

TAXATION LEGISLATION AMENDMENT BILL (NO. 2) 2014

Second Reading

Resumed from 23 October.

MS R. SAFFIOTI (West Swan) [7.18 pm]: I rise as the lead speaker on the Taxation Legislation Amendment Bill (No. 2) 2014.

Mr D.A. Templeman: You bumped me off the list.

Ms R. SAFFIOTI: I did bump the member for Mandurah, but I cannot wait to hear his contribution to this debate, as a well-known taxation expert in this chamber. I still recall seeing that photograph of him at one of those big boardroom tables discussing taxation issues with some taxation experts.

Mr D.A. Templeman interjected.

Ms R. SAFFIOTI: The member thought there was a free lunch, as I understand.

Mr D.A. Templeman: I thought they wanted to talk about GST.

Ms R. SAFFIOTI: There he became an instant expert on taxation law in Western Australia, so I look forward to his contribution later this evening.

Mr D.A. Templeman: Much later.

Ms R. SAFFIOTI: I rise to talk on the Taxation Legislation Amendment Bill (No. 2) 2014 and indicate that the opposition will support it; however, because this a very technical bill, there are many questions that we will raise through the consideration in detail stage. From the outset, I thank the advisers for a very informative briefing session that was held earlier today at one o'clock. We were able to go through a number of aspects of this legislation. I again thank those advisers sitting in the Speaker's gallery who have had to wait around since one or two o'clock for their advice on this legislation. I know how much they love this place. I do not want to be too political here, but it is Parliament, so I might give it a go. I am shocked that we are debating this bill this year. After the Minister for Finance's second reading speech on this bill, my colleague the member for Victoria Park—who had wanted to contribute to this debate but is currently visiting the communities that the Premier wants to unilaterally shut down—went over to the minister and asked him, "When is this legislation going to be discussed in this place?" The Minister for Finance replied, "Don't worry about it; it will not be until next year."

Mr D.C. Nalder: I did not say that.

Ms R. SAFFIOTI: Yes, the minister did. I trust the member for Victoria Park. I was shocked when I received a request late last week for the legislation to be brought on on Thursday. I did not think that it would happen. Yesterday, my office chased up a briefing with the minister's office and one was scheduled for today at one o'clock. Unfortunately, it was not great timing, because it was after our caucus meeting. On a wing and a prayer I had to take a recommendation to the caucus about the contents of this bill. I was shocked how quickly this bill had been rushed into this place, but I then realised why it had been rushed into this place. It was rushed because this week is Repeal Week.

Mr D.A. Templeman: Again.

Ms R. SAFFIOTI: Again.

Mr D.A. Templeman: I thought Repeal Week was last week.

Ms R. SAFFIOTI: No, it is this week. I think because things are not looking too good for the government—we know that—government members thought, "Gee, why don't we make next week Repeal Week?" Government members went looking through the drawers to find legislation they could dress up as Repeal Week legislation, and lo and behold the Taxation Legislation Amendment Bill (No. 2) 2014 became a key part of Repeal Week. I do not think the legislation was designated to be a key part of Repeal Week, because, frankly, it does not really simplify the law. The legislation changes the law in relation to the primary production test, but it is not about repealing laws or cutting red tape; it is about changing some definitions and introducing more legislation into this place. I was shocked by the speed at which this legislation came into this place, but, as I said, I think government members went to find legislation that looked like it could be talked about in Repeal Week, and this is it. As I said, in opposition—I will not complain about opposition because opposition is what it is—we do not have a lot of resources, so when I have a briefing at one o'clock and then have to lead the debate on the legislation later that day, it is a bit tough. We do not tend to have a lot of resources and we do not have departments of advisers, but, as I said, it is our job to get out of opposition, not to complain about it, so here we are debating the Taxation Legislation Amendment Bill (No. 2) 2014.

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I will just ask the member for Mandurah to contact the member for Cannington, because he wanted to come to the chamber to listen to my contribution.

Mr D.A. Templeman: He is swotting up now.

Ms R. SAFFIOTI: He is swotting.

Members might find it quite interesting to know that this whole process was triggered in 2012 when producers—I heard some of this firsthand—in the metropolitan area, particularly the Swan Valley, who processed their products on site were, for the first time, being hit with significant land tax bills. In 2012, producers doing secondary processing on their properties, for the first time, in many instances, received a land tax bill. The bills were significant, sometimes tens of thousands of dollars coming from zero the previous year. The key issue in all this is what triggered these events in 2012. Today I sought advice on that, and it appears that as part of the ongoing assessment by the Commissioner of State Revenue into the interpretation and application of the legislation, the commissioner determined that the legislation did not intend to give land tax exemptions to primary producers processing on their properties. As a result, in 2012, many primary producers who processed or value-added—whatever term one would like to use—on their land were hit with a land tax bill for the first time. I quote a 2012 letter from the Office of State Revenue to a grapegrower in the Swan Valley who also produces wine. The letter states —

It has been determined by this Office that the growing of grapes on the land for the production of wine for sale (“winery”) is not a rural business and therefore the land does not qualify for exemption under the provisions of section 29 of the LTAA —

The Land Tax Assessment Act. The letter continues —

As a result, the land has been correctly assessed and the application for exemption has been disallowed.

The letter goes on to refer to the grounds for assessment, and states —

Section 29(1) of the LTAA provides that land (except land in a non rural zone) is exempt for an assessment year if, at midnight on 30 June in the previous financial year, it is or was used solely or principally on a commercial basis to produce income to the user from the sale of produce or stock in the course of carrying out one or more of the following kinds of rural businesses —

- (a) an agricultural business, silvicultural business or reforestation business;
- (b) a grazing business, horse-breeding business, horticultural business, viticultural business, apicultural business, pig-raising business or poultry farming business.

The letter continues —

The term ‘viculture’ is not defined in the LTAA but it is understood in its ordinary meaning as ‘grape growing’ or ‘the study or science of grapes and their culture’. This is contrasted with the term ‘viticulture’ which is taken to mean the ‘cultivation of grapes for the production of wine’.

In applying this statutory definition of “rural business” to the ordinary definition of “viticultural business”, it can be seen that for a viticultural business the income is required to be produced from the sale of grapes that are grown for sale.

In 2012, letters and assessments were sent for the first time to many grapegrowers and winemakers in the Swan Valley. I remember that it was a major issue at the time. I quote a newspaper article titled “Taxing times for metro winemakers” published on 21 November 2013. The article outlines the issues winemakers faced at the time. The article states —

Wine makers in the metropolitan area are being slugged tens of thousands of dollars in land tax after a review of exemptions for primary producers.

Primary producers in metropolitan areas had long been exempt if more than one-third of their income came from a rural business, Swan Valley and Regional Wine Makers Association vice-president John Griffiths said.

But the status of wine producers has changed, Mr Griffiths said.

“Everyone pays land tax unless you’re a resident or if you’re outside the metropolitan zone and you’re a farmer,” he said.

“It’s designed so companies pay land tax and families and farmers don’t, that’s the intent of it.

Extract from Hansard

[ASSEMBLY — Tuesday, 18 November 2014]

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“Now, all of a sudden, we’re getting letters from the State Revenue Office saying you’re a winery and we understand you’re earning revenue from wine, not grapes, and that’s not a primary product.

“For whatever reason they have changed their interpretation of the Act.”

Wangara vintner Paul Conti, whose Sicilian father emigrated and started the winery in the 1930s, is facing a bill of \$80,000 for two years worth of land tax.

“I really haven't got too many qualms about (paying land tax on) the winery and the restaurant ... but the rest of it is used as a rural property,” Mr Conti, 77, said.

“If someone just bought a piece of land in suburbia and said ‘I’m going to put a vineyard there ... I’d be against that. But (the winery) has been here for a long time, it’s not an overnight thing.”

City of Swan Mayor Charlie Zannino, who was also hit with a bill for his Swan Valley winery, said the tax was hurting an industry already under strain.

“Prices of grapes have probably reduced by half (over the past 20 years) but then if you look at your overheads, fuel, labour, chemicals, fertiliser, they’ve more than quadrupled,” Cr Zannino said.

“When you look at the return you get it’s not viable.”

Cr Zannino also pointed to the inconsistency of the Swan Valley being zoned non-rural by the State Revenue Office while it was set aside as a wine producing region in the 1995 Swan Valley Planning Act.

In 2012, for the first time, many wine producers throughout the valley were slugged with land tax. Between 2012 and 2014 there was an internal discussion—as it has been described to me—between the Departments of Treasury and Finance about this primary production exemption, how it was being applied and what its future was. That led to the Minister for Finance, as I recall, or possibly the Treasurer, in July this year outlining a policy direction paper and some draft legislation that was put out for consultation. As I said, I tried to read all the submissions on the website, but unfortunately not all 18 submissions received during this review were published on the website. I found a couple, but much of the information was kept private. I do not think those who submitted were told it was going to be made public, which is why it was kept confidential, but I cannot see any reason for those 18 submissions on the proposed legislation not being made public. I am not sure whether the minister is listening. Eighteen submissions were received by the minister’s department following the invitation to be part of the consultation in July this year, but those submissions have not been made public. It would have been good to have been able to compare the changes being made today with the requests from all who were consulted, but that has not been the case. Because this legislation has been sort of rushed into this place for Repeal Week —

Mr P. Papalia: You should wear a red nose when you talk about Repeal Week, really.

Ms R. SAFFIOTI: It should have a colour.

Dr K.D. Hames: We are working up to it; it will grow with time.

Mr P. Papalia: A big clown nose and a hat, and big shoes that stick out!

Ms R. SAFFIOTI: The last time the government tried a stunt, it tried a big hook and that did not work—no more visual stunts!

Dr K.D. Hames interjected.

Ms R. SAFFIOTI: Pardon? Repeal Week.

Mr P. Papalia: It’s just silly! Tell Dixie to let go of it. Seriously!

Ms R. SAFFIOTI: Yes, after that hook incident. Member for Warnbro, as I said when I started this debate, this legislation was not meant to come forward this week; it was meant to be next year. But the government called it “Repeal Week” and it thought it should bring something in.

Mr P. Papalia: They have to do something for Repeal Week!

Ms R. SAFFIOTI: Even though this is not really repealing any legislation. It is not actually simplifying anything either.

Dr K.D. Hames: Are you talking about the bill now?

Ms R. SAFFIOTI: I am; I am talking about the Taxation Legislation Amendment Bill (No. 2) 2014. As I said, the government had Repeal Week, it had to find some legislation that it thought could somehow look like it was simplifying something, but it is not really.

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Dr K.D. Hames: I think you're being very cynical.

Ms R. SAFFIOTI: I have been in government; I know how it works. I know what happens when the media guys take control, which they have. They took control a long time ago. The media guys are running the government; I can see it every day. Even the Twitter account—give me a break!

Mr P. Papalia interjected.

The ACTING SPEAKER (Mr N.W. Morton): Members, let us try to stay focused on the bill.

Ms R. SAFFIOTI: The Deputy Premier keeps interjecting.

The ACTING SPEAKER: I am saying “members”.

