tasmania, come over."

I was born in Western Australia. Name it and I have supported it. I have supported every Western Australian sporting team. I am a very proud Western Australian, but this type of narrative is going over the top. Why is there no real analysis of where the state is heading? Why has Western Australian industry not been diversified? Why has Western Australia's manufacturing base not been strengthened? The Western Australian agricultural sector is not being strengthened, and in many cases is weakening, whether it is the orchardists in the hills or the grape growers in the valley. The people who have been there for decades, providing the Western Australian economy jobs and local produce, have been abandoned. Where are we going? Is the level of economic debate seriously at the stage at which all we can say is, "Tasmania, come over here"? It is fine for members to stand in Parliament and have a go at Tasmania, but it is not fine for the Western Australian Treasurer to do that when he addresses a key business audience. What is the analysis? Where is the economic plan? Where is the plan for the state? Where is the plan for jobs for young people?

There is no doubt that Western Australians have worked hard to capitalise on the resources of the state. WA is a proud state with a proud and successful economy, but it is not right to rest on our laurels and say that jobs in Karratha are it. Is that it for the state? Is that it for the Treasurer? Western Australia has lost its AAA credit rating and those states in the rest of the nation with what people call basket-case economies have a AAA credit rating. Western Australia has significantly high debt that impacts on and hinders its ability to invest in economic infrastructure for generations to come.

The issue of the train line has got me going again. Today we heard that it will cost \$2.2 billion to build eight kilometres of track for the train line to the airport. Four options were assessed. Discount the Labor Party's proposal. Members know what Treasury costed that at. Three other options were assessed, the details of which the Minister for Transport went into today—one was fully underground, one was aboveground near Tonkin Highway and one was partially underground. A lot of detail was provided but I do not have that in front of me. There were three clear options. What was the cost of each of those options? Was the \$2.2 billion underground proposal the cheapest? What was the benefit cost of each of those three options? Although the minister said that he assessed all three options, he refused to say how much each of those options would have cost. He said they were all in the ballpark of \$2.2 billion. The minister should outline each of the routes the government assessed. The public needs and deserves to know the cost of each of those options.

**Mr P.C. Tinley:** And the business case.

**Ms R. SAFFIOTI:** Yes, and the business case. Obviously, the work was done and a decision was made to go with the \$2.2 billion option. Ultimately, that might be the right decision, but we do not know, because we do not have the information and we will not know what those three options were costed at. Again, I am going back to the method of operation of this government, which is, seriously, "Don't worry about finances; don't worry about the economy. Look at this—I've got a shiny new plan." I sense that the public is beyond that. They are trying to understand what the future is for WA. The projects that the Premier promised—Browse and Oakajee—are not happening. The major construction that would have continued to drive jobs growth, in particular over the next five to six years, is not happening. It is nonsense to come in here and say that the stadium is all about jobs. Let me talk about the capital works program as an investment program. If it is looked at historically, it can be seen

that it is not much higher than when the Labor Party was in government, particularly when the program is indexed. To try to now manufacture something and say that debt has increased and that the state has lost its AAA credit rating because it is about jobs is not believable. That is not right. Job creation from those projects pales into insignificance when compared with what private sector business investment drives.

There is now no plan, and the government's polling must suggest that. Its polling would suggest a number of things, but one thing it would suggest is that people are starting to worry about future jobs. Now the government is saying that the stadium is all about jobs or that the train line will be all about jobs, which it will not be. The government is trying to retrofit the argument for the decisions that have been made.

As I said, the train line was a classic example. To spend \$2.2 billion for eight kilometres of rail is fair enough, but the government is not saying how much each of the routes cost.

**Mr P. Papalia:** It is only in the ballpark.

**Ms R. SAFFIOTI:** That is right; it is only in the ballpark. I am astounded even more—I do not know why—at the audacity of the minister to criticise the Labor Party for its project. Think about it. What was the cost of the government's fully funded, fully costed route that it advertised, committed to and put in brochures? Was it north of \$2.2 billion?

**Mr P.C. Tinley:** It has to be—and then some.

**Ms R. SAFFIOTI:** It would have to be more than \$2.2 billion. What is the cost of the government's fully funded, fully costed route that the government advertised and committed to at the election? Can the minister tell us the cost of the route that the government promised at the time of the election?

**Mr D.C. Nalder:** I don't understand why you are asking the question.

**Ms R. SAFFIOTI:** Because the government promised it.

**Mr P. Papalia:** Because you said that you analysed it in comparison to this one.

**Mr D.C. Nalder:** We have.

**Ms R. SAFFIOTI:** No, the route the government promised —

**Mr D.C. Nalder:** What we have got is what I believe is a better solution.

**Ms R. SAFFIOTI:** But what is the cost of the route that the government promised at the time of the election?

**Mr D.C. Nalder:** What is the relevance?

**Ms R. SAFFIOTI:** The relevance is that the government promised it.

**Mr D.C. Nalder:** You promised a route that cost —

**Ms R. SAFFIOTI:** But the Labor Party is not in government; it lost. The Liberal Party won and the minister is in government. Tell us what the route the government promised will cost?

**Mr D.C. Nalder:** What I have said is that they are all pretty much the same cost.

**Ms R. SAFFIOTI:** But what was the cost that the government promised at the time of the election?

**Mr D.C. Nalder:** At the time of the election, what did we promise?

**Ms R. SAFFIOTI:** Yes.

**Mr D.C. Nalder:** We had it costed by Treasury and announced it in March 2013.

**Ms R. SAFFIOTI:** What is the current cost that Treasury gave advice on? The minister said that he put three options to Treasury.

**Mr D.C. Nalder:** No.

**Ms R. SAFFIOTI:** The minister did.

**Mr D.C. Nalder:** You are correct and incorrect. You are correct in the sense that we analysed it, but those things haven't been put to Treasury at this point. They were put to Treasury at the last election.

**Ms R. SAFFIOTI:** Has the government announced the rail line without Treasury costing?

**Mr D.C. Nalder:** What we have announced is —

**Ms R. SAFFIOTI:** Do not tell me that at the weekend the minister announced a \$2.2 billion project without Treasury costing?

**Mr D.C. Nalder:** Without the final Treasury costing; yes.

Several members interjected.

**Mr D.C. Nalder:** No, sorry; let me take it back. We had Treasury costing at the time of the election.

**Ms R. SAFFIOTI:** It was a different route. This is all underground.

**Mr D.C. Nalder:** They are all variations of the same route.

Several members interjected.

