

TAXATION LEGISLATION AMENDMENT BILL 2014

Consideration in Detail

Resumed from 14 August.

Clause 10: Schedule 1 amended —

Debate was adjourned after clause 9 had been agreed to.

Mr W.J. JOHNSTON: On Thursday last week we asked about provisions of a similar nature to the powers being given to the minister here to make the determination and he referred me to a provision in the Land Tax Assessment Act. I want to clarify whether there is an opportunity for a taxpayer to bypass the commissioner. At the moment, if the taxpayer applies for an exemption and gets a negative outcome, under this provision he or she has the choice of either going through a procedure with the commissioner or bypassing that and going to the minister. I wonder whether the minister could clarify whether that land tax provision to which he referred me has a similar structure.

Mr D.C. NALDER: If the Commissioner of State Revenue denies the exemption, the person concerned has the right to appeal directly to the minister but has no right of appeal to the court.

Mr W.J. Johnston: Is that the same as the other provision?

Mr D.C. NALDER: No, it is different. If the commissioner does not have the right to approve an exemption and then the person concerned goes through their appeal rights, they appeal to the minister. There is a slight variation in that.

Mr W.J. Johnston: Under the other provision, the person does not have the ability to bypass the appeal process, so it is not the same as the one we are being asked to approve today.

Mr D.C. NALDER: It is not quite, no.

Clause put and passed.

Clause 11: Glossary amended —

Mr W.J. JOHNSTON: Clause 11 is similar to clause 4, as clause 4 amends the definitions in the Duties Act and clause 11 amends the definitions in the Land Tax Assessment Act. Later, in clause 16, we will make the same amendment but to the payroll tax arrangements. I wonder whether the minister has had a chance to consider the issues regarding political parties that we discussed the other day and whether he could give me a response. He said that he would consider that question of the associated entity arrangements with political parties and I wonder whether he has had a chance to think about that between then and now.

Mr D.C. NALDER: The proposed amendments include a regulation-making power to exclude from the exemption any class of organisation that is not specifically identified by the amending legislation. This matter will be closely monitored, and should it be found that a group of employers, as contemplated by section 54 of the Industrial Relations Act, will continue to qualify for exemption, an appropriate regulation will be made to exclude this class of organisation from the exemption. As required under the Interpretation Act, any such regulation will be laid before both houses of Parliament and subject to disallowance.

Mr W.J. Johnston: That is the other question. The question I asked was the political party one.

Mr D.C. NALDER: I am sorry; is that regarding the employer group?

Mr W.J. Johnston: Yes. That is later on, though. I will talk to the minister about that in a moment. I am sorry; I specifically asked about the associated entity for political parties.

Mr D.C. NALDER: The point the member is talking about is catered for under proposed section 38AA(f). To help the member a little, it is in part 3 on page 11 of the bill. Does that help?

Mr W.J. JOHNSTON: No, not really. I thank the minister very much. I will not delay the house. We had this debate on Thursday. I appreciate what the minister said about trade unions, and I will come back to that in a minute, because in the past couple of days I prepared a few amendments to deal with this issue. However, I was specifically asking about the political parties, and I do not think that the provisions in proposed section 38AA or the equivalent provisions in the other acts actually deal with this. I hope that the government does not intend to give associated entities of political parties a doorway through which they can go. The minister is saying that the provision he referred me to is about the sole or dominant purpose. I am just not convinced. If this was not an issue, why would the minister name political parties? Political parties would not be able to get through the sole or dominant purpose test, which is the one the minister referred me to. Given that the minister does not think that political parties are excluded by the sole or dominant purpose test, how could associated entities possibly be excluded from that same provision? If the minister thinks that the political parties cannot get through that gate,

why is he mentioning them? He is mentioning them because he fears they might get through. If he fears that political parties might get through, surely he fears that associated entities might get through. I need more reassurance than the minister's answer has given me.

Mr D.C. NALDER: Each of those entities refers to another entity in another paragraph. For example, proposed section 38AA(f) states that it automatically links back any associated entity to —

- (a) a political party;
- (b) a trade union;
- (c) a professional association;

We believe this covers it exceptionally well; that any member or group as defined and referred to in those earlier ones is associated with those and, therefore, is excluded from exemption.

Mr W.J. JOHNSTON: I am not going to pursue it. I do not think the minister is right. Anyway, it does not matter; I am not going to go there.

In respect of a trade union, I appreciate that the minister answered my question before I asked it. But I think that is a complete load of bollocks, quite frankly, minister! How in the hell can the minister say that he needs to specifically exclude trade unions of employees but not exclude trade unions of employers? It is an outrage! It is absolutely rubbish to say that the minister will somehow or other fix by regulation what he is not doing by the bill. The fact is that he has specifically allowed employer associations. The construction of this bill actually permits the Chamber of Commerce and Industry of Western Australia to get the exemption again. It is outrageous! The minister could have very easily fixed this.

I am going to propose a series of four amendments on which I will seek procedural advice.

The ACTING SPEAKER (Mr N.W. Morton): You can seek leave to move them en bloc if you wish to.

Mr W.J. JOHNSTON — by leave: I move —

Page 17, line 21 — To delete “Section 53” and insert —

Sections 53 and 54

Page 17, line 23 — To insert after “employees” —

or employers

Page 17, line 27 — To insert after “employees” —

or employers

Page 17, lines 30 to 33— To delete paragraph (d) and insert —

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

My amendments will not delete anything from the act. They will simply make sure that unions of employers are treated exactly equal to unions of employees. There is absolutely no logical reason to not proceed with this arrangement. What is the logical reason for saying that unions of employers and unions of employees should be treated differently? It is outrageous, particularly as we know that one union of employers, the Chamber of Commerce and Industry—although it is not a registered union, we know what it is—sought the exemption. It is not the trade unions that have caused this issue; it is the employer associations. These amendments will ensure that the rules that apply to a union of employees are exactly the same as the rules that apply to a union of employers. It is bizarre that there would be even a debate about this provision. It is just incomprehensible that there would be resistance to this arrangement. I hope that the government does not resist these amendments.

Ms R. SAFFIOTI: I rise to allow the minister some time to fully consider his position on these amendments. They were foreshadowed last week. The member for Cannington has outlined that the opposition cannot see any reason why a union of employers would be treated differently from a union of employees. We believe that this is a loophole in the legislation before us. Basically, incorporating the member for Cannington's amendments will ensure that this legislation is not at risk into the future. Remember, it was the CCI that challenged its tax status and went to the State Administrative Tribunal to be declared a charity and therefore not liable to pay a number of state taxes. It was the CCI that did that. I do not understand why we would create an opportunity for either that body or like bodies to exploit this legislation into the future. These amendments are not unreasonable. Basically, they are asking that a union of employees be treated in a similar way to a union of employers. I stood because I believe the minister should think about this and take further advice from his advisers. It is a sensible addition or

change to the legislation. I use the word “futureproof”—it basically strengthens or improves the legislation in trying to restrict any further challenges to the legislation in the future.