Ms R. SAFFIOTI: Back to this legislation that is being dealt with in Repeal Week. Basically, the review came about as a result of these primary producers being hit with land tax for the first time. As part of the internal review some other areas of the Land Tax Assessment Act 2002 and Duties Act that needed to be tightened up were identified. As I said, it is not really repealing anything. In some sense, it is actually trying to prevent some revenue leakage, which is not really repealing regulations or legislation; it is adding to them. Also, we are changing some of the definitional issues that seem to be inconsistent in some of their application.

The submissions closed in August, after which two key changes were made to the draft legislation that was posted and on which people were consulted. The legislation with the two key changes is what we have before us today. One is whether the exemption would continue to apply to an executor of a will. What was not contemplated under the original legislation was a property being passed from a deceased family member to another family member. During that transitional time the executor is in control of that property, and that allows the exemption to stand in that transfer. The other change is to discretionary trusts. The legislation extends some definitional arrangements, and so it creates a transition time, as I understand, when the structure of trusts can be changed to ensure that the intention to the exemption continues, and that the exemption is not lost for discretionary trusts because of the structure of the trust that was created. They are the two key changes made in between the legislation being posted in August and the legislation coming before us today. That is a little of the history of the changes. I want to highlight my understanding of each of the key changes being talked about today, and the explanatory memorandum will be my guide.

Basically, the first key change—the key change related to primary production when some processing is involved—is bringing back the exemption for land that is used for primary production, even though some value-adding or secondary processing is being undertaken on that same property. With the 2012 change, that exemption was lost and this legislation seeks to bring back that partial exemption. A clear example would be a property on which grapes are being grown that is also a winery. This legislation will mean that the land on which the vines are is exempt from land tax, but the land on which the winery stands will be subject to land tax. I understand that this will replicate in general what existed before the change of application in 2012. I have been informed that no-one will be worse off than they were pre-2012, and we will go through this during the consideration in detail stage. It is interesting to deal with this legislation during Repeal Week, because all these matters have a significant administrative burden, particularly when trying to assess what portion of land is used for primary production and what portion of land is used for processing, although, frankly, I suspect it would not apply to too many properties throughout the metropolitan area or in regional WA. It is administratively cumbersome, but there does not appear to be any way around it.

Another key change that I think has been welcomed by many in the industry is the abolition of the one-third income test for non-rural land, which I will now call metropolitan land because I find it very difficult to understand the definitions of “non-rural” and “rural” throughout the legislation. The current one-third income test can be satisfied only if any supplemented off-farm income does not exceed two-thirds of the farmer's total net income; for example, continued losses or high financing costs may result in a genuine farmer not satisfying the one-third income test. This one-third income test, which has been an issue for many grapegrowers in the Swan Valley but also more generally, will be replaced with the common law concept of activity, and new indicators will be put forward in the legislation. That provision is on page 6 of the legislation. Proposed section 30B identifies the new business test that will be applicable. As the explanatory memorandum states, these factors generally reflect the business test indicators applied by the Queensland Office of State Revenue and the Australian Taxation Office to determine a genuine primary production business. The one-third income test will be replaced with this new assessment, which, as I have said, will be welcomed by many in the industry. This is one area in which the one-third income test was administratively very difficult to determine, but hopefully these new indicators will allow for a truer assessment of the activity that is being undertaken on the land that it covers.

Extract from Hansard

[ASSEMBLY — Tuesday, 18 November 2014]

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The next change is in relation to the owner–user rule. The legislation proposes to expand the owner–user rule to be more in line with the definition of “family member” in the Duties Act 2008. It will also expand the owner–user rule to include other certain related entities, which I think includes trusts and other sorts of organisations. This is one of the more recent changes. Under this change, executors will also be able to continue with the land tax exemption in that transition period between one owner and the next owner.

The next change is to the multiple appeal options. We had a crash course on this legislation today, so hopefully I have not got too many things wrong so far. I love it when the Deputy Premier listens to my speeches! In a number of instances, there are concurrent appeals to both the minister and the State Administrative Tribunal. Given some of the changed definitions, a proposal has been put forward that there is no longer a requirement for an appeal mechanism to the minister and that we have a streamlined process whereby the appeal goes only to the SAT. As I said during debate on the last taxation bill that we discussed, I am generally supportive of taking away the role of ministers in the appeal of taxation decisions, because I think it puts both the commissioner and the minister of the day in particular in a bit of a tricky situation. It should not be subject to political interference, because sometimes the pressure is very great. Generally, I am supportive of this change, but I will ask a few more questions during the consideration in detail stage.

Another key change is to the definition of “rural business”, which is another interesting aspect. The bill seeks to redefine a rural business, noting that when this was established, they tried to define exactly what constituted a rural business. The bill will modernise that definition to try to properly reflect the activities that currently occur on these lands. There used to be a very limited definition of “rural business”, but as activities grow and as we breed different animals and grow more exotic plants, the definition needs to be changed to better reflect the modern agricultural community.

The last key change, which is an interesting change, is in relation to a SAT decision about a retirement village. In 2013, a decision was handed down by the SAT in a case between Aveland Pty Ltd and the Commissioner of State Revenue. At that time or soon after, a statement was made by the then Minister for Finance—I cannot remember who it was, but I suspect it was the member for Riverton; I lose track of Ministers for Finance. Other key amendments to the Land Tax Assessment Act included in this bill relate to the granting of partial exemptions. The then Minister for Finance foreshadowed these amendments in Parliament in November 2013 following a SAT decision that overturned the longstanding practice of allowing only a partial exemption when land is not being fully used for an exempt purpose. The decision was that there could no longer be partial exemptions. I understand that this case related to the construction of a retirement village facility. The facility was on a portion of the land and a land tax exemption was being sought at the time for the entire block. The State Administrative Tribunal determined that partial exemptions, which led to the entire block not being subject to land tax, would not apply. In the briefing—again, we will explore this a little more in consideration in detail because it is a significant change—it was put to me that without this amendment there could be significant revenue leakage in future years. More people would seek full exemption by contesting the land tax applicability to their property. I understand that since that SAT decision the Taxation Legislation Amendment Bill (No. 2) will stop anyone seeking a full land tax exemption. However, Aveland Pty Ltd will not be retrospectively hit with land tax; its land tax will be applicable prospectively, not retrospectively. The bill seeks to go back to that SAT decision to make sure no-one can claim the full land tax exemption from November 2013 to when this legislation is finally passed. It is a complex issue but I understand it is about preventing significant revenue leakage.

The key issue from my perspective is: what is the revenue impact of the entire legislative package? We were told that the bottom line cost of this entire package is around \$3 million per annum. It appears that the cost to the budget will be \$3 million per annum.

Another late amendment to this bill on the notice paper is that many of the exemptions will be retrospective to 2012. I understand that will mean a few people who have been subject to land tax, particularly grapegrowers, will get a refund for the tax they have paid since 2012. I understand the minister will move that amendment in consideration in detail. I think that is fair because the interpretation of the 2012 act led to the unfair situation of people who had not been subject to land tax on particular parcels of land, out of the blue, having to pay land tax. I think it is right to make sure people are not worse off for that intervening period. It is obvious that it was never the government’s intention to make people pay land tax where they undertake primary production, but that is what started to occur in 2012. I look forward to that amendment being brought forward later tonight, tomorrow or Thursday or whatever the case may be.

The last two changes relate to the Duties Act. They too are technical in nature, and I tried to become a full bottle on it at one o’clock today. The Duties Act is an interesting beast because lawyers and accountants are forever trying to work out how they can change the nature of transactions to minimise duties. Stamp duties are based on transactions. As we all know, when we purchase a house, we pay a significant amount of stamp duty. In many

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instances, the impact in monetary terms for businesses is far greater. It is a constant issue for the Office of State Revenue to ensure that it protects the integrity of its taxation base. Sometimes I sound more like a taxation adviser than a politician. State Revenue seeks to make sure that the purpose of the act is not constantly being undermined through specific legal challenges. As I said, no-one likes paying tax but if people buying a house have to pay their fair share of stamp duty, it is incumbent on all businesses to pay their share of stamp duty.

The second key provision is in relation to mining tenements.

Mr D.C. Nalder: It's about information.

Mr W.J. Johnston: It's mines and petroleum too.

Ms R. SAFFIOTI: I forgot mines and petroleum was also the member for Cannington's shadow portfolio.

This provision is about mining tenements in particular where there has been a concerted effort to break away the information component from the land component to try to reduce the duty. My good colleagues, the Office of State Revenue advisers, have faced constant legal challenges to, not undermine, but break away the information content from the land to reduce the duty. This bill seeks to create an intrinsic link so that mining tenements and information on the tenements are one.

Mr W.J. Johnston: Which clause is that?

Ms R. SAFFIOTI: It is in a later part of the legislation, which I am sure, as the member for Cannington has some time, he can find it for me and maybe alert me to it. That is an interesting part. Another key point on duties is transactions—this is far, far more complicated—and how duty is applicable when a company and its subsidiary are sold. I understand that, in light of the timing of a transaction, the Office of State Revenue can collect stamp duty twice from the same broad organisation and it is possible that the office might not be collecting the revenue that it should be in other situations. I understand this change will close that loophole to make sure that, first of all, a possible loophole is not exploited but, moreover, that double taxation is not charged on the same transaction. As I said, the Duties Act is an area of constant change. I think former Treasurer Eric Ripper introduced the land-rich provisions to prevent companies from structuring their businesses to try to rip out land and reduce the tax payable on those transactions.

As I said, I hope I have done the contents of this bill justice and that my colleagues who will have to speak on this bill are fully briefed on its content. As I said, it would have been good to see all 18 submissions on this review because I had intended to do some very significant consultation on this bill over the Christmas period, but it was Repeal Week and the minister needed something to talk about so he has brought it on today. Here we are in Repeal Week debating 27 more pages of legislation. The Taxation Legislation Amendment Bill (No. 2) 2014 streamlines some aspects of taxation law, but by no means was this bill designed for Repeal Week. Really, the government had nothing to talk about, so it brought this bill forward.

Mr P. Papalia interjected.

Ms R. SAFFIOTI: The media advisers are running the show; we know what it looks like. I sought further input from the wider community on these proposed changes because taxation law is a very tricky beast and sometimes the changes have unintended consequences and other things that have been promoted are not picked up. I am pretty confident that some of the specific issues raised by the Swan Valley grapegrowers have been picked up, but there are some other issues that I will outline today. Before I go through the grapegrowers' submission on this issue, I want to put on record the Property Council of Australia's submission. It was pushing for a more general review of land tax in Western Australia.

In its submission titled "The Voice of Leadership", the Property Council states —

What is needed, however, is for the modernisation and simplification of the entire land tax system in Western Australia, as called for by the Government's own Economic Regulatory Authority.

A land tax review should reassess land tax thresholds, abolish land tax aggregation at an entity level, cap land tax assessment and re-examine ALL land tax exemptions.

I probably would not agree with all those things, but the Property Council has been calling for a more comprehensive review of the land tax system in Western Australia, and it used its submission on primary production to put forward those ideas. On the retirement villages exemption the Property Council states —

The recent amendments to the *Land Tax Assessment Act 2002* to overturn the State Administrative Tribunal's decision concerning retirement village exemptions provides strong evidence of the urgent need for a tax review in Western Australia. The inconsistent use of exemptions is not only detrimental

to the property sector, but decreases the availability of affordable housing options for senior Australians.