**Ms R. SAFFIOTI:** Now I know what the minister did. The minister announced an entirely different route that completely undercuts the entire route. All the minister did was index the \$1.9 billion announced at the time of the election for two years to get \$2.2 billion.

**Mr D.C. Nalder:** No, that's not right.

**Ms R. SAFFIOTI:** What did the minister do?

**Mr D.C. Nalder:** Because in March 2013, it was already announced that it was \$2.015 billion.

**Ms R. SAFFIOTI:** When? It was \$1.9 billion.

**Mr D.C. Nalder:** I said in question time, at the election we announced \$1.9 billion when we did it, but when we put it to Treasury, it came back at \$2.015 billion. That is what we put forward.

**Mr W.J. Johnston:** So the \$2.2 billion is the \$2.015 billion, indexed.

**Ms R. SAFFIOTI:** For two more years.

**Mr D.C. Nalder:** So there is an escalation effect in there.

**Ms R. SAFFIOTI:** Yes, but the minister is telling me —

**Mr W.J. Johnston** interjected.

**The ACTING SPEAKER:** Member for Cannington, the member for West Swan is on her feet.

**Ms R. SAFFIOTI:** What we heard today—again, I do not know why it continues to alarm us—is that the announcement made on the weekend was not the actual route that was costed. All the government did was use the Treasury costing of \$2 billion at the time of the election and escalated it for two years.

**Mr D.C. Nalder:** No, that's not right.

**Ms R. SAFFIOTI:** What is right?

**Mr D.C. Nalder:** I will be announcing the details of this —

**Ms R. SAFFIOTI:** I want to know how the minister got to \$2.2 billion. We are talking about a taxation bill. We need taxation because we have to fund expenditure and try to control debt.

**Mr D.C. Nalder:** I am not sure what the amendments to this bill have to do with that question.

**Ms R. SAFFIOTI:** It has everything to do with this question.

**Mr B.S. Wyatt:** Everything. You're protecting your revenue.

**Ms R. SAFFIOTI:** We are discussing additional revenue of about \$10 million a year.

**Mr D.C. Nalder:** We're discussing amendments to the fourth limb of the charities.

**Ms R. SAFFIOTI:** Yes; it is a revenue bill.

**Mr D.C. Nalder:** What's that got to do with the railway line out at Forrestfield?

**Ms R. SAFFIOTI:** If the minister does not think that revenue has anything to do with expenditure, I am sorry, but he should not be the Minister for Transport or the Minister for Finance. If he does not think revenue has anything to do with expenditure, he should not be here.

**Mr D.C. Nalder:** I'm not saying that.

**Ms R. SAFFIOTI:** He is. He is saying that the revenue bill has nothing to do with funding a rail line. I am sorry, but it does.

**Mr D.C. Nalder:** I am saying that the points you are making have nothing to do with this bill.

**Ms R. SAFFIOTI:** They do because what I am trying to portray in this house is that this state has given up on the AAA credit rating. It has made a judgement call. It might be the right one but the public does not care. It made a judgement call. Some of the commentators probably do not care. The government announced a \$2.2 billion project and did not have any new Treasury costings.

**Mr D.C. Nalder:** No. Let me qualify it again. We did not go and do a formal Treasury costing but they are involved in the steering committee on this so they have had input all the way through, and they are comfortable with the pricings.

**Ms R. SAFFIOTI:** How did the minister make the decision on this route?

**Mr D.C. Nalder:** They were comfortable with the pricings on all the routes.

**Ms R. SAFFIOTI:** How did the minister make the decision on this route?

**Mr D.C. Nalder:** I am not sure that this is a debate about the airport and the routes.

**Ms R. SAFFIOTI:** It is a legitimate question. How did the minister make a decision on this route?

**Mr D.C. Nalder:** How is that a legitimate question for this bill?

**Ms R. SAFFIOTI:** We need revenue to fund expenditure and the minister announced today, as he did on the weekend, that the rail link would cost \$2.2 billion—an additional \$300 million to what had previously been advised in this place. That is why it is significant.

**Mr D.C. Nalder:** The \$2.2 billion is specifically for an underground rail all the way to Forrestfield.

**Ms R. SAFFIOTI:** What did the other two cost?

**Mr D.C. Nalder:** Why do I need to declare that here? It is irrelevant.

**Ms E. Evangel:** Have you run out of facts for your speech?

**The ACTING SPEAKER:** Member for Perth! Right now the member for West Swan is taking interjections from the minister. They are the only two speaking until the member gets the call.

**Ms E. Evangel:** Do your homework.

**The ACTING SPEAKER:** Member for Perth!

**Ms R. SAFFIOTI:** The member for Perth came in and talked about her fluffy slippers and her nightgown and tried to tell other people to do their work. Please!

**The ACTING SPEAKER:** Member for West Swan, I suggest that you come back —

**Ms E. Evangel:** What's wrong with fluffy slippers and a nightgown?

**The ACTING SPEAKER:** Member for Perth, I have spoken to you twice. I call you for the first time. Member for West Swan, I suggest we stay with the subject matter.

*Point of Order*

**Mr P.C. TINLEY:** This debate had been going on quite civilised, back and forth, with consenting interjections from both members until the member for Perth decided that she wanted to make some contribution.

**The ACTING SPEAKER (Mr I.M. Britza):** There is no point of order, member for Willagee.

**Mr P.C. TINLEY:** My point of order, if I could finish —

**Ms E. Evangel** interjected.

**Mr P.C. TINLEY:** — is in relation to that example right there. She cannot keep her mouth shut. Why did you not call her earlier?

**The ACTING SPEAKER:** There is no point of order.

*Debate Resumed*

**Ms R. SAFFIOTI:** As I said, the reason that expenditure is relevant is that we are dealing with another taxation bill. This is an amendment bill to close a loophole that was identified and used by the Chamber of Commerce and Industry of Western Australia, but it is still a taxation bill. The effect of this bill is to raise more tax for the state. When we talk about taxation, we normally come to this place and talk about the state of finances. Basically, one of the reasons we are dealing with taxation bills again and again is the need for this government to increase taxes to fund its expenditure program. What I was trying to highlight—it has been reinforced again by the minister today—is that we need to keep dealing with taxation bills because of the way this government manages its finances.