Mr D.C. NALDER: It is something that we want to consider in full detail. That means we want to monitor how this is implemented and how it goes. If there is an issue, we will consider dealing with it in regulations.

Mr W.J. JOHNSTON: I know what is happening here. The minister has discussed this with cabinet and it said, “No, we’re not going to let them do that.” My God—have some standards! Minister, there is no reason. If the government wants to treat unions of employees in a particular way, what is the logical reason that the minister does not want to treat unions of employers in the same way? The minister will monitor it and come up with something. Given that a trade union has never tried to get this exemption, why do we even mention unions of employees? It is bizarre. This is a problem that has been caused by employer associations. We are dealing with this legislation not because of trade unions, but because employer union bosses have tried to rip off the taxpayers of this state. Not “tried”—the bosses of employer associations have stolen money from the taxpayers of this state by pretending to be charities. That is what has happened.

What is the legislative response? The legislative response is to not even once mention the people who caused the problem. The legislative response of this government is to introduce a law related to people who have never tried to do what the law prevents. They have never once done what the law complains of, yet the people who have done what the law complains of are not mentioned. An amount of \$56 million was taken from state taxpayers and given back to immensely wealthy employer associations. An amount of \$11 million a year was taken from the taxpayers of this state and given to multimillion-dollar organisations or the union bosses at the Chamber of Commerce and Industry of Western Australia and elsewhere to use on their campaigns as they see fit, instead of being used for the benefit of the taxpayers of this state to build schools and pay for hospitals. That happened. We have this bizarre position that not one word in the law changes that fact. After two years, not one word in the law prevents the Chamber of Commerce and Industry doing exactly what it did two years ago, but we are going to prevent trade unions doing something that they have never done! Never—not once—has a trade union applied for this provision, but we are going to ban them. Employer bosses, who have done it, have taken \$56 billion out of the pockets of Western Australian taxpayers—that is 11 times larger than the planned surplus for next year’s budget, which is \$5 million, and if the Premier has not read the forward estimates, \$11 million a year is double next year’s planned surplus—but we are not going to discipline the CCI. Not once, in the entire provisions of this bill, do we do anything that prevents it from doing it again. In fact, we make a provision that specifically allows the Chamber of Commerce and Industry to continue to receive this exemption! This bill will not prevent the people who have caused this problem from continuing to receive this benefit, but we specifically say that the people who have never done this are not allowed to! It is just bizarre. It goes to the heart of the problem for the government. It spent two years trying to work out whether it would give this money back. It let the Chamber of Commerce and Industry and those other organisations—their mates; those union bosses—keep the money, but we are going to make sure that the trade unions that represent low-paid workers and help to prevent poverty never get it. It is bizarre.

This is the most outrageous behaviour. This is a minister who is not well behaved in the chamber, but this one is the worst! The Minister for Finance supports giving \$11 million back to the Chamber of Commerce and Industry, and he is doing nothing to stop it. He should bring in a provision. I have no trouble regulating trade unions and I have no trouble having proper rules, but we must make it fair. What logical reason is there to treat unions of employees this way and unions of employers in a more relaxed fashion? We know why—because the minister is not prepared to stand up to his Liberal Party mates. He is too weak.

Mr D.C. NALDER: The logic that the member for Cannington keeps asking for relates to how the Chamber of Commerce and Industry of Western Australia—he specifically referred to the Chamber of Commerce and Industry a number of times in his speech—is picked up in proposed section 38AA(d), which states —

a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the sole or dominant purpose of the body is —

- (i) the relief of poverty; or
- (ii) the advancement of education; or
- (iii) the advancement of religion;

The government believes that that proposed section clearly picks up bodies such as the Chamber of Commerce and Industry. It is hard to think that it is not a body that would be trying to promote trade, commerce or industry. The Chamber of Commerce and Industry is clearly defined in that proposed paragraph. I think that provides substantial logic to the queries that the member for Cannington raised. For that reason, we do not propose to change anything in proposed paragraph (f). We could go over and over this. If there are any exceptions, we will pick them up in regulations, but we want to understand the full implications after implementation. This matter

will be closely considered. Should it be found that a group of employers as contemplated by section 54 of the Industrial Relations Act would continue to qualify for exemption, an appropriate regulation will be made to exclude this class of organisation from the exemption.

Mr W.J. JOHNSTON: I want to point out that proposed section 38AA does not relate to the Land Tax Assessment Act; it relates to the duties legislation. We are not discussing that provision. We are currently discussing the Land Tax Assessment Act 2002. When we go back to discuss clause 4 of the bill, the section that the minister referred to will be relevant, but that relates to the duties bill. We are not dealing with the duties legislation at the minute; we are dealing with the Land Tax Assessment Act 2002.

I make the point that the minister is creating a situation in which the minister gets to exempt people. This is what the minister is saying: X, Y, Z employer association, which, like the Chamber of Commerce, is not a section 54 body—it is a section 50 party, but that is another issue—applies to the commissioner for an exemption and the commissioner turns it down. Even though the commissioner turns it down on the basis of those provisions that the minister referred to—although not that one; it would be the equivalent provision under the Land Tax Assessment Act—it then appeals directly to the minister and the minister gives it the exemption. That is the point we are debating. The minister allows a provision so that it can get around the fact that its application has been rejected by the commissioner. This is the problem. The minister is the one creating the problem—nobody else. It is not a problem in the current legislation; it is a problem that the minister is about to create. The minister may say that the bodies have found the so-called fourth limb loophole and that the government is trying to close that fourth limb loophole. However, the minister is now opening that loophole again because the minister will have an absolute right, without giving any reason, to give the exemption back to those bodies in secret. That is the provision the minister is asking us to support. That is the provision that was in clause 10 of the bill. We have already dealt with that provision; it was supported by the government and passed. Now we are dealing with the clause that defines them and the minister is asking us to give a specific exemption to employer associations so that he can retain the power to give them these exemptions under the provisions that we dealt with in clause 10. The minister's argument would be great if it related to the terms of the bill; sadly, it does not. What relates to the terms of the bill is that the minister is retaining the power. If a body is refused an exemption on the basis that it is a trade organisation and it makes an application to be determined as a fourth limb and the commissioner rejects it, it then goes to the minister in secret without telling anybody else in Western Australia, and the minister, personally, at the 500 Club meeting, can give the body the exemption. That is what the minister is asking us to support. Mate, it is never going to happen. It is wrong, it is corrupt, it is typical of the Liberal Party and we ain't going to buy it. It is rubbish law. If the minister wants to keep good law, he will treat trade unions of employees exactly the same as trade unions of employers. What is the logical reason? The minister says, "Oh, well, if there's problem, we'll fix it by regulation." The problem is the minister. He is giving himself the power to exempt the Chamber of Commerce and Industry from these provisions; that is the problem. We do not want to give him that right. We do not want the CCI treated differently from a union. Name a union!