The Property Council goes on to say —

The Victorian government has taken the initiative to widen the land tax exemption for retirement villages. Since 1 January 2011, the land tax exemption for retirement villages in Victoria has applied to land on which a retirement village is being constructed ... Under section 78A(2), the exemption applies up to the earlier of the date of completion of construction, or the expiry of two tax years following the date of commencement of construction. The Property Council therefore recommends the extension of the land tax exemption to cover land on which a retirement village is being constructed be included as a specific area of focus in tax reform agenda.

For a long time the Property Council has been pushing for a complete review of land tax in Western Australia.

I will refer specifically to the Swan Valley and go through some of the key points in the application of this bill to the valley. The Grape Growers Association of WA states —

We strongly support: ...

- a) The exemption for the production area of agricultural produce used in secondary processing,

I have outlined that to the house before —

- b) The abolition of the one third income test, and
- c) The replacement of point (b) with the primary production business test.

That is something that the opposition supports.

A key issue for Swan Valley grapegrowers is the definition of rural and non-rural activities and the fact that metropolitan WA is seen as a non-rural area under the Land Tax Act, so slightly different conditions apply to land in metropolitan WA compared with regional WA. A suggestion pushed by the Grape Growers Association and others in the Swan Valley is that because of protections in place over what can be done in the Swan Valley planning area, it should be designated as a rural zone under the Land Tax Act. This is an interesting issue because next year we will be debating changes to the Swan Valley Planning Act. In that debate we can start to look at some of these issues more specifically. Landholders in the Swan Valley are not afforded the same privileges as maybe some landowners in regional WA, even though they are prevented from undertaking many activities, as one would expect in a rural area.

The association also points out some problems with the primary production business test, and I may go through these in a bit more detail in consideration in detail. Basically, the association is concerned that the primary production business test is inconsistent with the concept of pop-up farms. This is an interesting issue that was contained in the statement from the Minister for Planning on “The Way Forward—Swan Valley Land Use and Management: Report on Submissions and Recommendations”. The minister talked about allowing pop-up farms throughout the Swan Valley.

Mr W.J. Johnston: Like pop-up shops.

Ms R. SAFFIOTI: It is a bit like that and taking the small bar concept and little clothes shops into another stratosphere. It is a nice concept, member for Cannington, that on our retirement we can set up a little pop-up farm and grow organic mangoes in the right environment.

Mr W.J. Johnston: It sounds like a tax dodge!

Ms R. SAFFIOTI: It could be a tax dodge! Or we could grow Western Australian garlic, which is very popular. On the premise that anyone can grow anything anywhere, we could find an area for a pop-up farm.

Mr W.J. Johnston: You should come to Cannington, or east Cannington in particular with its large blocks, and see what people grow at the back of their blocks. It’s amazing.

Ms R. SAFFIOTI: I know. As the member knows, I am of Italian heritage and my mother can grow anything anywhere. Unfortunately, I missed that gene. I got the eating gene, but I did not get the growing anything anywhere gene. This concept of pop-up farms is inconsistent with the new primary production business test, and I will go through that a bit more in consideration in detail.

The association also refers to leased land, which is an interesting issue in the Swan Valley. The government’s vision has been outlined, without a lot of detail, in its “The Way Forward” for the Swan Valley, to continue this area as an agriculture and viticulture precinct; however, this concept of pop-up farms is also out there. The issue

here is leased land versus owned land. The land tax exemption applies only to the owner of the land and not to someone who leases the land. Members will understand that land tax is applicable because the owner of the land will receive rental income if they lease the land. However, we need to explore this issue of leased land more generally when we deal with changes proposed to the Swan Valley Planning Act next year and what should be applied in the Swan Valley planning area. If we want to keep promoting the valley and identifying it as something to be preserved for future generations, we need to be a bit more proactive in how we deal with land usage and also the costs that are incurred within the Swan Valley protected area. It is okay to stand up and say that we love the valley—everyone does it because it is a great place. But a key issue is: what practical things need to be done to ensure that the valley continues to grow? There are some beautiful places in the valley. I was fortunate to be in the valley on Thursday night to attend the opening of the new Mandoon Estate by the Minister for Planning. The member for Carine was there knocking back a few vinos. You should have seen him—he was getting right into it!

Mr A. Krsticevic: I was trying to keep up with you, but I couldn't do it unfortunately.

Ms R. SAFFIOTI: The member for Carine knows that is a lie. I was not drinking much that night.

Mr A. Krsticevic: There is as much truth as there was in your statement.

Ms R. SAFFIOTI: It was a lovely night at an incredible venue. The new Mandoon Estate is next to Sandalford Winery. It is just before Reid Highway if one is heading north on West Swan Road. Quite simply, I have never seen anything like it in Western Australia. It is massive—absolutely massive. It has a 500-seat function centre and a private dining room. I have not been there, but the member for Carine has. There is a restaurant, a winery and an outdoor beer garden. The old house of John Septimus Roe has been converted into an outdoor deli. It is incredible. It is located on the river and is absolutely beautiful. There are beautiful places in the valley, such as Ambrook Winery, which I go to quite a bit, and Sandalford. The key issue is how to take it forward and how to preserve the key tourism destinations and viticulture. There is no easy answer; indeed, it is a complex puzzle. But as I said, while we all stand and say we love the valley, what practical things should we put in place to help it grow and to preserve some of the heritage in the area that we need to preserve? The whole issue about the ratings and whether it is under the emergency services levy and the ratings in relation to land tax are all quite interesting, because the government is saying that it wants to preserve the agriculture precinct, but it will tax people here. Water access is an issue and there are all these other inhibitors. We need to acknowledge whether we as a state value it and, to quote the old economic textbooks: Is it a common good? Is it a beneficial externality? I know that sounds quite boring, but basically is it an asset that we should all value; and, if we do value it, how much value will the state give it? For example, we have been pouring money into Rottnest Island for a long time—a long time.

Mr P. Papalia: Ooh!

Ms R. SAFFIOTI: No; I am putting the point out there that the state has been pouring money into Rottnest for a long time. Why do we do it? We do it because it is our playground.

Mr W.J. Johnston: Whenever you get a foreign visitor, it's the place to go.

Ms R. SAFFIOTI: Member for Cannington, I agree. When I have foreign visitors, I go to Fremantle, Rotto, the Swan Valley and Kings Park—those are the big four—and maybe to Caversham Wildlife Park and to a few other things. What I am saying is that the state has been pouring money into Rottnest for a long time. I am not saying we should not, because it is our playground.

Dr K.D. Hames: It is mostly self-funded from the fees that people provide; not a lot of money goes in.

Ms R. SAFFIOTI: I know. I am not criticising it but, frankly, what I am saying is that we pour money into a destination —

Mr W.J. Johnston interjected.

Ms R. SAFFIOTI: Go on, say it!

Dr K.D. Hames: Tell him to stop interrupting you.

Ms R. SAFFIOTI: I am enjoying the debate.

The DEPUTY SPEAKER: Member for West Swan, focus on the bill.

Ms R. SAFFIOTI: I am looking at the Swan Valley grapegrowers association's submission to the Land Tax Amendment Bill. The state has poured money into tourism icons. The belltower is another example, and the state continues to pour money into that place. Do we as a state value the Swan Valley to put some money into it to help with infrastructure and the facilities and also to ensure that we retain some of the historic aspects of the

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valley? That is a discussion that we need to have because we cannot expect private landowners to deliver the positive externalities for the rest of the community without acknowledging that. What I am talking about is that we need tourism icons. This one is 15 kilometres from the city centre and it is growing all the time. There are new businesses and there is greater commercial activity, but a lot of what is there is owned privately. It is different from Rotto in that sense. How do we continue to promote the valley in conjunction with private landowners while retaining viticulture and growing other business? It is a big debate to be had. I am looking forward to debating that legislation next year. Hopefully, it is not brought on next Tuesday because it will be hard to prepare for it in one day.

I was a bit perplexed and angry when I found out that we would be debating the Taxation Legislation Amendment Bill (No. 2) 2014 today, because we had not been briefed. The minister did tell my good colleague and friend the member for Victoria Park that it would come on next year. I understand why it happened. It happened because the media team has taken over. This week is Repeal Week, which means that everyone will come in and talk about cutting red tape.

Mr P. Papalia: At least for one question time.

Ms R. SAFFIOTI: For one question time! That had a big impact. Repeal Week—cutting red tape. I know why the bill is now in front of us. I know that the Minister for Finance did not know that debate on the bill was coming on today. I know who definitely did not know that it was coming on for debate today—the poor Leader of the House. I feel sorry for him trying to manage the house. No wonder the Minister for Health gave up that job after such a short time; trying to manage this place with that Premier would have been very, very difficult.

Dr K.D. Hames: I did it for one year.

Ms R. SAFFIOTI: And he hated every day of it! But does the minister know what he got in return? He got the fishing committee! The minister managed the house for a year and he got a fishing committee in return.

Dr K.D. Hames: What we did get was the ability to go home on time most nights. I am a big fan of going home on time.

Ms R. SAFFIOTI: The minister does not have to be so nasty about it. He does not have to get defensive. I think he did a good job. He managed the house for a year and got a fishing committee in return. The minister did okay. I am not sure what the poor old Minister for Planning will get. He will get a street named after him.

Dr K.D. Hames: I've already got a street named after me—Hames Court.

Ms R. SAFFIOTI: Where is that?

Dr K.D. Hames: In Balga. We did a redevelopment there and agreed to knock down a block of units. The residents applied to the council to get a street named after me and Richard Court. Hames Court is just off Beach Road.

The DEPUTY SPEAKER: Member for West Swan, let us focus on relevancy.

Ms R. SAFFIOTI: I have never been to the Minister for Health's house, but I am sure that if I walked in, the first picture I would see is a picture of him next to that road sign! I bet you it is there in the hallway!

Dr K.D. Hames: I have Alston's picture of me and Troy Buswell in a bra. Do you remember the thing he did with the bra? He did a caricature of me and Troy Buswell in the bra. I bought it off Dean Alston.

Mr P. Papalia: You do have a picture of Hames Court, don't you?

Ms R. SAFFIOTI: The minister must have a picture of that road sign in his house. I betcha, I betcha!

The DEPUTY SPEAKER: Thank you, members. That is enough banter. Member for West Swan, please conclude your remarks.

Ms R. SAFFIOTI: Thank you.

As I said, the opposition will support the bill. It will be of significant benefit to the people in the valley and other people who undertake secondary processing. It is complex legislation and I look forward to exploring it in a bit of detail.

MR C.J. TALLENTIRE (Gosnells) [8.10 pm]: I rise to speak to the Taxation Legislation Amendment Bill (No. 2) 2014. I begin by acknowledging the illuminating remarks of the member for West Swan who worked under the pressure of having had a briefing at only one o'clock. I did not have the benefit of that briefing, unfortunately. Given the very short notice provided to those of us in opposition, it was not possible to attend.