Today the minister walked in and said that the government assessed four routes. He wanted to have a go at us. That is fair enough; he can have a go. He knows the cost of our route but he will not tell us the cost of the three routes that the government analysed. Surely, in determining the figure of \$2.2 billion, the government must have

a figure for the other two. Some cost-benefit analysis of the three routes must have been done, which will provide the most significant cost benefit to the state. If that has not happened, I will be surprised. We were not volunteering this concept; the minister walked into this place today to say that there were three different projects. I say again that one of those projects was the one taken to the election. The minister likes to come in and say what ours was. That is fair enough. The minister should tell us how much Treasury is costing the one the government took to the election. The one it took to the election is very different from the one the minister announced on the weekend. If the minister is telling me that he has not costed the one that was taken to the election, I would be surprised. I do not think he is telling the truth. I think he does have different costs for the three projects that Transport determined. The government should have a cost for the project it took to the election. The fact that the minister is not willing to tell us that proves that it must be an embarrassing answer. The finances are all over the place. We hear that again and again. The biggest contribution to the debate on the economy is the Premier saying that South Australia should give us back our GST and the Treasurer is saying that Tasmanians should come to Karratha. Sure, the state has tens of thousands of unemployed, but Tasmanians should come to Karratha? That is the level of economic contribution by the professor of economics.

The Premier talked about the GST. I found his address to the Liberal conference on the weekend quite interesting. We not only heard about this \$3.3 billion, but also had another insight into what this government is doing about the GST. It is doing nothing. On the ABC news on Sunday night I saw how much revenue we give to each state. Notwithstanding the fact that an agreement was drawn up and signed by both the federal and state Liberal governments, the key issue is that the government announced a rail line to the airport. We should remember that airports are normally commonwealth owned. This rail line would significantly benefit the federally owned airport. How much did the state government ask the Abbott government to give? How much is the federal Abbott government giving for a rail line to the airport? Nothing. Zip. We should remember that the federal Labor Party funded 80 per cent of the Gateway WA project because it was a Nation Building Program —

**Mr D.C. Nalder:** That's wrong.

**Ms R. SAFFIOTI:** How much is it?

**Mr D.C. Nalder:** It is \$65 million.

**Ms R. SAFFIOTI:** What does that include? What is the total amount?

**Mr D.C. Nalder:** It is a billion-dollar project.

**Ms R. SAFFIOTI:** As I recall, it was \$80 million.

**Mr D.C. Nalder:** It is \$65 million for that one.

**Ms R. SAFFIOTI:** If it is \$65 million, it is still a fair amount. I am taking the minister's word for it.

**Mr D.C. Nalder:** The federal government increased funding of the Northbridge Link to 80 per cent. It was originally funded by the Labor government.

**Ms R. SAFFIOTI:** It was always 80 per cent. There was a project blowout for Gateway.

**Mr D.C. Nalder:** No. It has come in under budget.

**Ms R. SAFFIOTI:** No. It has not come in at the original cost.

**Mr D.C. Nalder:** The Berkshire Road and Roe Highway grade separation has been funded —

**Ms R. SAFFIOTI:** I know what the minister is saying but we do not ever take the original cost. Those opposite talk about budgets as if —

**Mr D.C. Nalder:** Like the Mandurah railway line that you put in.

**Ms R. SAFFIOTI:** The one that was actually built. Honestly!

**Mr D.A. Templeman** interjected.

**The ACTING SPEAKER:** Member for Mandurah, I am on my feet. Member for West Swan, I am going to ask you to take back the call.

**Ms R. SAFFIOTI:** Sure. I love this! The Minister for Transport who is building projects into the never-never at a cost he does not yet know is criticising our handling of the Mandurah rail line. We built it! I just cannot believe it.

**Mr P. Papalia:** We know what it costs; we know there was no debt attached to it.

**Ms R. SAFFIOTI:** Pardon?

**Mr P. Papalia:** There was no debt attached to it on the day it opened.

**Mr D.C. Nalder** interjected.

**Ms R. SAFFIOTI:** So what is the minister's budget for this new rail line to the airport?

**Mr C.J. Barnett:** \$2.2.

**Ms R. SAFFIOTI:** Is he sure it is \$2.2 billion?

**Mr M.H. Taylor** interjected.

**Ms R. SAFFIOTI:** Is the member talking to me about —

Several members interjected.

**The ACTING SPEAKER:** Member for West Swan! Member, I am going to ask you to come back to the debate.

**Ms R. SAFFIOTI:** Sorry.

**The ACTING SPEAKER:** I am trying to protect you, member for West Swan.

**Ms R. SAFFIOTI:** I just could not stop taking those interjections; they were too enjoyable.

I have one last thing to say about the expenditure in this bill on the airport line. The minister stands to talk about how quick it will be—or whatever—based on travel comparisons from the city. However, the key point is that not everyone starts their travel from the city. I think only a small minority of people start from the city; most people start their travel from the suburbs. An integrated connected rail solution, such as Metronet, is far more sensible because it does not start from the city.

**Mr C.J. Barnett** interjected.

**The ACTING SPEAKER:** Premier, I was just going to ask that. Member for West Swan, you were referring to part 4, so just bring it back for me, will you.

**Ms R. SAFFIOTI:** Yes, sure. I am looking at the expenditure profile of this government in relation to the fact that we are dealing with yet another taxation bill to raise revenue because of this government's spending commitments; that is why we are here.

Several members interjected.

**The ACTING SPEAKER:** Member for West Swan, are you taking the interjection?

**Ms R. SAFFIOTI:** No.

**The ACTING SPEAKER:** Then continue, please.

**Ms R. SAFFIOTI:** Thank you. I was just shocked by them.

We support the bill. However, I will go back to the key points of this bill. We trust that the bill is not drawn in such a way as to have unintended consequences. We are worried about the exposure that this bill creates in the direct lobbying of ministers for particular bodies. That is something I raised. I know that the minister was on his phone before, but, as I said, this bill gives bodies the opportunity to directly lobby the Minister for Finance and the Treasurer about being exempt from these taxes. I do not think that that is probably the wisest public policy choice to make and I would like to hear the minister respond to that in his reply to the second reading debate. It should be the Commissioner of State Revenue who will make those decisions about the application of these taxes to those certain bodies. We support the bill; however, I put on notice that some of my colleagues also have concerns about some of the entities, particularly in grain handling and grain exports, that the legislation could now extend to. Regardless of whether we deal with that issue in the lower or the upper house, I note that one of my colleagues has significant concerns about it. We support the bill, although we do have some concerns, and we hope that there will be no unintended consequences. We will be looking at the process by which particular bodies can become exempt from these taxes.