Ms J.M. Freeman: The nurses!

Mr W.J. JOHNSTON: The Australian Nursing Federation. We do not want the ANF to be treated any differently from the CCI. Equally, we do not want the chamber of commerce treated any differently from the Australian Nursing Federation. There is no reason to reject these amendments. The only reason the minister wants to reject these amendments is that he wants to keep the power to do dirty deals with his mates; that is what this is about. Give it up. The minister should not proceed in the way he wants to. He should be sensible and come back with an amendment that treats the CCI and all the employer associations exactly the same as the unions. That is called fairness and commonsense.

Mr D.C. NALDER: I just want to correct something I said earlier. I was referring to the Land Tax Assessment Act, not the Duties Act, and proposed section 38AA. The same provision is in section 96(a) of the Duties Act, and I was therefore reading from the Land Tax Assessment Act. I will just repeat: we are being fair and equitable because we pick up the trade unions in proposed section 38AA(b), and we pick up the chamber of commerce in proposed section 38AA(d). I will not keep repeating myself because I have responded to the member's concerns. We believe we are covering the matter; however, if upon implementation we find that there are issues, we will regulate. However, I will say that the power does not solely sit with me as the Minister for Finance; it is in concurrence with the Treasurer. It does need to meet the public interest test and be published in the *Government Gazette*. It needs to become very public. I think that is more than prudent, and I stand by these clauses.

Ms R. SAFFIOTI: I just want to again reinforce what the member for Cannington has outlined. Basically, we are creating two groups. Unions will not have access to the minister, with the concurrence of the Treasurer, to get an exemption from paying state taxes.

Mr W.J. Johnston interjected.

Ms R. SAFFIOTI: That is what I am saying. The unions cannot get any exemption from paying state taxes and yet the Chamber of Commerce and Industry can under the minister's proposed legislation. That is the case.

Mr D.C. Nalder: No, it's not.

Ms R. SAFFIOTI: It is the case because the minister is retaining the power to exempt any organisation apart from a political party and a trade union. The minister has the exemption power for fourth-limb organisations that are not trade unions or political parties, because they are the only two that are specifically excluded from the legislation. This is the point. It was the CCI that, together with seven other organisations, received a \$66 million benefit because of the challenge to the existing legislation—\$66 million. I have said before that if a trade union movement got \$66 million worth of concessions under the Labor Party, and we were tardy and spent two years bringing legislation into this place, a minister would have resigned and a royal commission would have been called. It is as simple as that. Some \$66 million has flowed from the consolidated fund to these organisations and now the group that actually caused the problem has been giving different treatment to groups that never challenged their status. That is the point. I do not think the minister is right when he said that trade unions cannot be expressly exempted, whereas, under the definition that the CCI will fall under, it will continue to have the right to appeal to the minister. That is the point the member for Cannington made. I do not know why the government is treating the union of employers differently from a union of employees. I just do not know why that will be the case.

Ms J.M. FREEMAN: I am sorry I was out of the chamber earlier, but the minister is assuring us that the Chamber of Commerce and Industry will be excluded because of proposed section 38AA(d), which states —

a body, other than a body referred to in paragraph (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the sole or dominant purpose of the body is —

- (i) the relief of poverty; or
- (ii) the advancement of education; or
- (iii) the advancement of religion;

If my assessment of what the minister is implying in this place is correct, which is that as the minister he will never give the Chamber of Commerce and Industry of Western Australia an exemption and that he does not believe any other minister will ever give the CCI an exemption, and given that the CCI's income as outlined in the decision of the State Administrative Tribunal showed that of the \$79 million or \$80 million service revenue drive in 2011 that included approximately \$65 million derived through an apprenticeship system, how can the minister be assured that the CCI will not go back to SAT to again pursue this in the courts to show that it is not a body for which its dominant purpose is the advancement of education? How will the minister be assured of that?

Mr D.C. NALDER: Any organisation has the right to pursue any angle, but we do not believe that such organisations would meet the test. The Chamber of Commerce and Industry is specifically designed for and is about promoting trade, commerce and industry. I think that is fairly clear to all.

Ms J.M. Freeman interjected.

Mr D.C. NALDER: Sorry?

Ms J.M. Freeman interjected.

The ACTING SPEAKER: Member!

Mr D.C. NALDER: A dominance of any one of those three will be captured and they will be excluded.

Ms J.M. FREEMAN: Will the minister put on record that if the Chamber of Commerce and Industry proceeds down the same path to pursue a ruling that its dominant purpose is that it is a body set up for the advancement of education, which will enable it to get an exemption, that he will not wait another two years—it has been four or five years since he knew about this particular issue—to specifically exclude it in the same way he is specifically excluding unions? The government is doing that for no other purpose other than a vendetta against unions versus the people who the minister makes decisions for and he gets support from. The minister has provided the CCI with another loophole. When we look at what the decision says, we see that SAT did not find that the purpose of the CCI was for the promotion of trade; SAT found that the CCI's purpose was for the benefit of the public. That is how the minister ended up here in the first instance—it is because of this decision. What the minister is relying on when he says that such organisations promote trade, industry and commerce is not what was in this decision. That is why we are here in the first place, and now the minister is providing another loophole instead of doing what he is doing to the trade union movement, which is specifically and expressly including it in the legislation so that he can close down his mates so that they do not come back. That is not the intent of this legislation; this legislation came about because the government got scared of the charities legislation and he thought that trade

unions were coming. I want him to put on record that he specifically and absolutely makes sure that he will be here if the Chamber of Commerce and Industry puts in an application under advancement of education, which it can do. I refer the minister to the decision in the Western Australia State Administrative Tribunal case 146 of 2012—Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue. Justice J.A. Chaney heard the case on 29 and 30 March 2012 and delivered his decision on 18 July 2012. This is the same Commissioner of State Revenue who declined previously the chamber because it was a trade in industry or commerce. This was the same commissioner who was found to be wrong in terms of how that process went, so that the State Administrative Tribunal made that decision. This is at the same time that the minister gave CCI this special treatment. Paragraph 61 of the document reads —

While the proportion of service revenue appears, on its face, to dwarf the subscription revenue, a very large proportion of the service revenue is derived through government funding of CCI's apprenticeship training programme through its subsidiary Apprenticeships Australia Pty Ltd. For example, of the \$79,984,704.00 service revenue derived in 2011, Mr Nicolaou said that that included approximately \$65 million derived through the apprenticeship scheme. That scheme involves apprentices being employed and trained by CCI but placed with external businesses.

The CCI does that through training. It assists in that aspect of training, and that is through the advancement of the education of apprentices in this state. Why can the CCI not drive a hole straight through the minister's legislation? Why does the minister not shut it down as he is trying to with the trade union movement?