Mr D.C. Nalder: It was not short notice.

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Mr C.J. TALLENTIRE: I had not been advised of it until this morning and I had prior commitments. Let us be very clear about this, minister: the opposition was not given adequate warning about this legislation; it was not given time to attend briefings. However, I do not say that as a slight on those good people who are in the Speaker's gallery who provide us those briefings because I know that they do their best.

I begin my remarks, though, by saying that I think many sectors are sensitive to tax signals. The primary production sector is particularly sensitive to tax signals, and that is why it is very important to read correctly the tax signals that relate to income tax in the federal sphere and land tax at the state level and that we send the right message to people about how they run their businesses. Clearly, this is the case when a primary producer has the option of putting in a crop, running livestock and then selling the grain or the live animals without any further processing to the market. However, here is the option, the possibility, to allow people who are engaged in primary production and who want to undertake further processing on their properties that they in the future, with the passage of this legislation, will not incur land tax on that portion of their properties used for that type of primary production. That is a good thing because we want more businesses in Western Australia to be engaged in primary production and then doing that next stage, that level of processing that enables them to provide a product to the market that directly connects them with the consumer. On a number of levels it is very important that primary producers have a connection with end consumers because the pricing dynamic can change dramatically if people stop being price takers—that is, producing a commodity that is sold into a global market in which they have no control over price—and become price setters—that is, producers who can market a unique product and set the price depending on what the consumer is prepared to pay. That results in a dramatic change for the economic wellbeing of a producer.

It is very important that this change is brought about at another level to enhance the connection of a primary producer with their end user, and that will enable them to have a direct linkage feedback mechanism. I will illustrate that. The member for West Swan spoke very well about the situation of Swan Valley wine producers. One can see straightaway the potential for a grape wine producer to sell their produce yet have no real connection with the end user—the consumer. However, if they make a decision to sell the wine through cellar door sales, they have a direct connection with the consumer; they can get real feedback from consumers and learn what consumers like and do not like about their product. It is vital to make that connection. However, I put to the house that in many other sectors in Western Australia today that kind of connection can be established between primary producer and consumer. I think of people who live in the member for Swan Hills' electorate, such as primary producers—I am sure he is well-acquainted with them—and cheese producers, and goats' cheese producers in particular. I think of the Kytren and Kervella goat dairies. I am not sure of their current situation—perhaps the member for Swan Hills can enlighten us later—but those primary producers had been running goat herds made up of a combination of British alpine, Sannen and Anglo-Nubian goats and were learning and developing the craft of blending the different milks and working out what type of pasture was the best for their cheese production. They were determining whether they needed a combination of green pastures in summer and how they would go about irrigating their properties to maintain green pasture in the dry January and February months, and developing all of the skills of a cheese producer and producing that cheese—this is the essential point relevant to this legislation—on their properties. If a land tax signal tells them that because they have become not only primary producers, but also producers of this secondary product of goats' cheese they should then pay a land tax, we have created a disincentive for those people to be involved in this very worthwhile pursuit of being not only a primary producer but also a producer of a product that is desired and sought after by consumers. There are probably many other examples of that.

It is interesting to note that many such primary producers' properties are found in the outer metropolitan, peri-urban and Avon-arc regions. I know that the Minister for Finance has some agricultural experience, and that although he and his family were engaged in commodity production in the wheatbelt, he is well acquainted with primary producers in the price-taker situation and that whatever the global wheat price is at the end of the harvest, they do a bit of hedging with futures markets and things like that; but essentially they are price takers. If we can encourage more primary producers to be involved in product production —

Mr D.C. Nalder: Downstream processing.

Mr C.J. TALLENTIRE: That is right; if they are involved in downstream processing and become the producers of niche products for which they can set their own prices, we will liberate primary producers from the terrible shackles of being commodity producers. I think we owe all primary producers in Western Australia the opportunity to get out of being price takers. It is damaging to Western Australian agriculture—indeed, Australian agriculture—to have such a large portion of the sector stuck in the price-taker framework. It is not good for them and it is not good for their long-term viability. The reality is that for price takers, as the global per capita income goes up, people spend proportionally less on food, and that means that even less money will be going towards those engaged in primary production, especially when they are price takers. We have to liberate people from

being price takers, and in a small way this amendment to the land tax arrangements helps to do that. It sends a signal that if a person is involved in primary production and engaged in some form of, as the minister says, downstream processing, they will be able to liberate themselves, and that is a good thing.

I am also personally excited by the idea of a stronger connection between primary producer and end consumer because it develops a very strong quality control mechanism for not only the product, but also methods of production.

We see this when consumers start asking questions about how a product is produced. They ask what the fertiliser might be, whether it is organically produced, whether a product has required vast amounts of water for its production and what the animal welfare standards might have been. It gives the consumer a connection with a brand. People can say, for instance, that they want to consume chicken from Mt Barker. The Mt Barker Chicken company is an interesting example. I do not know the business particularly well, but I see that that company markets its chicken product as being from Mt Barker, and it gives an indication of the animal welfare standards involved in the production of those chickens before they are sent for processing. It gives the consumer that opportunity to ask a few questions about the production standards. That is a very good thing as well. We want informed consumers. We do not want consumers to be ignorant. The people in the member for Perth's electorate want to go into a supermarket and see the difference from one product to the next. We want consumers to be aware of where their products come from and we want them to ask intelligent questions about production standards. That will be another reason for people to want to pay a little more for that product. We see that, of course, in egg production. I hear more and more about the phase-out of battery hen cages. Why is that? Why are egg producers doing all they can to adapt to new production systems? Why, when I go into the supermarket and look along the shelves and try to work out which are the most eco-friendly, most animal welfare-oriented eggs, do I see all these different messages? It is because people are prepared to pay a premium price for the better product. It is very important that we bring about this legislative change so that we can encourage people to be in a position to claim a land tax exemption in this way. It is an important price signal.

I also note that one way that a landowner can get out of paying land tax is by seeking a conservation covenant for the bushland, forest or native vegetation on their property. If the landowner has gone through the process of getting a recognised conservation covenant, they will not have to pay land tax. That is a very sensible arrangement. There should be other tax concessions for people who own land for conservation purposes. We should give a whole range of incentives to private landholders who hold and manage land for conservation purposes. However there is an exemption from paying land tax when the land is held for conservation purposes, subject to that land having a recognised conservation covenant over it. That provides a useful incentive and guide to people.

It is interesting that today we are debating this legislation that is of great interest to the primary producers when in the other place notice was given by the Minister for Agriculture and Food, Hon Ken Baston, that he would be seeking to repeal the Genetically Modified Crops Free Areas Act 2003. That legislation effectively rules out the production of commercial genetically modified crops in Western Australia. I was talking a moment ago about the growing affinity that people have with primary producers and their product and how people want to know where a product has come from and how this legislation will help enhance that connection. Hon Ken Baston is seeking to repeal legislation that currently prevents the commercial production of genetically modified crops in Western Australia. One exemption from that law has been given for the commercial production of canola. If Hon Ken Baston is successful in passing his legislation, he will enable producers to grow genetically modified wheat, oats and barley crops—all kinds of crops with a potentially direct connection with the consumer. When we are moving in this direction, as I have been talking about, of producers and consumers coming closer and communicating better with one another, it is very important that we consider what Hon Ken Baston is contemplating here. We know that the vast majority of consumers do not want to buy genetically modified produce for their own consumption.

[Member's time extended.]

Mr C.J. TALLENTIRE: Consumers want to seek out GM-free produce. We should also be enabling—I see this legislation is going some way towards encouraging this—a situation in which primary producers would be able to produce, say, oat crops, quinoa crops, and all those new crops that are coming up, and making sure that they are GM-free and perhaps taking them through some level of processing so that they can then be sold directly to end consumers under the name of the property on which the crop was produced. That is the vital thing. People are moving in that direction. They want to be able to go to a website—not all the time, but just occasionally—and find out the production standards associated with their particular muesli or quinoa packet. They want to know what production standards were used. They want to go in that direction. They do not want to continue along the blind path of buying commodities without really knowing where they have come from. People do not want that, yet the proposal by Hon Ken Baston is taking us into that situation, which is the very old-fashioned

way of doing agriculture. It is not the modern way of doing agriculture at all. That kind of commodity production is the old way of doing things.

I was fascinated to hear from the member for West Swan that, in the briefing that was given at one o'clock today, she was told that the cost to the state budget of this legislation would be in the order of \$3 million. When we look at the benefits of encouraging people to value add to their produce, and we encourage people to take an interest in produce to the extent that they will pay more for it, we need to take into account not just the cost of the land tax that might be foregone, but also the multiplier effect, the benefit and the stimulus of encouraging more downstream on-farm processing, where people can clearly identify with the product. I found that very interesting.

I want to quickly touch on the Premier's own agricultural interests I understand that he is a breeder of Damara sheep, which are much sought after, often in overseas markets.

I know that during Ramadan and the hajj there is a demand for Damara sheep. Again, there is the potential for people to want to know more about where those animals have come from. We could eventually look at a situation in which the processing occurs with mobile abattoirs on a property. I am concerned that under the present arrangements, given the reading of things in recent times, that if someone were to engage a mobile abattoir, they would find that they would have to pay land tax under the present arrangements. Fortunately, with the passage of this legislation, we can be confident that a land tax exemption can be claimed by somebody who produces a meat product on a property on which a mobile abattoir arrives, including the chilling facilities and chiller rooms, and the meat is processed. That is a very good thing.

I note that in the outer metropolitan area in the peri-urban environment and the Avon Arc, a lot of people who do not have an agricultural or rural background become property owners. As has been said by my colleagues, people sometimes get into these activities for tax reasons and do not necessarily know what they are doing. We see a lot of land degradation, a lot of mistakes made and a lot of money wasted, but fundamentally there is a loss to our society through land degradation. Again, I am thinking of properties in the electorate of Swan Hills where people have attempted aquaculture enterprises and gone into all kinds of earthworks activities to create ponds, only to find that there is not the necessary water flow, and the aquaculture enterprise never works. We have to be very careful when we encourage people to engage in primary production. I think that with downstream processing we have checks in the system—it is coming in nicely through the marketing side of things—but we have to be very careful that we do not encourage people to buy land and basically degrade and make a mess of it. Too much of that has already happened, and there are many examples of it. Likewise, we have heard about people who have bought land and then said that they did not know that there were clearing restrictions. I refer to the case of Manjimup farmer Peter Swift who went through the courts and somehow managed to get off on a technicality. At one point he claimed that when he bought the property in 2007 or 2012, he was not aware that there were land-clearing restrictions. We have a problem with people who come to primary production activities with such a degree of ignorance. There are many sectors in which it is necessary for a person to have a licence to practice as a professional or an operator. Perhaps we need to look at a similar arrangement for primary production. Unfortunately, at the moment, anyone can buy land and come up with what is sometimes a crazy idea and cause lots of damage. We could say that the damage is their problem and that it will degrade the value of their property, but society is left with that degraded land, so it is a societal problem. We cannot have people coming to activities with high levels of ignorance and doing lots of damage to things that really belong to all of us.