**MR B.S. WYATT (Victoria Park)** [5.03 pm]: I, too, rise to speak to the Taxation Legislation Amendment Bill 2014 that is before us this evening. We heard a rather enlightening exchange between the member for West Swan and the Minister for Finance. I am glad that the Minister for Finance was engaging up to a point, until the Premier came in and instructed him not to, because it was interesting. We have moved from the previous Minister for Transport who imagined the cost of the Metro Area Express light rail to the current Minister for Transport who said, "It's all in the ballpark." For the minister now to confirm to the Parliament that that \$2.2 billion figure is just the election promise route escalated —

**Mr D.C. Nalder:** No, I did not.

**Mr B.S. WYATT:** That is what he said on radio yesterday as well. I will take the Minister for Transport's interjection because he said on radio yesterday, and I quote —

The primary driver of the escalation in costs is not to do with the route or other things like that. It's more to do with the delay in timing.

So what we originally said was that our intent was to finish or complete the construction and be live in 2018 and we changed and deferred that until 2020, so the methodology of determining prices always takes into consideration extending out a further two years, so it's primarily driven off that delay in two years, being the escalation costs.

**Mr D.C. Nalder:** That's correct.

**Mr B.S. WYATT:** Then he said, in response to the member for West Swan, "It hasn't gone to Treasury." I have no doubt that the minister will be scribbling through his draft *Hansard* to perhaps change the meaning of that, but that is what he said. It is little wonder that we lost our AAA credit rating. I remember it. The member for Vasse asked about MAX when —

**Mr D.C. Nalder:** Will you still take an interjection?

**Mr B.S. WYATT:** I will in a minute.

I remember when Geoff Hutchison—the same guy that the minister spoke to yesterday—asked the member for Vasse, when he was Treasurer and Minister for Transport: what will MAX cost? His answer was —

I think it will be over a billion dollars or at least a billion dollars or more than a billion dollars ...

That is the answer the day after the Premier announces MAX. In the minister's answer today and yesterday on radio about this \$2.2 billion figure, he went on to make the point, "Oh, look, they're best estimates, about 90 per cent accurate." The government is not the opposition; it is the government. No wonder the Economic Regulation Authority has canned the government's processes—there are not any! The ERA has canned the government's processes in its microeconomic reform report because the government does not have any.

**Mr D.C. Nalder** interjected.

**Mr B.S. WYATT:** The government does not have any. Again, MAX was announced because the government had a timetable of TV ads starting. The government's \$2.2 billion airport was announced because a Liberal Party conference was coming up. The government has all these clashing issues that get in the way of the development of good public policy; that is the reality. It is extraordinary, and the member for West Swan is right: the government has given up on the AAA credit rating. This bill was not exactly rushed into the Parliament when the State Administrative Tribunal made its decision back in 2012 or in May 2013 when the member for Vasse, then Treasurer, said, "We're going to do it." Here we are in August 2014! Meanwhile, the government is writing cheques to organisations refunding money left, right and centre. Its surplus is getting smaller while the cost of its projects are getting bigger. Slowly and surely, here we come; we finally get to the bill today.

Several members interjected.

**Mr B.S. WYATT:** In the ballpark! But at least our friends up the back from the Departments of Finance and Treasury could tell us. They knew every nickel and dime the government has refunded—\$56 million—they knew! Unfortunately, those people up the back, those good public servants, are referred to post-announcement. That is the government's problem: bring them in, embrace them, love them; they are there to help the government.

**Ms R. Saffioti:** Cuddle them!

**Mr B.S. WYATT:** Cuddle them! Do not be hostile to them because they might get the government out of some of these pickles it keeps getting itself into, and it will not have a Treasurer, when asked how much it will cost say, and I quote —

I think it will be over a billion dollars or at least a billion dollars or more than a billion dollars ...

If the government spent as much time on its own route as it had on Metronet, we would probably be down there catching the bus to the airport right now! I think the one project that has received the most government time has been Metronet.

Coming back to the legislation, the member for West Swan outlined the opposition's position on this bill. We support it, of course, fixing a loophole that the Chamber of Commerce and Industry of Western Australia, using State Administrative Tribunal, drove a Mack truck through. That is to the CCI's credit and I want to acknowledge John Nicolaou. When we read through the judgement by SAT, he was clearly a star witness on behalf of the CCI, convincing His Honour Judge Chaney that the CCI is indeed a charity worthy of payroll tax exemption. I must admit that I was surprised, not having practised law in this area around charities and taxation

exemption, that the Chamber of Commerce and Industry was found to be a charity. I do not say that facetiously to my friends at the CCI, but I just did not imagine that that is how they would be categorised.

It is worth spending a few minutes going through the judgement of His Honour Judge Chaney, delivered on 18 July 2012, and the arguments put by the CCI pursuant to the relevant sections of the act. The CCI in its original claim to the commissioner claimed exemption status under two sections of the Pay-roll Tax Assessment Act 2002; that is, section 42(c) and section 41. It then objected when the commissioner refused that claim and went to SAT for a review. However, when the CCI went to SAT for that review, it was in respect of only section 41 of the act. The argument put by the CCI was that it was a charitable body or organisation and it was, therefore, entitled to a payroll tax exemption. Of course, we are also dealing with land and duties. But in light of the recurrent nature of payroll tax, and as advised by the public servants, payroll tax is by far the largest component of the refunds that are provided, and that is, no doubt, what motivated the CCI to go to SAT.

The question that was heard by SAT is: is the CCI a charitable body or organisation for the purpose of section 42? The glossary of the Pay-roll Tax Assessment Act 2002 states —

*charitable body or organisation* means a body or organisation established or carried on for charitable purposes except —

- (a) a body or organisation whose sole or principal purpose is the provision of tertiary education; or
- (b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*;

It was accepted by all parties that neither paragraph (a) nor (b) applied to the CCI. So the question therefore was: how do we ascertain whether the CCI is a charitable body or organisation and therefore required to go through the common law around this area? I did not know until I read this decision that there is quite a detailed and extensive body of law going back a long period of time around this question.

The question that Judge Chaney ultimately had to decide was: if the CCI is a charitable body, is it entitled to a notice exempting it from payroll tax liability? I do not know whether the minister has anyone at the back of the chamber from the State Solicitor's Office, but maybe the advisers will take note of this particular question. It is a technical point. Section 41 of the act states, in part —

- (1) A charitable body or organisation may apply to the Commissioner for exemption from liability to pay-roll tax.
- (2) The Commissioner may, by giving notice to the charitable body or organisation, exempt it from liability to pay-roll tax.