Mr D.C. NALDER: A couple of things here. When the member was discussing this during the second reading debate, she was pushing that trade unions should be classified as charities and therefore exempt from payroll tax. Those were some of the arguments she was making. When we talk about the CCI, it has a subsidiary that looks after training for apprentices. That would be excluded under paragraph (f) of proposed section 96A because the core purpose of the CCI is the promotion of trade, commerce and industry. It would be picked up within that aspect; therefore, any subsidiary or any associated entity of that would be excluded. I think it is fairly clear, and it is covered fairly well. Just to clarify a point the member made, wages that are paid —

Ms J.M. Freeman: Can you go back to (f)—why is that included? Read me the part that is included in this.

Mr D.C. NALDER: I beg the member's pardon; she does not need to be rude in here or to speak in that sort of manner.

If we read paragraph (f)(i), it is quite clear —

(f) a body that —

(i) is a member of a group, as defined in the Pay-roll Tax Assessment Act 2002 Glossary, of which a body referred to in another paragraph is also a member;

Look at paragraph (f)(i) for a start.

I want to clarify another point that the member made—namely, wages paid to apprentices are exempt from payroll tax anyway, so the member's point is not relevant.

Mr W.J. JOHNSTON: I would just like to explain to the minister the provision that he is asking us to support. We have paragraphs (a), (b), (c), (d), (e) and (f), and he keeps referring us back to them and states, "They'd be covered under (d) and the subsidiaries would be covered under (f)." The minister then needs to look at the following provisions, because it says that if an organisation is covered by (c), (d), (e) or (f), the minister can declare it to be a fourth limb, but if it is covered under (a) or (b), it cannot be declared a fourth-limb organisation. Let us understand what is happening. Assuming a trade union applied for the exemption, not only would it not get the exemption, but also it would not be treated as a fourth-limb entity by the commissioner. If it went to the minister to ask to be treated as a fourth-limb entity, it could not be given that exemption. But the Chamber of Commerce is going to be in a different category. It will be covered under (d), not (a) or (b). If it made an application to be treated as a fourth-limb entity and it was refused that application, it could then go to the minister to be exempted—unlike the trade unions. Let us also say that if there were an entity known as the nurse employers' federation—I do not have any idea that there is such a body—it would be able to get the exemption that only the minister can give. Does the minister understand that he is allowing an exemption for bodies covered under paragraph (d) that is not available to political parties or trade unions at (a) or (b)? If he were to simply broaden the definition of a "trade union" to be not only employee associations but also employer associations, that door would be bolted shut. The only reason we are having this debate and taking the time the house is taking is because the minister is asking us to treat the Chamber of Commerce and Industry and other employer organisations differently from trade unions.

The minister accused the member for Mirrabooka of saying that unions should get the exemption; that is his great accusation against her. He said, "The member for Mirrabooka is a bad person because she wants trade

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Ms Janine Freeman; Dr Tony Buti; Mr John Day

unions of employees to be able to get the exemption”, but our amendment is actually the opposite. We are not attempting to open the door to unions of employees; we are attempting to bolt the door shut against unions of employers. The minister says in the chamber that unions of employers should not get the exemption, but for some reason or other he does not say it in the legislation. Given the government’s incompetence in taking two years to get this legislation to us, we suspect that it is not actually incompetence; we suspect that it is actually connivance. The reason it has taken the government all this time to do what a reasonable government would have already done by now is that it wanted this to happen. As the member for Mirrabooka rightly pointed out, the minister suddenly got afraid and referred to federal legislation. Federal legislation had no impact on this, unless the definitions for a charity changed and suddenly trade unions were able to get fourth limb exemptions. That is what is motivating the government; it has nothing to do with the \$56 million it gave back to the CCI and its friends or the \$11 million it gives away every year to the CCI and its friends. It is happy to do that; it will have been doing that forever. That is absolutely true, and the fact that the minister is hiding when the decisions were made is proof of the fact that the Liberal government is culpable. It has been two years, and the minister will not tell us the truth in this chamber about when things happened because it would embarrass the government and prove our case. We know that. Everybody outside this chamber knows that. Just treat unions of employees and unions of employers the same; do not treat unions of employees favourably and give them a favour. Shut the door, but at the same time, shut the door on employer associations as well. The argument about trade unions is equal to the argument about employer associations, and the minister’s behaviour shows that to be true.

Division

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

Ayes (18)

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

Noes (32)

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

Pairs

Mr D.J. Kelly	Mrs L.M. Harvey
Mr B.S. Wyatt	Mr M.J. Cowper
Ms J. Farrer	Mr A.J. Simpson

Amendments thus negatived.

Ms J.M. FREEMAN: I want the minister to put on record that under clause 11, in terms of that amendment and his reflection on proposed section 38AA, if the Chamber of Commerce and Industry of Western Australia goes to the commissioner and asks for an exemption on the basis of the advancement of education and starts proceedings in the State Administrative Tribunal, he will immediately come into this place and amend the legislation to specifically exclude the CCI.

Mr D.C. NALDER: If the courts were ever to hold that the Chamber of Commerce and Industry of Western Australia was promoting education, it would never get to the minister. It would not get to the minister, because if it were found to be a charity under the criteria of religion, education and relief of poverty, it would never get here, because it is not under the fourth limb. I will clarify: if the courts found that, we could then regulate to strike it back out. That is the advice I have just received. I am a bit surprised by that, so I will just confirm it.

I can confirm that proposed section 38AA(e) operates independently and therefore the minister has the power to come back and regulate so that the CCI cannot be exempt. The minister can overrule on that.

Ms J.M. Freeman: Can you point out where that is?

Mr D.C. NALDER: Proposed section 38AA(e), which states —

a body that is a member of a class of bodies prescribed for the purposes of this paragraph;

Ms J.M. Freeman: But that is the exemption to let them in. That isn't an exemption to not allow them.

Mr D.C. NALDER: That defines it as a relevant body and therefore unable to get an exemption.

Mr W.J. Johnston: That is not true. That is wrong.

Mr D.C. NALDER: That is the advice I have received. I think I have answered the question.