It is very useful for Parliament to review this issue of primary producers and their sensitivity to tax signals at this stage. I regret the haste with which the legislation has been brought on and the inadequacy of the briefings, but I am happy to support this legislation and I look forward to the continuation of a strengthened connection between primary producers and end-consumers. That connection is brought about by people being engaged in on-farm downstream processing of products, enabling them to have a direct conversation with consumers about what they want—what they like and do not like in a product. I conclude my remarks and look forward to further consideration of the bill in this place.

MR D.A. TEMPLEMAN (Mandurah) [8.44 pm]: Madam Deputy Speaker, I am catching the train this evening, so my speech will be very short. I support the Taxation Legislation Amendment Bill (No. 2) 2014.

MR W.J. JOHNSTON (Cannington) [8.45 pm]: I appreciate the thoughtful contribution from the member for Mandurah. It is always very good to follow the considered thoughts and detailed analysis that the member brings to these highly technical bills. He now gets an extra mention in *Hansard*, which is excellent. As always, his contribution is worthy of careful consideration.

Also worthy of careful consideration, of course, is the minister's second reading speech on the Taxation Legislation Amendment Bill (No. 2) 2014. This morning, I was excited when I found out that the bill

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might come on for debate—I have to get out more!—because I thought, “More taxation legislation means more clauses, more detailed provisions and more technical wording to be brought to us by the Office of State Revenue’s capable staff.” As the member for West Swan explained, the Labor Party did not know that the bill would come on today until very, very late. We expected it to come on next year. I was then confused, because in the Premier’s brief ministerial statement this morning, he explained that the Taxation Legislation Amendment Bill (No. 2) 2014 is actually part of Repeal Week. To quote the Premier from this morning —

Last year I explained that Repeal Week was aimed at progressing legislation that will streamline government processes and at removing obsolete legislation.

Much work has been done since last year to modernise and streamline legislation, ease the compliance burden and improve the manner in which government administers regulation.

I was quite excited about that and I thought we should look at a provision in the bill. Clause 24 of the bill, which amends section 13 of the Duties Act, states —

(1) Before section 36(4)(a) insert:

(aa) the ordinary principles of valuation apply, except to the extent that those principles are modified due to the operation of another paragraph of this subsection; and

That is clearly the sort of streamlining that legislation needs in Repeal Week. If we are going to commit ourselves to streamlining legislation, those are the exact words that I would include in a bill to provide for a streamlined administration of the law.

Mr P. Papalia: For the purposes of *Hansard* that was sarcasm.

Mr W.J. JOHNSTON: No, I am not being sarcastic, member for Warnbro; I am following the government’s line here. I note that clause 27 of the bill, which amends section 195, states —

(1) Delete section 195(1)(a) and insert:

(a) for the purposes of an assessment —

(i) an agreement to acquire an interest in land has, under section 149(1)(a), been regarded as having been completed; or

(ii) an agreement to acquire an interest in an entity has, under section 156(8)(a), been regarded as having been completed;

and

It makes me wonder how the original clause 195(1)(a) read; it must have been a very convoluted arrangement if this is the simplified version.

I was very excited, too, to read clause 27(2) of the bill, which reads —

Delete section 195(2)(a) and insert:

(a) for the purposes of an assessment —

(i) an agreement to dispose of an interest in land has, under section 149(1)(b), been disregarded; or

(ii) an agreement to dispose of an interest in an entity has, under section 156(8)(b), been disregarded;

and

If this is the government simplifying legislation, I am just excited at the government’s commitment to streamlining.

I am also interested that the minister forgot to mention in his second reading speech that this was actually part of Repeal Week. I would have thought that when the minister gave his second reading speech, he would have included the exciting information that we did not find out until this afternoon. When the member for West Swan received her briefing at 1.00 pm today, the exciting news that this was actually part of Repeal Week was not shared with her. I felt it was particularly disappointing that neither the minister nor his representatives were aware.

Ms R. Saffioti: This was a key plan.

Mr W.J. JOHNSTON: Maybe they were aware, but they were hiding it from us. Perhaps they were hiding from us this exciting news that the Taxation Legislation Amendment Bill (No. 2) 2014 is part of Repeal Week.

Mr D.C. Nalder: I’m just glad you guys support it.

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Mr W.J. JOHNSTON: I am just excited, minister, that —

Mr P. Papalia interjected.

Mr W.J. JOHNSTON: The government did; it brought it in last year.

Mr P. Papalia interjected.

Mr W.J. JOHNSTON: Of course, that legislation is still in the other house because it has not got through, but that is another detail.

There are some interesting things. I understand from the member for West Swan that this bill affects the revenue of the state by \$3 million. That was the estimate provided to the member for West Swan by the agency in the briefing this afternoon.

Ms R. Saffioti: That is \$3 million per annum.

Mr W.J. JOHNSTON: Yes, \$3 million per annum.

I note that the 2014 budget estimate is that there will be \$9 346 million in taxation revenue. That is a budget estimate, and, of course, we do not know what the final figure will be. We are all waiting very excitedly for the midyear review. I have no doubt that when the midyear review is announced between Christmas and new year, so that nobody is around to report it or to hear the reports, that figure of \$9 346 million will be updated. I understand that this legislation has a \$3 million cost to revenue. That is a rounding error, in my view. Maybe the government set out to get legislation that was revenue-neutral. I am not trying to accuse the government of seeking additional revenue by this legislation, but equally it cannot be seen as an intended tax cut. Is the minister excitedly looking for a different figure that he will quote back at me?

Mr D.C. Nalder: No, I wasn't.

Mr W.J. JOHNSTON: That is fine. I am just working on the information provided to the member for West Swan. I was at a different briefing and was unable to attend this one.

The interesting thing about that figure of \$9 346 million is that it is 47.4 per cent more than the tax collected in 2007–08 in Western Australia—the last full year of the Labor government. I note that in 2017–18, the current year budget sets out in the forward estimates that the Liberal government intends to collect \$11 220 million in that year, which is a full 77 per cent more than was collected in the 2007–08 financial year. I am not saying the government ever intended this legislation to be any form of tax cut, and I am not alleging that it is intended to be a tax increase, but the point I am making is that this government has only one agenda on tax, and that is to continue to increase the taxation effort in this state to go from the amount collected by the Labor Party—\$6 339 million—to \$11 220 million in 2017–18. Again, minister, I have to contrast that with a comment that appears in *Hansard* from the minister's inaugural speech, when he said —

Our vision for this state must not come at the expense of our fundamental philosophies of lower tax, ...

A 77 per cent increase in taxation would not actually appear to be lower, but rather, higher.

I was interested in the member for West Swan's comments that I have referred to about the duties in clause 24 that apply to mineral tenements. When we get there, I will ask some questions. I have a couple of other questions for the minister when we get into consideration in detail, including, but not limited to, proposed section 30A, which is the definition of primary production.

We will explore it a bit more—I am not sure it will be particularly onerous—at the consideration in detail stage. As I understand, the principal issue we are dealing with here, to draw from the second-last paragraph on the first page of the minister's speech, is —

To illustrate this problem, if a primary producer used the land to grow grapes and then produced and sold wine, rather than the grapes, the exemption would be denied. This is because the current exemption in the legislation does not extend to secondary production.

My understanding is that we are responding to that issue and allowing the primary production for that section of the farm that is used for primary production, and for the land tax to be applied only to the section of land used for processing. I just wonder whether that is required to be processing to a finished product, as opposed to processing for an interim step. I give the example of cheese: people might make milk, and, as I understand, the section of the property used as a dairy would be exempt from the land tax, but if they have a facility that creates whey—some people eat might eat whey, but generally speaking I am not aware of them in Australia; they do in children's rhymes—it is not a product that I would understand to be generally sold to end-users, but it might be on-sold to somebody else who produces cheese. Is it intended that if there is an interim step in some partial processing of a primary product, the land used for that interim processing will be subject to land tax and not

treated as part of the primary production? I again use dairy as an example. I am relying on my family's history as dairy farmers in north-eastern Victoria, which was left long behind by me, I must say. If the whey were produced in the milking shed, the milking shed would clearly be part of the primary production. However, has consideration been given to the shed being used for an incidental purpose in the interim processing step? Perhaps when we get to the clause at the consideration in detail stage, or during the second reading reply, I could have an answer to that question. A popular example used in the second reading speech and explanatory memorandum, and also by the members for West Swan and Gosnells, is when grapes but not wine are produced; rather, must or grape juice is being produced for further processing. Of course, in winemaking, many people who own vineyards do not produce the wine themselves; even if they have their own label, they outsource that arrangement to somebody else.

However, they may, for example, produce must and then hand the must over to a winemaker. I am interested in whether that has been contemplated and, if it has, what the answer to that question will be.

I am also interested in the definitions around trusts and relationships. In the explanatory memorandum, which I have enjoyed reading, there is quite a deal of discussion about examples. Proposed section 29 in division 3 has a definition of family relationships and it provides ways of determining that, and then examples are given. In proposed section 30, "Persons related to trustee of a family unit trust scheme", examples are also given. When we get to the consideration in detail stage, I will be interested in asking about that issue.

Fundamentally, the reason that the Labor Party supports the bill is that it is sensible legislation. As I understand from the second reading speech and the explanatory memorandum, it recognises the continued development of the understanding of the laws as we get more and more information from tribunals and courts.

I am also interested in the review that was conducted. In the minister's second reading speech, he said —

The proposed amendments in the bill are based on recommendations from an informal review of the operation of the exemption by the Department of Treasury and the Department of Finance's Office of State Revenue. It is the most comprehensive review of this exemption in over 35 years.

Given that nothing has been done in 35 years and all the minister did was an informal review within the department, why was it decided to do it effectively behind closed doors without, as I understand it, published terms of reference and a process for inviting submissions? The final report of the review went to cabinet and therefore was never made public.

[Member's time extended.]

Mr W.J. JOHNSTON: I note that the second reading speech goes on to state —

The review was initiated in 2012, following a determination that primary producers who sold produce in a processed or converted state rather than a natural state were ineligible for the exemption.

I am not quite sure of the date of that determination; I understand that it is at the State Administrative Tribunal. Given that it has taken two years or longer to bring forward the legislation, why was it not considered appropriate to do something more formal if, as the minister says, it was the first time that this matter had been looked at in 35 years? The reason I raise that issue is that the one thing we all know is that the wider we discuss something, the more likely we are to get it right and the less we discuss something, the more likely we are to be in error. These taxation laws are complex. I note the commentary around the transfer of the mining tenements under proposed section 24 in the bill. I think this shows the challenge. This is the explanatory memorandum, which is supposed to make it clearer for us. It states —

Section 36(4)(b) of the Duties Act is a similar provision to those inserted into the *Stamp Act 1921* by the *Stamp Amendment Act (No. 2) 1991* following the Full Court of the Supreme Court of Western Australia in *Commissioner of State Taxation (WA) v Nischu Pty Limited* 21 ATR 1557 (Nischu amendments)

The Nischu amendments were required to overcome attempts by taxpayers involved in indirect acquisitions of mining interests to minimise stamp duty by attributing significant portions of transaction values to non-dutiable assets in the form of mining information

Mr Acting Speaker, if that is the explanation, you can see the challenge for all of us in interpreting the words in the bill. I suggest to the minister that if there had been a wider opportunity for participation in the review of these matters, we might have greater confidence that we have got it right, because, as the minister made clear in his second reading speech, as the explanatory memorandum explains and as the member for West Swan commented, one of the problems with all taxation legislation is that people will try it on in the future. We are relying on information that is not available to us to trust that the proposed words are the best that they can be.