Section 41 uses the word “may”, not “shall”. Therefore, even though a recognised charitable body may apply to the commissioner for an exemption, the commissioner may still say no. So perhaps we could get some advice in that space when we get to consideration in detail. No doubt there is a court judgement that might assist us in respect of that matter.

The second point that SAT had to decide was: if the CCI was a charitable body, and if, as a result, it was exempt from payroll tax, should the wages to all employees of the CCI be exempt or only those paid in connection with a charitable purpose? The final point was around the time period; that is: for how far back should payroll tax be reimbursed to the CCI?

The definition of “charitable body” goes back to 1891 when Lord MacNaghten—who I assume also developed the MacNaghten rules; no doubt the member for Butler will be able to assist me with that—established four principal divisions in respect of what is a charity. Those divisions were: for the relief of poverty; for the advantage of education; for the advancement of religion; and for other purposes beneficial to the community. Initially I thought that perhaps the CCI had applied under the advancement of religion. Some of my friends who work at the CCI have a religious fervour to some of their views. But it was indeed the fourth division—for other purposes beneficial to the community—under which the CCI made its claim as to why it was entitled to an exemption from payroll tax. That was in 1891, so it goes back a way, but of course it has been endorsed by the Australian High Court as recently as 2006 in the case of *Central Bayside General Practice Association Limited v Commissioner of State Revenue*.

The question that then needed to be asked was: is the beneficial purpose that the CCI is undertaking for the benefit of the business community in general or specific to its members? I think ultimately the CCI by way of evidence did try to introduce the book *The CCI Story*. That is a very good book. I have read bits and pieces of it. However, Judge Chaney did not think that was a very reliable piece of evidence and he did not spend much time on it. My only comment is that that was probably for the best for the CCI, because I note that the introduction to the book, which was written by Harold Clough, focuses very much on the work that the CCI did for its members. If SAT had made the decision that the work of the CCI was for the benefit of its membership—that is, a small

section of the community—I do not think the CCI would have been recognised by SAT as providing a beneficial purpose to the broader community.

What was not in dispute, as outlined at page 10 of the judgement, was that the promotion of industry or commerce in general can be a charitable purpose. There was no debate about the fact that the CCI is involved in that area. The court case and the judgement went to great lengths to talk about the changing objects and purposes of the CCI over the years. It was accepted, as I have said, that promoting industry and commerce in general can be a charitable purpose, and that is the specific nature of the amendments being introduced by the minister tonight. So, that point was not in dispute.

I now want to quote from page 11 of the judgement of Judge Chaney —

If, therefore, CCI is established and carries on its operations for the main or dominant purpose of promotion of industry and commerce in Western Australia, and I am satisfied that it would be a charitable organisation for the purposes of the PTA Act. If, however, it is established and carried on for the purpose of benefiting its members, it will not be a charitable organisation.

A great amount of time, no doubt, was spent in submissions, and certainly in the evidence provided by Mr Nicolaou, on the question of, “For whom is the CCI acting?” and that became the key point. Page 20 of the judgement refers to the evidence provided by Mr Nicolaou, and that is why I made the point that whatever Mr Nicolaou is being paid, he is worth his salary, because his evidence was crucial in respect of this decision. The judgement states —

Mr Nicolaou stressed the importance of the advocacy and policy roles of CCI. He said that ‘While CCI provides a range of services to business, its core function and reason for being has and always will be the pursuit of free enterprise.

Prior to that, the judge had gone through the changes to the objects of the CCI, noting that in 2001 the CCI had deleted all the objects and created 12 new objects, the number one object being to promote Western Australian and Australian industry, trade and commerce, and economic development. No doubt, in drafting those objects, the CCI had used its legal team and identified the fact that in general it had to be providing the service to the community in industry and commerce. Mr Nicolaou went to great lengths, as you would appreciate, Madam Acting Speaker (Ms J.M. Freeman), to make the point that the members, and even the majority position of members, do not determine the policy position of the Chamber of Commerce and Industry of Western Australia, and he gave as an example the extended trading hours debate in which the CCI has been involved for a long time.

An aspect that I found interesting, and which was examined by the judge in considering the role of the CCI and to whom it provides benefit, was the change in the CCI over the 2000s. In 1992, membership subscriptions represented about 80 per cent of total income for the CCI, but by 2001 were down to less than 10 per cent of total income. We can therefore see the shift in revenue for the CCI.

[Member’s time extended.]

**Mr B.S. WYATT:** Mr Nicolaou provided a chart that broke down the percentage of revenue between subscription revenue and service revenue, which was referred to in the judgement. I will not refer to the amounts in each year but I will make a comparison between 2004 and 2011. In 2004, subscription revenue was \$6.8 million, representing 15.4 per cent of total revenue, whereas service revenue was \$34 million, representing 77 per cent of total revenue. By 2011, the subscription revenue had gone up to \$7.1 million, which is not much in real terms, but had declined as a percentage significantly to 7.46 per cent of total revenue. However, the service revenue shows the real growth for the CCI; it was up to \$80 million, or 84 per cent, of total revenue. This formed a significant part of Mr Nicolaou’s evidence for the CCI, making the case that service provision is not limited to membership and that anyone can come in and buy at cost that service provided by the CCI. Interestingly, of that \$80 million, \$65 million is derived through the apprenticeship scheme.

I will quote from page 61 of Justice Chaney’s decision —

While the proportion of service revenue appears, on its face, to dwarf the subscription revenue, a very large proportion of the service revenue is derived through government funding of CCI’s apprenticeship training programme through its subsidiary Apprenticeships Australia Pty Ltd. For example, of the \$79,984,704.00 service revenue derived in 2011, Mr Nicolaou said that that included approximately \$65 million derived through the apprenticeship scheme.

Members can see that the government-funded apprenticeship scheme is the big beast within the CCI. Mr Nicolaou went on to make the point that it is that revenue through the commercial activities that provides the capacity for the CCI to undertake the advocacy role. That it does—we all know. We all have been to CCI events and read its papers and reports.

I will quote briefly from the judgement at page 27 —

Mr Nicolaou said that the revenue generated from CC's commercial activities and member subscriptions is used by CCI to fund its activities including advocacy and policy, and to further its core function of pursuing free enterprise and 'making it easier to do business'. He stressed that the principal focus of the business was the promotion of industry and commerce, and that the services provided to members, which were aligned to that principal purpose, simply provided funds which enable it to perform its advocacy and policy activities.