Mr W.J. JOHNSTON: We have been through this and I do not understand why the minister keeps referring to it. All the bodies in proposed section 38AA(c), (d), (e) and (f) will be able to get exemptions. I agree that the bodies in paragraphs (c) to (f) would be ordinarily excluded, but the minister will retain the power to determine that all those bodies are eligible to be excluded from the tax system. Does the minister not understand his own legislation? That is the problem the opposition has with this legislation. We do not have a problem with the wording of proposed section 38AA(a) to (f); the problem we have is that despite the words in paragraphs (c), (d), (e) and (f), the minister will have the power to let bodies through the door. The opposition says, "Don't let them through the door! Let's make this legislation tougher, not weaker." That is the problem that has occupied us from the first moment that the member for West Swan stood and started speaking in the second reading debate. It is bizarre that after all this time, the minister still does not understand the legislation that he is asking us to support. We do not want the door open; we want it shut. We want it shut for political parties and we want it shut for trade unions, but we also want it shut for professional associations, a body that promotes trade and industry, a body that is a member of a class, a body that is prescribed and a body that is related; we want all of them out. The government says that it wants a law that says they are out, but a provision that lets them back in. We are saying that is stupid, and it is. We do not understand why the government wants stupid laws in this state—that is why we moved an amendment and I will not canvass the amendment—but given that it does, we then said that we should at least close it for a class of those bodies. However, the minister insists that he, as a minister, at the 500 Club, is allowed to give an exemption. If the body is covered by proposed section 38AA(c), the minister is allowed to open the door and let it in. The minister can let a professional association through the door and give it an exemption from paying tax. He can open the door and let in a body other than a body referred to in paragraphs (a), (b), (c) or (e). He can let in a body that is a member of a class of bodies. Even if the minister regulates on this, he still wants the right to exempt them. Does the minister not get it? Does he not know what his own legislation says? He cannot tell me that if the Chamber of Commerce and Industry of Western Australia gets through the door by use of the courts, after just two years he will rush into this place with a regulation to keep it out, but then let it through anyway. He will open the door and say, "Don't worry about paying tax. I'm the minister; I'm your mate." It is a really tough process, Madam Deputy Speaker. The minister will have to convince the Treasurer—the Liberal Treasurer will have to be convinced as well to let the body back through the door. My God, that is such a secure way. It is not as though that body is owed any favours here. It will go along to the 500 Club and nobody will know what is happening; there is no prescribed form or procedure. It says that it will give up its appeal rights. Well—there is a word I could use!—"something" me; of course it will give up its appeal rights. It has the minister sitting at the 500 Club. Of course he will let it through the door; that is the problem, minister. Do not come up with this stupid stuff, saying, "I can prescribe." Of course the minister can prescribe, but that is not the problem. The problem is that even when bodies are prescribed under proposed section 38AA(e), the minister still has the right to let them through. We are saying that we do not want the minister to do that; we do not want him to have that right. It is bad law. It has taken the government two years to respond to the problem and it is still not fixing it. Then the minister says, "Trust me", Deputy Speaker. After two years, the minister's only answer is, "Trust me." Even you would not accept that, Madam Deputy Speaker, I am sure.

The DEPUTY SPEAKER: Do not draw me into the debate, member for Cannington.

Mr D.C. NALDER: I have covered this issue a few times. Firstly, we have the public interest test, we have to get the concurrence of the Treasurer and it has to be published in the *Government Gazette*. At the same time, one of the reasons we have not been as specific as the opposition would like on this issue is that the definition of "employer" in this situation is considered to be far too broad and, therefore, too difficult to prescribe specifically. For that reason, we have proposed section 38AA(d). There is the power under paragraph (e) for people to apply. We need to monitor the implementation of this. There is definitely no intent of the government to allow the CCI to be exempt from paying payroll tax. We have put the legislation forward with the best intent to stop those circumstances from occurring, but we will continue to monitor it and regulate, if there is a need to, for any specific issues. Any decision we make about an exemption will be published and, therefore, the government can be held to account on that—there will not be any secret with this—and it must meet the public interest test.

Ms R. SAFFIOTI: I am flummoxed, bemused, scared—all those sorts of words—about why the minister will not act on the recommendation from the member for Cannington and why we are debating this issue in such a way. Basically, the CCI took advantage of a situation and the government is not willing to ensure that all

possible barriers are up so that such organisations will not act in this way again. The idea that we should trust this government on a public interest test, given what we have seen in the justification of some of its decisions over the past few years, is incredible. These guys make decisions and then try to retrofit patronage numbers or whatever the example may be. They make a decision —

Mr D.C. Nalder: Relevance?

Ms R. SAFFIOTI: It is about trust and the public interest test that the minister said will need to be applied when he makes a decision on whether to allow an appeal in relation to an exemption. That is what this is in relation to. The minister said that the barriers are high. The minister has to approve it with the concurrence of the Treasurer—that is not such a high barrier—and it has to get through the public interest test. As we said, people have different determinations or ideas about what is in the public interest. We have seen this government wait two years to bring in this legislation, allowing the CCI and some other bodies to benefit to the tune of \$66 million. I would argue that that is not in the public interest; of course it is not in the public interest. That is \$66 million of taxpayers' money that went to refund certain organisations. Therefore, we have seen the government act against the public interest over the past couple of years by not acting, and now we have to trust it. The minister said also that the exemption will be published in the *Government Gazette*. We will go through the issue of liability, which should be tabled as a disallowable instrument, but that will be dealt with later. I know that the member for Maylands made some comment about what questions we were asking as she walked into the chamber. One of the issues is that we still do not have the answer about why a union body would be treated differently from the CCI or a criminal body. The minister has said nothing. I can understand what it is like for the minister to be sitting there, trying to be briefed as we go through the bill. That is why he has to step away and absorb the legislation that he has introduced into this place. I do not think that has happened. I know everyone is time-poor, but the minister has to absorb and understand the legislation—not just read the words on the paper, but also absorb them and understand why they are there. With everything that has been put today, I do not think the minister knows why they are there and I do not think we have received a good enough explanation about why there is differential treatment between the CCI and similar bodies and the unions. That is my core problem with this. The minister can sit there and be briefed on certain parts of the legislation—the words, the commas and so forth—but not understand exactly what he is doing or agree with the logic. The minister has to agree with the logic of legislation before he brings it into this place. He has to understand where there are inconsistencies and be ready to address them. That has not been the case.

Dr A.D. BUTI: I would like add a few words to those of the member for West Swan. Minister, one of the biggest problems in declaring that trade unions, but not the CCI, should be prescribed as bodies that would never be able to benefit from exemptions is based on current law. As the minister would know, in the history of charitable trusts, trade unions have never come under the fourth limb, so why do we do need to prescribe that in legislation? Why do we need to prescribe that for trade unions? The minister talked about the development of the law in this area, but when have trade unions come under the fourth limb? The converse is correct, because with the development of the law, as the minister stated, the reason for bringing in this legislation was the decision that the CCI would come under the fourth limb, yet the government does not prescribe the CCI. The government is prescribing a body such as a trade union, which has never come under the fourth limb, at least not in Western Australia. I am pretty confident it was the case with the development of trust law in common law. Trade unions have never been prescribed under the fourth limb, but the government has decided it is necessary to include them in the legislation. However, the Chamber of Commerce and Industry of Western Australia, which has benefited from being classified as a fourth limb charity, is the very reason this legislation has been introduced. Yet, the body that has been the catalyst for this legislation is not excluded. The trade union movement, for which the Liberal Party has a pathological hatred, is included, although it has never come under the fourth limb. The CCI is currently under the fourth limb, but is not prescribed in the legislation. The government should not tell us that that is not biased. It is an inherent Liberal Party philosophical bias, and that is why the trade union movement is prescribed in the legislation, but not the CCI.