Given the way that the government has decided to handle the bill, the opposition was not given an opportunity to consult with anybody about the terms of the bill. I would be interested to know whether there has been consultation with the Association of Mining and Exploration Companies about these provisions and to know its views about the proposed arrangements that are intended to be entered into under this provision. Obviously, AMEC represents the junior end of the mining sector, and those companies are probably the ones that these provisions are most likely to be aimed at. The large companies tend not to do the same types of transactions, or they do them only on an infrequent basis, whereas the smaller end of town transactions are much more common, because the companies deal with the various capital issues that confront them as they try to continue their exploration activities. They might have a range of tenements and only limited money to continue their operations on one or a small number of their tenements, so they will sell their interests in other tenements to focus on the tenements on which they think they have a better chance of making a discovery. I imagine that that tends to be the end of the market where these sorts of transactions are being dealt with. I would be very interested to know whether the Association of Mining and Exploration Companies has been consulted on the drafting of the bill. Of course, if we had had more opportunity to look at this legislation, that is the sort of question that we would have been able to ask. I had two briefings on other matters at lunchtime today and then we had question time and the matter of public interest, so it was only one o'clock this afternoon that the opposition received a briefing on this bill. There has been no other opportunity for us to consult interested stakeholders. That would have been one of the first things that I would have done if this bill had been brought on after the Christmas recess as originally intended rather than in the second-last week of the year.

I do not intend to unnecessarily delay the house. I have put on the record a number of important issues. I look forward to having a quick journey into the consideration in detail stage, as I am sure does the member for West Swan, who has principal carriage of the bill as the shadow Minister for Finance.

I will ask one final question and I would appreciate it if the minister would let us know in his reply: has this bill been to the regulatory gate-keeping unit? I understand this is not a budget measure and it is not an election policy issue. My memory is that those are the two issues that would lead to an exemption—people at the back of the chamber are nodding their head—from having to go to the regulatory gate-keeping unit. I know the minister does not produce the taxation legislation but he has the joy of bringing it to the chamber. We found that out from the former Minister for Finance. I understand that it is a development of Treasury, but he is the Minister for Finance and therefore responsible for the gate-keeping unit. It would be very helpful if he could let us know.

MR F.A. ALBAN (Swan Hills) [9.10 pm]: I would like to make a short contribution to the debate on the Taxation Legislation Amendment Bill (No.2) 2014.

Mr P.B. Watson interjected.

Mr F.A. ALBAN: There are some smart alocs on that side, of course. I would like to speak on this bill because it will have a big effect on my electorate. There are grapegrowers and winemakers in the hills as well as in the Swan Valley and I will say that the benefit to these people is enormous. Just nine months ago I met a couple of growers in the Swan Valley and they took me on a tour of the valley, not that I needed a tour, but there are considerable challenges to agriculture in the valley as a whole. I said, "Tell me what I can help you with." They were concerned about the subdivision of land in the valley. Some of them wanted to subdivide and retire. I was very clear about saying that that was not something I could personally do for them and I could not see it happening in the short or the long term.

They identified land tax and the emergency services levy as becoming an immediate and quite serious impost on them. These imposts seem to be very simple, but one grower showed me a bill for \$50 000, which as a land tax bill is probably more than he earns on the farm and he struggles to break even. We can therefore understand the cost and the concern that growers face.

The minister's second reading speech is self-explanatory; I do not need to go into the full details, but the growers in the valley were concerned because few of them were making a profit. The primary production test of the one-third income—the business test—is not working either and that is a serious concern to them. I am glad this bill has been introduced in Repeal Week. It is a very important and great agricultural bill because agriculture does not feature in debate anywhere nearly enough.

I would like clarified one of the issues I heard raised this evening. I hear a lot of stories about the Swan Valley. I live nearby. The valley rates in discussion about tourism and agriculture and it is often said that we have done nothing for the valley. However, something has been done lately, not particularly just for the Swan Valley, but as part of the Swan Valley's progress. I will mention in this place for the fiftieth time the Perth–Darwin highway, which was purportedly undertaken for three reasons: the first was to help tourism and the grapegrowers in the valley; the second was to address the safety issue of trucks in the valley as well as holding up the valley; and the

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third one was that once through the western part of my electorate and that of the member for West Swan the Perth–Darwin highway would open up job opportunities in the valley.

It is interesting that, say, 50 years ago, most growers in the Swan Valley owned their five or 10 acres of vineyard. They had to subsidise their properties with jobs outside the area because of the limitation on the number of acres. I am not sure whether there are any other areas like the Swan Valley that are limited by the number of acres. Few agricultural pursuits can manage on five or 10 acres. The largest grower I know probably owns 30 or 40 acres, which, sadly, was left behind. Sometime ago I visited a grapegrower in New South Wales who, in one square block alone, had sown 1 000 acres, so members can imagine why we cannot compete here.

I will leave my remarks at that, but as I said earlier, multiple issues confront agriculture. This is one that we have been able to help producers with. The next issue I know the government will address is the ES levy. I would also like to thank the minister on this very timely bill that growers throughout the Swan Valley and the hills are most grateful for. Thank you very much.

MR D.C. NALDER (Alfred Cove — Minister for Finance) [9.14 pm] — in reply: I thank members from both sides of Parliament for their contribution and I respect the views proffered this evening. Although I apologise that the briefing was only today, I confirmed with my office that since 7 November, pretty much on a daily basis, staff have been sending out emails to offer a briefing on this bill with relevant officials.

Ms R. Saffioti: To whom?

Mr D.C. NALDER: I will confirm to the member afterwards exactly who it was sent to, but I believe it was to the member for West Swan directly.

Ms R. Saffioti: I don't think so.

Mr D.C. NALDER: Okay, it was not. It was sent to the Labor Party. This offer was only accepted by the Labor Party —

Ms R. Saffioti interjected.

The ACTING SPEAKER (Mr I.M. Britza): Okay, member; we got the point.

Mr D.C. NALDER: The member for West Swan sat here for 20 minutes saying that she had not been offered a briefing and I am confirming that the Labor Party has been offered a briefing since 7 November. If the member wants confirmation of the emails, I will gladly forward them to her.

Mr P. Papalia interjected.

Mr D.C. NALDER: Members opposite have said in this house that they were offered a briefing only today.

Ms R. Saffioti: Did you tell the member for Victoria Park?

The ACTING SPEAKER: Members!

Mr D.C. NALDER: I am confirming that the offer of a briefing was sent to them by email since 7 November. It was accepted only yesterday.

Mr W.J. Johnston: You're embarrassing yourself.

Mr D.C. NALDER: How am I embarrassing myself, member for Cannington?

Mr W.J. Johnston: You said it was coming on next year, you goose.

Withdrawal of Remark

The ACTING SPEAKER (Mr I.M. Britza): I will have that statement withdrawn, thank you very much.

Mr W.J. JOHNSTON: Which statement?

The ACTING SPEAKER: You called him a goose.

Mr W.J. JOHNSTON: Is that unparliamentary?

The ACTING SPEAKER: Absolutely.

Mr W.J. JOHNSTON: Okay, then. I withdraw.

The ACTING SPEAKER: Thank you very much.

Debate Resumed

Mr D.C. NALDER: It reflects well on the member for Cannington!

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The first element of this legislation regarding land tax on primary production is the first major reform in more than 35 years. For taxpayers in non-rural areas it will be easier to qualify for the exemption through removal of the one-third income test and the wider range of family members and entities that can carry on the business. Primary producers who process their stock or produce will also be eligible for a tax exemption on the land they use for primary production. The amendments are about reducing red tape and recognising current business practices and structures of modern-day primary producers. The amendments guard against investors and developers accessing the exemption in non-rural areas pending sale or development. There has been a history of abuse in this area.

In answer to the query from the member for West Swan about the 18 submissions and why they were not made public, consultation was not undertaken as part of a formal review. Many of the submissions reveal confidential information about specific tax affairs. Taxpayers had not been notified and did not indicate that the submission could be made public. Nonetheless, some submissions have been publicly released by the taxpayer/industry group. The submissions received generally supported the specific amendments.

Part 2 concerning the land tax partial exemptions reinstates the long-standing policy position of exempting only that part of the land used for an exempt purpose—nothing more and nothing less. With regard to the Duties Act and the landholder, it removes an unintended consequence of calculating duty on land owned by a subsidiary entity where there was a pre-existing agreement for the sale of that entity. The member for West Swan talked about information for landholders. There is no policy change. The amendments confirm and clarify the existing provisions. The aim is to reduce complex and costly legal and valuation arguments that the Commissioner of State Revenue and taxpayers have to engage in to complete the assessment.

I will move the amendments on the notice paper in my name, which will ensure that the policy position is applied retrospectively from 1 July 2012 for primary producers who sell their produce in the process of a converted state.

I acknowledge that everyone seems to be in support of this bill and I look forward to moving through the consideration in detail stage.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Ms R. SAFFIOTI: My question relates to paragraph (b) and the date on which part 2 division 1 comes into effect. Amendments on the notice paper indicate that these changes should come into effect from 1 July 2012. Why has the primary production exemption not been backdated to 2012 in this commencement clause?

Mr D.C. NALDER: It will preserve the exemption for secondary production, but the other one is new policy and that is why the difference between the two.

Ms R. SAFFIOTI: I was trying to find out about people undertaking secondary processing who have paid land tax from 2012. They will no longer be paying it, which is fair enough, but it will be backdated to 2012. Why have we not changed this paragraph to reflect the backdating of the provision to 2012?

Mr D.C. NALDER: We are changing all the terminology and it is difficult to integrate this into the new amendments, hence, it is a transitional arrangement to modify the bill.

Mr W.J. JOHNSTON: As I understand the minister's answer and from my reading of this clause, the act comes into effect on a particular day but it has effect from a different time. I wonder what provisions of the act have effect from a time earlier than the date of royal assent or from the deemed date at paragraph (b).

Mr D.C. NALDER: The act was to have taken effect from 1 July 2014 and the amendment will take that back retrospectively to 2012. The moment we hit royal assent, the original bill would have taken it back to July this year, but then we found that in the 2013–14 tax year the Commissioner of State Revenue would have gone back further and penalised people, hence the need for the amendments to take it back to 2012 when there was a change in interpretation of the law.

Mr W.J. JOHNSTON: The minister is saying that these provisions will have effect only insofar as they relieve a taxpayer of paying tax and there is no provision that goes back to the earlier date that will create a tax obligation.

Extract from Hansard

[ASSEMBLY — Tuesday, 18 November 2014]

p8264d-8287a

Ms Rita Saffioti; Mr Chris Tallentire; Mr David Templeman; Mr Bill Johnston; Mr Frank Alban; Mr Dean Nalder; Mr Murray Cowper

Mr D.C. NALDER: Parts of the legislation deal with exemptions that are not covered in this provision that go back to 1 July 2013 and they relate specifically to pastoral exemptions, if that makes sense.