Ultimately, that is the key point to which the judgement relates. I want to make one quick aside to that. It is that the CCI is very lucky that it has not had the same sorts of restraints put on it that have been put on our community legal centres. Community legal centres that receive funding from the commonwealth government now are not allowed to participate in any form of advocacy in that legal debate. Members might think that is quite extraordinary, because organisations that feel the brunt of laws and law changes in particular should have that right to participate. In fact, for the development of good public policy, our community legal centres should be involved in advocacy. I assume we all have them in our electorates. I have one and most members have them in their electorates for the value they provide. A condition of the funding agreement with the Australian government specifically disallows them from participating in advocacy. I think that is a shame and that it will result in bad policy over time coming out of the Australian government.

I will come back to the key question of the judgement. You will be pleased to know, Madam Acting Speaker, that I am nearly finished with the judgement. I have gone through the main points. The CCI had to prove to the court why it should be considered part of the fourth class of charity and therefore worthy of an exemption from payroll tax. His Honour, in referring to the CCI as the applicant, made the point —

Are the activities of CCI directed to the purpose of promotion and industry, generally in Western Australia, as the applicant contends, or rather are the activities directed to serving the private interests of members or other businesses, as the Commissioner contends?

I make the point that the court considered corporate documents, annual reports, strategy documents and a lot of other documents that the CCI presented as evidence. Mr Nicolaou, of course, was adamant that the services were a means of pursuing an end, which is the advocacy of free enterprise. However, the commissioner made the following point —

... the Commissioner points to the provisions in CCI's strategic plans which are replete with references to services to members, to annual reports which identify the principal activities of CCI as providing a range of services, rather than activities directed to the promotion of trade, industry and commerce generally.

I made the point earlier that I think it was in the CCI's best interests that Justice Chaney did not consider the CCI's story to be relevant evidence in the decision he made. Ultimately, as we now know—hence the legislation before us—His Honour decided that it is accepted that the promotion of industry and commerce can be a charitable purpose. That was not in dispute, so that hurdle was crossed with ease. The judge then concluded —

Taken as a whole, the materials before the Tribunal support the view that the driving force of CCI's operations is the promotion of a strong business community in Western Australia.

No doubt Mr Nicolaou heaved a great sigh of relief and no doubt got a healthy bonus from the governing council of the Chamber of Commerce and Industry as a result of that.

The question then was: to what extent are the wages exempt? The CCI, of course, argued that if the tribunal found that the CCI was a charitable purpose, then all wages, including the wages it pays in its commercial activities—the \$65 million being a separate exemption—should also be included and there would be no payroll tax payable at all. I think the judge agreed with that. However, in the original decision of 18 July 2012, the commissioner had not yet prepared submissions, so that part of the case was deferred to a later point, and a subsequent judgement was delivered by His Honour Justice Chaney on 10 July 2013, nearly a year later, that dealt with interest payable. Obviously that issue of the amount of wages payable was worked out, and it looks like the commissioner agreed that all wages were to be included in that general exemption. I want to make that point, although in the apprenticeship program all those wages are exempt under section 40(2) of the Pay-roll Tax Assessment Act 2002.

Unsurprisingly, therefore, as I said at the beginning of my contribution, the government did not exactly bring this legislation before Parliament with great haste, although I would think such legislation would create a significant opening for government. The briefing provided by the officers of the Department of Treasury and the Department of Finance made the point that as a result of this decision a number of applications had been made similar to the CCI application saying, not surprisingly, "If the CCI is entitled to the exemption, so are we." As a

result of that decision, therefore, some \$56 million had been refunded to those organisations over a period of about five years. I am not getting any acknowledgement from members opposite but, from my memory of the briefing, it had an impact primarily over the last two budget years. This is a loophole that needs closing. As I said at the beginning, I was surprised that the Chamber of Commerce and Industry of Western Australia was considered in the first place to be a charity, simply because I made the point, not as a facetious critique of the CCI, that it is not an area of law with which I was familiar; however, I am now. This amendment will not impact on the definition of “charity”; it deals with which organisations are entitled to exemptions. It will also catch professional associations, and that is quite right.

The member for West Swan raised some concerns that were expressed also by Pro Bono Australia in its media release today about giving the Treasurer and the Minister for Finance the power to exempt organisations. This is the exact point made by Pro Bono Australia in its media release titled “WA Charities Open to Political Intimidation”. It is a long media statement that starts as follows —

Proposed legislation in Western Australia aimed at removing some charitable organisations from state tax exemptions will leave them vulnerable to political intimidation, law experts have warned.

It goes on, so I will not read it all. I put the question to the officers who gave us the briefing: are there any other circumstances in which the minister has the power to exempt the payment of a tax? The answer was no. Some in the original act have been removed over the course of time, I think, quite rightly. Yet we are now giving the Minister for Finance and the Treasurer the power to do just that. I think that carries with it, as expressed by the member for West Swan, some inherent problems. They may not manifest now but over time ministers of the day may find themselves subject to lobbying from whatever organisation because the only stipulation on the minister and the Treasurer will be to make those exemptions in the public interest, which is an incredibly broad concept. I think that perhaps should be dealt with by the Commissioner of State Revenue as opposed to the minister of the day. I think we would get a better public policy outcome, as well as perhaps free government from being pressured to declare a particular organisation exempt from paying payroll tax. I make the point, minister, as I did at the beginning: I have talked about payroll tax tonight because that is the main tax we are dealing with but we are also dealing with duties and land tax. I understand that; however, payroll tax makes up, I dare say, 90-odd per cent of the \$56 million that has been refunded to date.

The Taxation Legislation Amendment Bill is an interesting bill that deals with an interesting situation. Again, I congratulate John Nicolaou who provided exceptional evidence to the State Administrative Tribunal, and I hope he was duly recognised by the CCI, even though that particular benefit is about to come crashing down on the CCI. However, I have not had any letters from the CCI objecting to this bill, nor has the CCI intensively lobbied with requests from it saying that this is a bad bill that should be opposed, and I am not surprised. I think this is an inevitable outcome and the CCI probably accepts that as well.

With that short contribution, the member for West Swan made the point that we will support the legislation, but we have some issues that we will raise during consideration in detail. I seek an answer from the minister to the question I asked earlier about a technical legal point, to which there is probably an easy answer.