Mr D.C. NALDER: I appreciate the emotional contribution the member for Armadale has made to the debate, but we are repeating some of the subjects we discussed last week, although the member was possibly not here. A similar question was raised around unions and unions not claiming.

Dr A.D. Buti: Not claiming—being granted.

Mr D.C. NALDER: Yes, being granted; it is the same thing. An article was published in *The Age* in January last year that I referred to last week when we were debating this. It is about the Victorian Employers' Chamber of Commerce and Industry applying for the same thing. It reads —

A successful bid by the group could allow other business organisations, professional associations, unions and think-tanks that already operate as non-profit entities to become eligible to claim charitable status. That is why the unions have been picked up.

Dr A.D. Buti: Are you saying that it has been successful?

Mr D.C. NALDER: No, the Victorian chamber of commerce is currently in the Supreme Court in Victoria. That is why the unions have been picked up. When this was raised by the member for Cannington, I thought his concerns made sense to me, and I wanted to understand it, so I put pressure on about why we were not being more specific about employer groups. The advice I received was that the definition of employer groups is so broad that they cannot be captured accordingly. We are trying to deal with this the best way we can. We will monitor the implementation of this and pick it up in regulations if there are any difficulties. I have tried to be as clear, honest and open as I can with this issue but I am repeating this explanation.

Mr W.J. JOHNSTON: I was not going to participate in this debate on this clause but I want to, after what the minister has just said. Let us understand the depth of the public policy process. There is a newspaper article in *The Age* that refers to employer associations, trade unions and think tanks—I think that is the list; there might have been another one—that might seek this exemption.

Ms J.M. Freeman: Because of the Victorian Employers' Chamber of Commerce and Industry.

Mr W.J. JOHNSTON: The Victorian chamber of commerce will follow the Chamber of Commerce and Industry of Western Australia down the same path. The minister's response to that one newspaper article in Melbourne is not to address public think tanks or the Western Australian Chamber of Commerce and Industry or an employer association but to address only the trade unions. Remember, this debate is not about the definitions at proposed section 38AA (a) and (b); it is about proposed paragraphs (c), (d), (e) and (f). The problem is that proposed paragraphs (c), (d), (e) and (f) are all areas that the minister can exempt from the rule we are passing. Political parties and trade unions can never be exempted. The other ones may be exempted if the minister wants them to be—not for any reason. He never ever has to tell us why he has given that exemption; he can just do it behind closed doors without any procedure, without filling in any forms; he can just do it. He said that employer associations cannot be defined and that is why they will not be included.

I direct the minister to the words on page 17 under "trade union". Each of those words has a meaning. We have voted on it and I am not proposing that we discuss it again. I am talking about the words the minister used. He said an employer association cannot be defined. Actually it can; it is very easy because employer associations and employee associations are governed by the exact same statute. All he has to do is mention them and then they are defined. There is a catch-all term in this proposed section. Paragraph (c) is to catch unincorporated unions that are not registered. Almost none of those is left any more.

Mr P.B. Watson: Excuse me.

Mr W.J. JOHNSTON: That was clever! For the benefit of Hansard, the member for Albany's iPad started making a noise.

The DEPUTY SPEAKER: I think he's watching a football game, isn't he?

Mr W.J. JOHNSTON: Yes; I did not watch the match on the weekend, I can tell you that.

Mr P.B. Watson: I apologise.

Mr W.J. JOHNSTON: So should the Collingwood Football Club.

The DEPUTY SPEAKER: Apology accepted. Thank you, member for Albany.

Mr W.J. JOHNSTON: I think the Collingwood Football Club needs to apologise to its fans like me, the member for Albany and others in the chamber.

Dr A.D. Buti: It's a charity case.

Mr W.J. JOHNSTON: Maybe the Collingwood Football Club should apply for a fourth limb exemption!

Mr P. Papalia interjected.

Mr W.J. JOHNSTON: It does; it is a charity case, yes.

I will get back to the words on the page. The minister has to come up with a real reason, not a phoney one. He cannot say an employer association cannot be defined. Of course it can. I could have been really nasty and proposed—it was not in the original amendment but I might do so during debate on the next clause—section 50 and 53. The member for Mirrabooka will understand instantly the effect of that. It would specifically ban the Chamber of Commerce and Industry of Western Australia by name because it is a section 50 party. That is all that the government had to do. In fact, if the clause read, "An organisation covered by the Industrial Relations Act 1979," we probably would not even have needed to go that far; it would have caught the CCI. We could include paragraph (aa) to read, "any of the parties prescribed by section 50 of the Industrial Relations Act 1979". That would have instantly solved the problem because then, as a section 50 party, the Chamber of Commerce

and Industry would be covered by the act. The minister should not come in here with nonsense excuses and say that it cannot be defined or that we cannot work that out. Of course they can. What a load of rubbish! The Industrial Relations Act worked it out and the Fair Work (Registered Organisations) Act worked it out. All the other states have worked it out. Give us a real excuse and not a pretend one.

Ms J.M. FREEMAN: The minister says that an organisation cannot be included under this legislation as per section 53 of the Industrial Relations Act because the definition of a union of employers is too broad. Can the minister tell me which union of employers, under the present act, does not pay payroll tax and that their inclusion would mean they suddenly come under that provision? If the definition is so broad, does that not mean it should be included and that a union of employees could be included in the exemptions? It seems only right, proper, fair and equitable that the same exemption should apply to a trade union. If the definition is so broad, under which part of section 54 headed “Organisations of employers, which can be registered” is the minister so concerned that if they are included, they will be missed? Unless the minister can be specific, it is all speculation. Trade unions have been included on the basis of speculation by an article in *The Age* about employer organisations seeking exemption in Victoria. Unless the minister has proof that a union of employers should not be allowed to seek a payroll tax exemption, he is choosing to exclude unions due to speculation. I cannot fathom why the government would write a piece of legislation based purely on opinion and speculation and not on good policy matters.

Mr D.C. NALDER: We have no access to that information, because the commissioner cannot provide any details on any specific individual or organisation. There is nothing we can provide about what the member is seeking.

Ms J.M. FREEMAN: Is the minister saying that the Western Australian Industrial Relations Commission could not give the government any details of unions of employers?

Mr D.C. Nalder: The commission cannot provide any details of anyone applying for or being given exemptions.

Ms J.M. FREEMAN: That is not what I am saying. The government knows who is given exemptions. The finance department knows who has exemptions from payroll or land tax.

Mr D.C. Nalder: We do not. We know the status of the Chamber of Commerce and Industry of Western Australia because it went through the State Administrative Tribunal and it is public.

Ms J.M. FREEMAN: Does the minister not have a list of all the organisations?