Mr W.J. Johnston: No.

Mr D.C. NALDER: The first part deals with primary production exemptions and the second part deals with the State Administrative Tribunal decision on exempting land that was not used for exempt purposes. One relates to legislation in a different period; therefore, the provision to take it back is for that first part only around primary production, whereas the second part reinstates the intent of the original law.

Mr W.J. JOHNSTON: I am sorry to labour the point, but I think I now understand what the minister is saying. My understanding is that there was a SAT decision that changed the understanding of the law and we are now inserting new provisions that restore the fact of the law to the original intent of the law.

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

Mr W.J. JOHNSTON: There was a taxpayer who successfully challenged their tax bill in SAT. They are being saved, but nobody else is being saved.

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

Mr W.J. JOHNSTON: Therefore, we are retrospectively increasing the tax rate on taxpayers, even though they have already paid the tax. They are not going to get a bill, but if we did not do this they would be able to follow that SAT decision and also apply for the benefit that that taxpayer won. They have already paid the tax, so we are not sending them a new bill, but we are effectively overturning the SAT decision in respect of taxpayers who did not apply to SAT.

Mr D.C. NALDER: I think it is semantics on this issue. The situation is that the law was set and everybody understood the intent of the law. It was challenged in the State Administrative Tribunal. SAT found in favour of the claimant. The government is preserving the rights of the claimant who won that case and, as the member correctly pointed out, it is putting in place legislation that restores the original intent. How the member has interpreted that from a tax perspective is semantics. The government is restoring the original intent.

Mr W.J. JOHNSTON: I do not have a problem doing this; in fact, I have spoken previously in this chamber on this. When we get a bad decision, this is the sort of law that we do this on. It is not a question of semantics. The point I am trying to get to is that we are retrospectively changing the law. Nobody will get a tax bill because they have already paid their tax, and all that is being done is insisting that they pay the tax for which they have already sent in the cheque, but it is retrospective. I have no trouble with retrospectivity; this is exactly the circumstance I have spoken about previously in this chamber in which retrospectivity is appropriate. I am not arguing against it all, but I think that it is important to state that that is what is being done.

I digress for a minute by mentioning the passage of a local government amendment bill through the chamber during the first term of this government, and never once did the government say that the bill was about recovering moneys that had been issued for special rates for underground power projects. Had the then minister told us that, the opposition would have supported it; only afterwards did the opposition find out that it had happened retrospectively. It is important that the government put on record what it is doing. I am not arguing against it; I am saying that the government should make clear what it is doing. It is my understanding that that is what the government is doing. People have had a tax invoice under the commissioner's understanding of the law, SAT has decided that the commissioner's understanding was wrong, and we are now restoring the commissioner's understanding. All I am driving at is that that is actually retrospective.

Mr D.C. NALDER: The original assessments are being validated. I am comfortable to acknowledge that. If the member for Cannington deems that retrospectivity, I am not arguing against it.

Mr M.J. COWPER: I am intrigued that this legislation is to deal with, if you like, separating the wheat from the chaff; that is, a number of property developers under the guise of being primary producers are seeking exemptions. Did the application that went to the State Administrative Tribunal concern a primary producer or someone who was developing land?

Mr D.C. NALDER: To clarify, there are two parts to the legislation. The first is to deal with primary production. What is being referred to now is the second part that was not a primary producer; it was another body that had exempt status but had additional land for other purposes. SAT ruled that the whole lot was deemed exempt when that was never the intent. The specific example was to clarify for other exempt purposes, not to do primary production.

Mr M.J. Cowper: Was it in the metro area or outside the metro area?

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Ms R. Saffioti: Aveley.

Mr D.C. NALDER: Yes, it was the Aveley case. My understanding is that it was in the metro area; that is correct.

Mr M.J. COWPER: I understand that there is going to be a shift in the way primary producers are assessed. I wrote to the minister about a constituent who owns four farms in the Shire of Murray. He produces beef from that property and his sole income comes from the property. However, recently he bought a property in Hopeland in the Shire of Serpentine–Jarrahdale, and he has been subject to the tax. Is there a possibility that there will be some relief for him? He has had to pay the full tilt. Will he be able to seek some sort of windfall from the retrospective date that the minister mentioned?

Mr D.C. NALDER: I cannot comment on that particular case because I do not know all the specifics, but the intent of this clause is that where primary production is carried out, they will be exempt. The old one-third income test was complicated and that could have triggered certain situations. Without knowing the specifics of the case to which the member for Murray–Wellington refers, it is not appropriate for me to comment in detail. However, what we are moving towards is that where it is purely primary production, there will be exemptions moving forward. That is all I can tell the member for Murray–Wellington. If he is doing something other than primary production, it could be; but, again, I do not know the specifics of the case and it is not appropriate to get into that detail.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 15 amended —

Ms R. SAFFIOTI: I am going through the Land Tax Assessment Act and looking at what is being changed. Can the minister explain the exact impact of this change in clause 4?

Mr D.C. NALDER: Section 29 of the Land Tax Assessment Act relates to the full primary production exemption and section 30 relates to the 50 per cent concession in which they do not meet that one-third income test.

Ms R. Saffioti: Basically, the impact of this change is to remove the one-third income test?

Mr D.C. NALDER: It is to replace it with part 3 division 3, which is the whole new section.

Mr W.J. Johnston: So the question of rural businesses will be dealt with elsewhere?

Mr D.C. NALDER: Yes.

Ms R. Saffioti: So, basically, this removes in particular the concept of the one-third income, but in particular the 50 per cent concession that is applied when someone does not meet the one-third income test; is that correct?

Mr D.C. NALDER: Because we are removing the one-third income test, we have to remove the references to it and replace it with a whole new division.

Mr W.J. Johnston: Which is at clause 6?

Mr D.C. NALDER: Yes.

Clause put and passed.

Clause 5: Section 20 amended —

Ms R. SAFFIOTI: Can the minister explain the intent of section 20? This clause will delete section 20(1)(c) to (e) of the Land Tax Assessment Act. That will basically change some of the commissioner's powers to exempt land, in particular, under some categories. Could the minister explain that?

Mr D.C. NALDER: Sections 20(1)(c) to (e) of the Land Tax Assessment Act are now redundant. That provided for the commissioner to exercise his discretion and override the one-third income test, so those paragraphs are now redundant.

Clause put and passed.

Clause 6: Part 3 Division 3 replaced —

Mr W.J. JOHNSTON: Clause 6 is quite extensive and inserts a large provision that goes all the way to page 13 of the bill. Of course it is necessary and I am not arguing about that, but I am making the point that we are going to deal with the guts of the rural exemption. We have gone from four words in section 15 of the Land Tax Assessment Act, to a couple of lines in section 20, and the existing part 3, and we are getting all these other words to replace them.

I am interested in the trusts and the definitions of trusts. What will be the effect of this clause? I understand that the modern nature of business is that people incorporate their family businesses for a whole range of very good reasons. Once upon a time they might have operated as sole traders, but now they incorporate. However, trusts are a little different. I understand that the commonwealth law is moving towards treating trusts just as companies. I wonder whether a similar approach would have been easier here. The important point about the company provision, as I understand from reading the bill, is that a company is a family company if the shareholders are the same people as those operating the business or owning the land, so a husband and wife are the two shareholders and that makes them, to use the words here, a family corporation. However, a family unit trust scheme or a family trust can have people who are not party to the operations of the rural business. I am just wondering why that approach has been taken. I might be wrong in what I have understood, in which case the minister can correct me straightaway to say that the family trust members must be equivalent to the family corporation members, but if I am wrong, why is there, in respect of a rural business, allowed to be a difference between a family trust and a family corporation?

Mr D.C. NALDER: On page 10, proposed section 30H(d) defines a family trust. All the beneficiaries have to be family members, so that second point the member was making stands correct.

Mr W.J. Johnston: Yes, but what I am saying is that you could have a father, mother and three children, and for them to be a family corporation, all of them would have to be operating the business. That is my understanding, and if I am wrong, I am wrong, but with a family trust, only the husband and wife might be operating the business.

Mr D.C. NALDER: It is any family trust, any family company—it does not matter who works inside it. I think the member has answered his own point about that second stage. That is my understanding; a person does not have to be working inside a family company if it is incorporated as a company.

Mr C.J. TALLENTIRE: I direct the minister's attention to page 5, and proposed section 30A, "What is primary production". I notice that that appears to be a question, but there is no question mark there; it is possibly a typographical error. My point of concern is that we have here a kind of definition of plants. This is a very important thing, because naturally a lot of this legislation will refer to things such as the growing of plants. Proposed section 30A(1)(a) states —

30A. What is primary production

- (1) Land is used for primary production if it is used for any of the following —
 - (a) the growing or rearing of plants (including trees, fungi or any crop) ...

My problem there is that fungi are not plants. It is important in our legislation that we maintain a degree of scientific accuracy. It is rather poor that this Parliament would even be contemplating legislation that is so scientifically inaccurate. I look forward to the minister putting forward amendments.

Mr D.C. NALDER: I thank my learned fellow for his commentary, but this is the same definition that we have in the Duties Act, and we have simply used what has been previously utilised as defining the growing of plants. The same definition is used across other acts.

Mr C.J. TALLENTIRE: I do not think the proliferation of ignorance is justified. The minister should be appalled that this Parliament is seeking to continue with an ill-informed definition. It is not a trivial point at all, because the very businesses that we are talking about could be directly impacted here. There is a growing industry in mushroom production—fungi—and those people would want to think that their business is covered by accurate definitions. If the minister is suggesting that a person producing mushrooms is producing a form of plant, which is what the legislation says, he has something seriously wrong.

Mr D.C. Nalder: I don't understand —

Mr C.J. TALLENTIRE: Does the minister not understand that he has something scientifically wrong?

Mr D.C. Nalder: No; I don't understand how this impacts the legislation. Please explain to me that if we separated —

Mr C.J. TALLENTIRE: It is for me to be asking the minister to explain why he does not respect science and getting things scientifically right. Why is the minister refusing to accept that he has this wrong, and that he should say straightaway that he will fix this? Why is he refusing to do that?

Mr W.J. JOHNSTON: This is a very extensive provision. Can the minister tell us whether there are more or fewer words in the new provision that is being inserted into the act than are being taken out? I wonder how we are doing with our attempt to reduce the amount of legislation in Western Australia. It is Repeal Week.

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Mr D.C. Nalder: You probably know the answer to that already. Perhaps you could tell me—enlighten me.

Mr W.J. JOHNSTON: Minister, this is Repeal Week and, after all, this bill is part of the government's commitment to Repeal Week. I am just wondering how we are going in cutting the number of laws that we have to administer in Western Australia.

Mr D.C. NALDER: I appreciate the intent of the member for Cannington in this question. I will acknowledge that there are more words in this amendment bill, but I state proudly that this simplifies the process for primary producers, and I think it is a great outcome. If it uses more words to make it simpler for farmers and primary producers, I am very comfortable with that.