**DR A.D. BUTI (Armadale)** [5.33 pm]: I, too, rise to speak on this Taxation Legislation Amendment Bill 2014 before us. As mentioned by the member for Victoria Park, we support this legislation, but we have concerns about the Minister for Finance being given the power to exempt a body from being subject to state taxes. As the member for Victoria Park said, we are not making any assertions about or allegations against the current Minister for Finance or, under the legislation, in concurrence with the Treasurer, but it would not be hard to imagine the pressure that may be put on any minister of the day regarding the number of bodies seeking exemption from the state revenue system. In the opposition’s view, it would be better if that role is left to the Commissioner of State Revenue. As the member for Victoria Park highlighted, there appears to be no other situation in which the minister has the single power to determine whether someone should be exempt from the state revenue system. We hope the minister may take some advice on that, given we have forewarned him of our concern about that part of the bill, and look at our amendment as a very sensible inclusion in this legislation, which is very much wanted and necessary because of the State Administrative Tribunal’s decision to allow the CCI to be exempt from paying taxes on the basis of it being a charitable body. As the member for Victoria Park said, that is somewhat surprising. The member for Victoria Park went through SAT’s decision that led to the need for this legislation. He also briefly talked about taxation law and I would like to build on that contribution by the member.

Being labelled a charitable trust is incredibly important to certain bodies and individuals because it can result in them being exempt from the jurisdiction of the commonwealth Income Tax Assessment Act and the Western Australian Duties Act, Land Tax Assessment Act and Pay-roll Tax Assessment Act. These are major sources of revenue for the state of Western Australia so we need to be careful when an organisation is held to have charitable status when, historically, it may be thought that organisation would never be held to have charitable

status. As the member for Victoria Park said, it is somewhat surprising that the CCI was considered to be a charitable trust. As we know, there are many varieties of trusts. There are private trusts, resulting trusts and charitable trusts. There are some similarities between private and charitable trusts. Private trusts must have what are known as the three certainties: certainty of intention, which means certainty that the establishment of a trust was intended; certainty of subject matter, which refers to the requirement that the trust's property must be identifiable; and certainty of object or beneficiaries. The beneficiaries are, of course, those who will benefit from the trust. Private trusts must be for people—the beneficiaries—but a charitable trust differs. It must have certainty of intention, obviously, and certainty of property or subject matter, but it does not have to have certainty of object or specific beneficiaries; it has to be for a charitable purpose. Generally, private trusts that are for a purpose are deemed to be void because no-one can enforce that trust. A charitable trust can be enforced through the inherent jurisdiction of the court, and that is why the requirement that it be for a purpose rather than a specific beneficiary does not make it invalid. It is interesting to note that the three main reasons for defining what is charitable under the law is that if a trust is for a non-charitable purpose, it is void because there is no individual capable of enforcing it. Although the term “charitable” may be defined in certain statutes, generally it will have the common law legal meaning applied to it and, as I said, the court has the inherent jurisdiction to enforce it. The member for Victoria Park mentioned Lord Macnaghten in the case of *Pemsel* in 1891 as being the origin of charitable trusts, but it goes back a long way before that. Lord Macnaghten's characterisation of the four limbs of charity came about through a certain statute—the Statute of Charitable Uses 1601—which contained a list of charitable purposes. I want to read them because it is difficult to see the Chamber of Commerce and Industry of Western Australia among these purposes. The charitable purposes listed under the Statute of Charitable Uses 1601 include relief of aged, impotent and poor people; maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; repair of bridges, ports, havens, causeways, churches, seabanks and highways; education and preferment of orphans; relief stock or maintenance of houses of correction; marriages of poor maids; support aid and help for young tradesmen, handicraftsmen and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants concerning payment of fifteens, setting out soldiers and other taxes. It was from there that Lord Macnaghten in the *Pemsel* case, in the latter part of the nineteenth century, came up with the four limbs to a charity: the relief of poverty; the advancement of education; the advancement of religion; and this fourth limb, which is what this piece of legislation seeks to address—that is, trying to constrict the bodies that may come under the fourth limb.

It is important to note that to be a charitable trust, not only does it need to have a charitable purpose as determined by common law—going back to the Statute of Charitable Uses 1601 and Lord Macnaghten's characterisation—but it also has to be for a public benefit. There cannot be a private nexus to the charity; it has to be for a public benefit. The public benefit is incredibly important to be labelled a charitable trust. It has to have a charitable purpose and has to be for the public benefit. The courts have generally stated that if it is for the relief of poverty, the question does not have to be asked: is it for a public benefit? The general view is that if it is for the relief of poverty, even if it is for the relief of one person, that is for a public benefit. If it relates to religion or education, one has to go further and determine whether there is a public benefit. If it will assist only one person, it is unlikely to be held to be a public benefit. A sufficient number of people will have to benefit for it to be considered a charity. It cannot be a private nexus and it cannot be a nexus related to family. A family trust is not a charitable trust. Some people may call the CCI a family, but it is definitely not what generally would be considered to be for a public benefit. The judgement found differently, but the government, in introducing this legislation to this house, has taken the view that the CCI should not have the privileged position of being considered charitable and of course obtaining the benefit of not having to pay certain revenues to the state.

I will move to the fourth limb shortly. It is important to understand how it has developed in law for us to realise how the State Administrative Tribunal's decision would have taken most people by surprise and there is a need for this legislation to come before the house. We all know generally what education is. There may be an educational arm to the CCI, but if a charity is set up for education, it has to be more than just education. It has to be for the advancement of education. It has to be seen to be advancing particular aspects of education for the public benefit. If it deals with someone sitting in a room increasing their knowledge, without that knowledge being transferred to a wider population, it is unlikely to be seen to be for the public benefit and for the advancement of education.

Religion is an interesting one. The member for Victoria Park said that some people might see the CCI as a religion. That is not as far-fetched as members may think. The definition of “religion” was determined in what is known as the Church of Scientology case—a Victorian case that went to the High Court. The case related to whether the Church of Scientology was a religion in order to be exempt from the Victorian payroll tax system. In that case, the High Court determined that the Church of Scientology was a religion. Whatever people's views may be on the Church of Scientology, I think it would generally be considered a religion. The definition was framed by the High Court in the *Church of the New Faith v Commissioner of Pay-roll Tax* (1983). The

judgement of Acting Chief Justice Mason and Justice Brennan stated that the legal definition of religion involves belief in a supernatural being, thing or principle; and the acceptance of canons of conduct in order to give effect to that belief. That is quite a broad definition.