Mr D.C. Nalder: The commissioner cannot disclose that information to us.

Ms J.M. FREEMAN: How does the minister know whether an organisation asking for an exemption is not already on the list?

Mr D.C. Nalder: If an organisation is refused an exemption, it has the right to come to us, but it is only at that point.

Ms J.M. FREEMAN: How does the minister know whether an organisation is already on the list if he does not have the list?

Mr D.C. Nalder: What list?

Ms J.M. FREEMAN: One assumes someone has a mythical list of all the organisations that are exempt from paying land, duties or payroll tax. Can the minister tell me whether there is a record of that and whether it is public; and, if not, why not? If organisations are exempted on the basis that they are a charity, why is it not a public list?

Mr D.C. NALDER: Section 114 of the Taxation Administration Act imposes a duty of confidentiality on the Commissioner of State Revenue from releasing information attained under a taxation act concerning affairs of a person. This duty operates to prevent the commissioner from releasing information to the government or the minister unless authorised by the person to whom it relates.

Ms R. SAFFIOTI: I point out why this is quite incredible. This is the point we made originally in the debate. Taxation law is done in such a way to prevent manipulation of political process—corruption. Historically, powers have rested with the federal and state commissioners of revenue. Things are so tight that the minister is not even allowed to be told which individual bodies are exempted.

Mr P. Papalia: A public servant knows but the minister does not.

Ms R. SAFFIOTI: Fair enough; it is all done so that the minister cannot abuse his position and so there is no manipulation. We are moving from the minister not being allowed to be told to whom the commissioner is giving an exemption to the minister making the decision. This is the absurdity of it. I believe the minister knows that the Chamber of Commerce and Industry has received an exemption, but he cannot tell us the other seven

bodies and organisations—fine. It is such a tight process that the minister is not aware of that, yet he will now be the arbitrator of who is going to get an exemption in all situations apart from those concerning trade unions. That is what I find absurd. The process is so tight, and I can understand the reasons behind it. We are throwing all that out the window and giving the minister the power to make the decision. As the member for Mirrabooka has rightly pointed out, it is bizarre that an organisation could go to the minister and say it wants an exemption but the minister will not know whether it has received an exemption or the history of their applications.

Ms J.M. Freeman: The minister would not know whether that organisation had received an exemption previously and had it taken off them.

Ms R. SAFFIOTI: Exactly. If he is not allowed to be told who has applied for an exemption, it seems an absurd process that I cannot even map out in my mind while I am on my feet.

Mr D.C. Nalder: The commissioner can provide the minister with the relevant information when the minister considers an application—for that sole purpose.

Ms R. SAFFIOTI: Is this in the bill?

Mr D.C. Nalder: We are talking about what the commissioner can and cannot provide by law under section 114.

Ms J.M. FREEMAN: The minister read me a section of the Taxation Administration Act that said the commissioner could not specifically do that unless that organisation gave it permission to do so. If the Chamber of Commerce and Industry was to call itself the “Industry for Chamber and Commerce” instead and was to ask for an exemption, the minister could not find out whether it previously had been given an exemption and had it removed unless it gave permission to do that. The minister is now saying that if an organisation applies for an exemption, the commissioner will give the minister that information. However, the minister read to us before that the commissioner can give that information only if the body gives permission. Can the minister clarify that for me?

Mr D.C. NALDER: We have had clarification from Parliamentary Counsel on this matter and the minister has a role to play within the application of this act, and on that basis the commissioner provides information only for the purpose of making a decision for the purpose of this act. For the purposes of this act, the minister has a role to play and at that point the information can be supplied by the commissioner to the minister.

Mr W.J. Johnston: That is under a different arrangement on a different issue under a different procedure.

Mr D.C. NALDER: I know we are starting to banter around all over the place, but I am relating my response specifically to the query of the member for Mirrabooka, and that is the advice I received and believe to be the correct application of this matter.

Ms J.M. FREEMAN: I am intrigued by this. The minister may grant someone an exemption, but not a trade union because he will not allow them to be given an exemption. He may grant the CCI an exemption because its members are his mates, but the Liberal Party may lose government. Does that mean that when the new minister came in, the new minister would know who had previously received an exemption? If it is a published decision, but, say, 10 years down the track that published decision somehow falls into an abyss, would each organisation that had been given an exemption have to give their approval for the new minister to be given that information? Would they have to acquiesce to give that information? I know the minister is saying that it is public information, but let us say that the public information is somehow irretrievable. In that case, how would the commissioner be able to give the minister the list of exemptions?

Mr D.C. Nalder: It is published in the *Government Gazette*, so that is where it becomes public. Any decision made by the minister in concurrence with the Treasurer needs to be published in the *Government Gazette*, so an exemption will be public for anybody —

Ms J.M. FREEMAN: But the minister will not be able to ask the commissioner for that. As the minister, he will have to go and seek it out of the *Government Gazette*.

Mr D.C. Nalder: No. We are talking about when the commissioner has ruled against it and the entity is applying to the minister for an exemption.

Ms J.M. FREEMAN: Yes.

Mr D.C. Nalder: If the commissioner accepts the application for exemption and it goes through, that is what the commissioner would have decided, and the minister would not have intervened at that point.

Ms J.M. FREEMAN: Yes.

Mr D.C. Nalder: It is only when the minister intervenes in the sense of applying an exemption to the matter —

Ms J.M. FREEMAN: That it becomes public.

Mr D.C. Nalder: — that it becomes public information, so it is only the decisions the minister makes that become public.

Ms J.M. FREEMAN: Why would it not become public for others, just because the commissioner made it? Why could it not be published in the *Government Gazette*? If an organisation is going for charitable status and everything has to be straightforward —

Mr D.C. Nalder: It is in section 114.

The DEPUTY SPEAKER: Order, members! I think if we could have a succinct question, the minister could answer it. I think it is getting a little difficult for Hansard.

Mr D.C. NALDER: Specifically relating to that, it is in section 114 of the Taxation Administration Act. It is commonly applied in all jurisdictions around Australia, both at a federal level and in all states. That is the way it is treated. We seem to be going right off track on this one, but that is the way it is applied.

Mr W.J. JOHNSTON: I move —

Page 17, after line 22 — To insert —

(aa) any of the organisations prescribed by Section 50 of the *Industrial Relations Act 1979*;

Section 50 parties are the specific parties that are granted special rights under the Industrial Relations Act. They are not registered organisations under the Industrial Relations Act. Let us make it clear: the Chamber of Commerce and Industry of Western Australia, for example, is not a registered organisation. The amendments I moved previously were about sections 53 and 54, which are about registered trade unions—either a union of employers or a union of employees. I am now referring only to section 50 parties. Section 50 parties are granted special rights under the Industrial Relations Act. In fact, in business they are usually referred to in shorthand as section 50 parties. Everybody in industrial relations knows that those parties are the minister, the Chamber of Commerce and Industry of Western Australia and the Australian Mines and Metals Association. I do not think UnionsWA is a party. They are the people who have a broad interest in the industrial relations system. As I say, the Chamber of Commerce and Industry is not a registered organisation—it never has been. In fact, it is proud of the fact that it is not. It makes the point that it does not see itself as a union and therefore does not want to register under the Industrial Relations Act, even though many employer organisations are registered under the act. Likewise, UnionsWA is not a registered trade union. In fact, it is probably not covered by the current definition, as it is not an organisation of employees. It is of course an organisation of employee associations. However, whether it is one or the other, it is not a registered organisation under the act. Section 50 is designed to take account of the fact that these important industrial bodies are not covered by the act.