Mr C.J. TALLENTIRE: I want to return to the issue of the minister's refusal to amend the legislation so that it is scientifically accurate. Why is the minister laughing at this?

Mr D.C. Nalder: Because it's not going to make a difference one iota.

Mr C.J. TALLENTIRE: Okay; so, if I am a mushroom producer —

Mr D.C. Nalder: You'll be treated the same as any other primary producer.

Mr C.J. TALLENTIRE: If this were taken to court, the government would be trying to pass off a mushroom producer as the producer of a plant.

Mr D.C. Nalder: We would be trying to pass off a mushroom producer as a primary producer.

Mr C.J. TALLENTIRE: How could the minister do that, because it does not meet the definition?

Mr D.C. Nalder: We have acknowledged them as a primary producer in this legislation, by declaring them specifically.

Mr C.J. TALLENTIRE: No, the minister has not, because the legislation states that they are producing a plant, and they are not producing a plant. The minister must make these things accurate; he cannot do things in a fudged way. He knows that it is wrong, so he must get it right. Why is the minister not going to amend this? The minister is remaining silent.

Mr D.C. Nalder: I appreciate your opinion.

Mr C.J. TALLENTIRE: It is not my opinion. The minister cannot dismiss scientific reason as opinion. That is disgraceful. I know that the Liberal Party likes to ignore science. This is typical Liberal Party.

Mr S.K. L'Estrange: Settle down!

Mr C.J. TALLENTIRE: Okay; what is the member for Churchlands' definition? He has remained silent in this debate; he has not said a thing, and now he wants to ignore science.

The ACTING SPEAKER (Mr I.M. Britza): Order, members! The question is to be directed to the minister.

Mr C.J. TALLENTIRE: I await the minister's answer to my question. Why is he not making sure that our legislation is accurate and reflects science, and will stand the test of law because it is scientifically sound? Why is the minister refusing to do that?

Mr D.C. NALDER: Mushroom farmers will be given exemptions under this law, the way it stands.

Mr C.J. TALLENTIRE: How can the minister be sure of that, because the legislation states that the exemption is for primary production, the growing of plants? The minister is trying to say something that is completely wrong in the legislation. He is trying to say that the growing of plants includes fungi, when it cannot do so because fungi are not plants. The legislation is wrong. Why is the minister not amending it?

Ms R. SAFFIOTI: My question relates to the equine industry, and refers to proposed section 30A(1)(c). I went through an example in the briefing, but, basically, where does the exemption stop for the equine industry? In particular, what is deemed to be a commercial activity? Is it the breeding of racehorses, or the breeding of polo horses? Is it basically just for the agistment of racing horses or the keeping of racing horses for training purposes? What is the line in relation to the equine industry where the exemption would stand?

Mr D.C. NALDER: It is proposed section 30A(1)(d), which reads —

... the breeding or rearing of horses for the purpose of selling them or their progeny;

Mr W.J. Johnston: Does that not include breeding for the purposes of racing?

Mr D.C. NALDER: It is not the training aspect; it is for the breeding or rearing of horses.

Mr W.J. Johnston: For the purposes of selling them?

Mr D.C. NALDER: Yes.

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Mr W.J. Johnston: What about if you are breeding them not for sale?

Mr D.C. NALDER: The exemption does not apply.

Ms R. SAFFIOTI: If people are keeping horses to train them for racing or for playing polo, would that exemption still stand?

Mr D.C. NALDER: No.

Mr W.J. JOHNSTON: I am not the member for South Perth, but as I understand it somebody might be breeding horses and selling some of them and breeding horses and keeping others. If they are selling some and keeping some, does this provision still apply to them?

Mr D.C. NALDER: If their primary objective is to breed to sell produce, it is part of the primary production. Obviously, every primary producer replaces their brood stock, whether it be a chicken farmer, a pig farmer or whatever. The primary objective is that they are breeding to sell. If they are breeding to train or race and all of that, or just to keep as pets, they are not going to qualify under the exempt status.

Mr W.J. JOHNSTON: If Mr and Mrs Smith have Smith Horse Breeding Pty Ltd with Mr and Mrs Smith as the shareholders, and they are conducting a business of breeding horses, and Mr and Mrs Smith also own Smith Horse Racing Enterprises Pty Ltd, the exemption would apply to the business that is for breeding and rearing horses. They would get the exemption. If they sell some horses to unrelated parties and they sell some horses to their other company, which I point out is not a related entity under the federal Corporations Act because there is no common shareholding even though the shareholders are identical, under the federal Corporations Act that does not make them related entities. To be related entities there has to be a cross-shareholding. Therefore, the racing enterprise does not get the exemption but the breeding enterprise does.

Mr D.C. NALDER: Yes, that is correct. It is as defined in “primary production” in proposed section 29. It is therefore around purely breeding to sell.

Mr W.J. JOHNSTON: Briefly then, given that everybody reading the debate is going to rush out and potentially restructure everything, is that a new benefit for horse breeders? Would they currently be able to establish themselves with two companies with common shareholders but not related entities under the federal Corporations Act because there is no cross-ownership? Is that a new exemption?

Mr D.C. Nalder: No.

Mr W.J. JOHNSTON: No. They can already do that?

Mr D.C. Nalder: Yes.

Mr W.J. JOHNSTON: That is fine.

Mr C.J. TALLENTIRE: The minister will be pleased to know that I have given up on his scientific abilities; he is completely incompetent in that regard. To give the minister another chance, I note in the explanatory memorandum the definition of “bodily produce”. Many people are in livestock production because of the genetic production. Is the minister trying to suggest that genetic material would be covered by “bodily produce”? I do not think many people who have livestock studs would agree with that. They would see a quite distinct difference between their activities in primary production that is focused on the production of a bodily produce versus the production of genetics that they would sell as genetic material. Indeed, it is not even the semen in the straw from the bull; it is the genetics contained within. I do not think that could be defined as “bodily produce”.

Mr D.C. NALDER: My understanding is that in addition to stud-type situations that are selling off various bodily produce, it also includes milk production from cattle, so other things are classified under that. However, if the member is looking at proposed section 30A(1)(b), he also needs to look at paragraph (c), which also further qualifies that.

Mr C.J. TALLENTIRE: Yes, I noticed that the minister talks about progeny, but I do not think genetic material has been properly covered. Where in the Taxation Legislation Amendment Bill (No. 2) 2014 has genetic material been covered? Genetic material is probably the most valuable of any of those products. The skins and the milk or whatever else are secondary to genetic material. That is the most valuable component for a stud owner; the genetic material produced is the most valuable thing. That is what is going to show up on their balance sheet. That is the thing they are producing—genetics.

Mr D.C. Nalder: Are you talking about semen?

Mr C.J. TALLENTIRE: No; the content of the semen.

Mr D.C. NALDER: I think they are all part of bodily produce, and that is built into the bill, so I would think semen, or parts thereof —

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Mr C.J. Tallentire: Or eggs, for that matter. It is the content of the eggs or the semen; it is the genetic material. It is the DNA, and the DNA is transferred on; that is not bodily produce.

Dr K.D. Hames interjected.

Mr D.C. NALDER: My understanding is that every stud sells semen; I am not aware of any —

Mr C.J. Tallentire: And they talk about selling the genetics.

Mr D.C. NALDER: But that is because they sell it through the semen. The genetics —
Several members interjected.

The ACTING SPEAKER (Mr I.M. Britza): Members!

Mr C.J. Tallentire: But it is not bodily produce.

Mr D.C. NALDER: Again, I think the intent is well covered in the bill, and I stand by that.

Ms R. SAFFIOTI: My question relates to page 6, and it is about the new primary production business test. One of the issues raised in relation to the business test is the concept of pop-up farms and hobby farms. The planning minister, in February this year in his Swan Valley statement, talked about pop-up farms and family-run businesses using vacant land to grow and sell produce—this whole concept of using vacant land in the valley to have a go at growing produce. This is where I still think there is a bit of a grey area as in commercial activities—hobby farm, and that grey area in between. Just exactly how is it determined that the activity is a non-commercial or commercial activity? I have gone through this definition, and it is still very unclear as to exactly whether the land would be exempt as a business and not just a hobby farm.

Mr D.C. NALDER: The fact that a farm is not permanent should not by itself affect its eligibility for the primary production exemption. It is more to do with what they undertake as part of that enterprise that will determine its exemption. If the pop-up farm is in a non-rural area and is being run by someone other than the owner of the land, it is unlikely to meet the owner–user test, unless it is being run by a family member or family entity. There are two elements to this: one is that it is a reflection of what is being undertaken that will determine whether it meets the exemption, rather than necessarily the permanence of it. The second thing is who is undertaking that enterprise, and it needs to be family or family related.

Ms R. SAFFIOTI: To continue the example—this happens quite a bit in the valley because of the block sizes—there may be two adjoining blocks. One of those blocks has a house on it, and the other block is empty, and one of the kids is growing citrus, or another type of fruit, on that block, basically to see whether they can make a long-term business out of it. How will it be determined whether that land will be subject to land tax in any given year, in particular in the beginning when they are not sure whether it will be a long-term commercially viable option?

Mr D.C. NALDER: The business indicators have been inserted into the legislation. There are a couple of things here. One is whether it is used for a commercial purpose, one is whether there is more than just an intention to engage in business, and one is whether it is for the purpose of generating a profit. They are the key determinants of the issue the member has raised. Everyone will be analysed on a case-by-case basis.

Ms R. SAFFIOTI: This is the replacement, in a sense, for the one-third income test. But administratively, it will be quite difficult. Initially, will more staff be required in the office to put the administrative changes in place? As the minister said, it will be done on a case-by-case basis. The one-third income test was administratively burdensome, too. But these are new indicators and, let us face it, people will try to challenge them initially.

Mr D.C. NALDER: The current business test is applied now. It is just that they also had to meet the one-third income test. Those assessments are being undertaken now because of the requirement to meet the business test.

Mr W.J. JOHNSTON: I want to refer again to the definitions. On page 12 of the explanatory memorandum, there is a heading “References to family member”, which has been taken from section 100 of the Duties Act. Is it the case that in order for a family business to get an exemption, only those people listed in paragraphs (a) to (f) can be involved in the business?

Mr D.C. Nalder: That is correct.

Mr W.J. JOHNSTON: So as long as all the people involved as shareholders or operators fit within paragraphs (a) to (f) of that definition—regardless of whether it is a trust, a partnership or a company—it will get a tick?

Mr D.C. Nalder: Yes, and that is extended by paragraphs (a) and (b) under “Family relationships, determining”.

Mr W.J. JOHNSTON: Yes, but that is really just to extend the common law understanding of these things.

Mr D.C. Nalder: That is correct.

Mr W.J. JOHNSTON: In the example that is given here, there is John and Jane, and they have a partner called Mark, and Mark is not family related, so therefore the exemption does not apply. So does that mean that if a

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family-run business had a sharecropper who is unrelated to the family, and who is almost an employee, yet not an employee, the exemption would cease to apply for their land, because they had brought in a sharecropper?

Mr D.C. NALDER: That is correct.

Clause put and passed.

Debate adjourned, on motion by **Dr K.D. Hames (Minister for Health)**.

House adjourned at 10.04 pm