I remember setting an exam when I was teaching trust law at university. The exam dealt with a group of bikies who had a belief that Harley–Davidsons had supernatural powers and it was something that they should believe in. They also believed that they should eat hamburgers and that they should go forth and spread the word. The students had to work out whether that was a religion and could obtain charitable status. It could be argued under that legal definition espoused by the High Court in the Church of Scientology case that that was possibly a religion. However, the High Court also said that if it is obviously a sham, it will not be held to be a religion. The Minister for Corrective Services may differ on whether a devotion to Harley–Davidsons should be a religion —

**Mr J.M. Francis:** As long as you don't say that about Jedis!

**Dr A.D. BUTI:** I will move to the fourth limb. Lord Macnaghten's characterisation is really to enable anything that does not fall under the first three limbs to be caught up by this broad fourth limb. This fourth limb, which is "for other purposes beneficial to the community", obviously has to have a public benefit. That is its main purpose. A two-staged test has to be passed. The first is the purpose in question must be beneficial to the community—namely, a qualitative assessment in addition to the chiefly quantitative criterion governing the test of public benefit; and the purpose must fall within the spirit of the preamble to the Statue of Charitable Uses 1601.

I still find it hard to see how the CCI came under that fourth test. The leading Australian case was the 1971 case, Incorporated Council of Law Reporting of the State of Queensland v Federal Commissioner of Taxation. It dealt with whether the appellant, which produced law reports not for private gain, was considered to be a "charitable institution" and therefore exempt from income tax. The High Court found that the purpose of the publication of these law reports was both beneficial to the community and within the spirit of the preamble. I am sure the member for Butler would appreciate this: lawyers and judges, because they are grounded in the law, see that the law has a special higher calling. Chief Justice Barwick reasoned that —

... the production of law reports is ... beneficial to the whole community because of the universal importance of maintaining the socially sustainable fabric of the law.

He reasoned similarly in respect of the fabric of law —

"The sustenance of the law is a benefit of a material kind which ensures for the benefit of the whole community. Is not its administration, with regularity, and with as much consistency as a system based on human judgment can attain, as socially fundamental as the instances [contained in] the preamble? ... [S]ociety cannot exist as such if it is not based upon and protected by justice under law: and nurtured by obedience to law."

We can see that a lawyer is speaking there. I imagine that if the decision were to be made by an economist, he would be advocating the importance of economics to the fabric of society. Others would, of course, disagree with that, as many people would disagree that law is incredibly important to the fabric of society. Of course, lawyers argue that law is very important to the fabric of society and for the benefit of the community, and that is why politicians should not interfere with the discretion of judges. I am sure that will come up in other debates that we will have as time goes on.

[Member's time extended.]

**Dr A.D. BUTI:** We are talking about this two-stage analogy, or this approach that an organisation must be for the public benefit, and it must fall within a purpose in the spirit of the preamble to the statute. With the minister's other hat on, that of the Minister for Transport, he might be interested to know that the repair of bridges, ports, havens, causeways, churches, sea banks and highways can be considered to be a charitable purpose. The minister might be able to get some tax exemption to reduce the budgetary forecasts for the Forrestfield link. However, that would be revenue lost to the state, but it might look good for the minister because the money being expended in his portfolio might be reduced. One of the areas that can be considered to come under the fourth limb is the protection of animals, and sometimes certain benefits for a locality. It has to be a locality large enough to confer a public benefit. The relief of distress, the promotion of safety and the protection of the country are also included. I still do not see where the Chamber of Commerce and Industry of Western Australia fits into all this. I note the Minister for Sport and Recreation is in the chamber. Interestingly, a trust that has been set up for sport is not charitable in itself, but if the sport is incidental to a charitable purpose, that will not be fatal to the trust.

The bill specifically states that trade unions and political parties do not have charitable purposes. That is simply in conformity with the long tradition of the common law. Trusts that have been set up for political purposes do

not have charitable purposes. We might argue that they have a public benefit but they are not considered to be charities. The decision in the case of *Bowman v Secular Society*, a British case of 1917, stated —

... the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit.

We are seeking to advocate a certain position that is not considered to be a charitable purpose, and the courts do not want to become involved in adjudicating on contentious political issues. In a New Zealand case, an organisation opposed to abortion was set up and sought charitable status. It was found not to have charitable status because abortion was considered to be a divisive issue and the organisation was not of benefit to the community.

That is just a little tour around the law of charitable trusts. As I have said a number of times in my contribution, I still do not understand the decision that led to the CCI being considered to be a charitable organisation. I would argue also that the CCI is a political organisation, and therefore should definitely not have been considered to be a charitable organisation. It takes political positions; it is involved in the political debate, and argues for economic positions it believes the government should take. It should have been denied exemption for being a political organisation. If people argue that a trade union should not be exempt from taxation—arguably trade unions are exempt because they may have a political bent—I cannot see why the CCI should be exempt. Of course, certain members on the other side of the house might disagree with that. It will be interesting, when the other side of the house moves to this side of the house, whether it will be pushing for the CCI to once again have charitable status. The minister is shaking his head, so I will hold him to that. In 2029, when he is over on this side of the house after having been an opposition member for about 12 years —

**Mr J.M. Francis:** Are you talking 2029? That is being a bit optimistic, isn't it?

**Dr A.D. BUTI:** Will the member have retired by then? We will see whether his position will change.

Seriously, the minister's position may not change but it is really important that he does not have the discretion to decide whether some organisation should be exempt from the provision of the tax legislation. That should be left to the Commissioner of State Revenue, who hopefully is free from political pressure. We know that political pressure can take many different forms, and can also involve financial pressure. That would place the Minister for Finance and the Treasurer in positions that they should not be in—to have to decide whether a body is exempt from the various revenue-raising mechanisms in our system by being considered a charity. The amendment the opposition will be moving is very sensible, and the minister should consider it seriously, otherwise the minister will be put into an inevitable position regardless of what he decides. He will be pleasing the body that he has exempted but he will be exposing himself to public scrutiny and protests from other organisations that he has decided not to grant exempt status to, and from the general public. When an organisation is given charitable status, although it may be seen as laudable since that organisation has a charitable purpose, there must be a cost-benefit analysis. Giving charitable status to an organisation doing good works is denying the state revenue. As we know, the state budget is in a dire situation as a result of the mismanagement of successive Treasurers and the Premier, so the government would be loath to give an organisation charitable status that would deny the state much-needed revenue.

The development of the law of charitable trusts has taken place over a couple of hundred years. The judgement of Lord Macnaghten referred back to the 1601 statute. Even though the categories of what can be considered to be a charitable trust are not closed, and that is why that fourth limb is open, it is important that, as Chief Justice Barwick stated in the law report case, we live in a society where there is certainty of law.

*Sitting suspended from 6.00 to 7.00 pm*

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.