In my amendment I am attempting to include in the definition of a trade union the Chamber of Commerce and Industry, UnionsWA and AMMA. It would also probably include a minister for industrial relations but they would not make an application anyway, so that would not cause them any drama.

I am not trying to take the definition further. I am not trying to cover the hairdresser association or the Australian Hotels Association as a union of employers. I am not trying to cover any of those associations. I am just trying to cover section 50 parties. In effect, I am saying that the Chamber of Commerce and Industry should not be allowed under any circumstance to be granted an exemption. Just to make it absolutely crystal clear: if the minister looks at proposed section 38AA(a), (b), (c), (d), (e) and (f), I am trying to take the Chamber of Commerce and Industry out of proposed paragraphs (d) and (e) and put it into proposed paragraph (b). The effect of that would be that if an application were to be made under proposed section 38AB, the CCI and equally UnionsWA would not be able to make the application under proposed section 38AB(1). The minister will see there that he can grant an exemption only to bodies covered by paragraphs (c), (d), (e) and (f). The CCI and indeed UnionsWA would not be covered by paragraph (d) but by paragraph (b). This is very, very narrowly defined just to limit ourselves to eliminating any possibility that either the Chamber of Commerce and Industry or UnionsWA would ever be granted an exemption by the minister under this bill.

Mr D.C. NALDER: Again, this is like the issue we raised last time. We do not want to see the Chamber of Commerce and Industry achieve an exemption—there is no question about that. The difficulty we have with this amendment as it stands is that we cannot tell who else it captures nor can we make sure that it does capture everyone.

Mr W.J. Johnston: Yes, you can. There are only four organisations.

Ms J.M. Freeman: It's an absolute in the bill.

Mr D.C. NALDER: Which are the four?

Mr W.J. Johnston: I said they were the minister, AMMA, the CCI and UnionsWA. They are the only section 50 parties.

Ms J.M. Freeman: Yes, there are only four.

Mr D.C. NALDER: Can I ask that we defer this clause for consideration towards the end of the bill and come back to it, and I will seek other advice? Is the member happy with that?

Mr W.J. JOHNSTON: Yes. I will move that further consideration of clause 11 be deferred until after the consideration of clause 4. We have already adjourned clause 4 until the end of the bill.

Mr D.C. Nalder: It is the same as clause 4.

Mr W.J. JOHNSTON: Clauses 4, 11 and 16 are all in the same form, so the issues raised are the same each time. We have already adjourned clause 4 to the end of the bill. I understand the minister is prepared to say that we should discuss this clause at the same time. Perhaps the best way is to move a procedural motion to have the consideration of clauses 4, 11 and 16 conducted as a cognate debate at the end of the discussion of other clauses of the bill. That will save the minister a bit of time.

The DEPUTY SPEAKER: Thanks, member for Cannington. I might just seek some advice on that.

Member, I think it would be better if you moved that we postpone debate on a particular clause and then when we get to the end of the bill, you can move that the remaining ones be dealt with cognately. Is the member for Cannington happy with that?

Mr W.J. JOHNSTON: Yes.

Further consideration of the clause postponed until after consideration of other clauses, on motion by Mr W.J. Johnston.

Clause 12: Act amended —

Ms R. SAFFIOTI: My question relates to organisations that had an exemption—the CCI being the classic case. The CCI had an exemption and this legislation removes that exemption. I want to understand the process for the enactment of the legislation. What is the lag between the legislation being in place and the CCI having to pay payroll tax?

Mr D.C. NALDER: We will cover that aspect a little later in the transitional clauses. That is where it is specifically referred to. I would rather wait until we get to that point. The transitional clauses will cover that—clause 15.

Ms J.M. FREEMAN: My understanding is that in the Pay-roll Tax Assessment Act there are a number of bodies under this clause that are currently exempt from paying payroll tax. The Chamber of Commerce and Industry of Western Australia is one and there are seven others, as I understand it. The minister is saying that that will be dealt with in the transitional clause of the bill. The minister read a section of taxation legislation before that stated that the commissioner cannot make the minister aware of any organisation unless the organisation gives its approval. Will there be any public record of organisations that are no longer exempt because of the amendment to the Pay-roll Tax Assessment Act? How will the public assure itself that the eight organisations that the minister says will be affected by this bill are actually affected by it? What public record will there be of the organisations that this Pay-roll Tax Assessment Act amendment affects; or, if it is beyond the eight, what public record will state what that number is?

Mr D.C. NALDER: There will be no public record of those exempted because the commissioner cannot release that information. Nothing will be available to the general public on which organisations, other than being more clearly defined by what is in the definitions of this amendment.

Ms R. SAFFIOTI: Following on from the member for Mirrabooka's question: Has the minister or the Treasurer been lobbied directly, or through the department, by any organisation that currently has an exemption but will lose that exemption? Has there been any lobbying or any representations made to the government from any organisation that the minister understands would lose the exemption, should this legislation pass?

Mr D.C. NALDER: I cannot speak for the Treasurer; I can speak only for myself. I have had no representation from any individual or any organisation whatsoever seeking to even discuss this matter. No-one has made representation to discuss this matter at all, whether it is to continue an exemption or regarding losing an exemption.

Ms J.M. FREEMAN: Does the minister appreciate that this is a major piece of legislation and it comes after another major piece of legislation, the Charities Act? It interplays with that. I am strongly of the view that the minister introduced this legislation only because of the Charities Act and his concern that if the Charities Act broadened the definition of a charity, unions would have the opportunity to apply under that broadened definition

and the minister wanted to close that gate. I am strongly of the view that that is the reason we are here. The minister has tried to dissuade me from that point of view, as has the Premier. Given the length of time this has been before us, and in view of the State Administrative Tribunal's decision, I am not persuaded of that view. Given that the minister will not provide an exemption to unions—and “only” not to unions—I am not persuaded of that view. How can the minister ensure transparency? How can the minister give credence to his argument that this is not the persecution of one group that represents a particular group in the community if we cannot have a list of those organisations that previously were exempt and subsequently, if this legislation passes, will not be? The minister told me that under the taxation act we cannot have that list. Will the minister undertake to have his department get the approval of those organisations so that that list can be made public? Will the minister undertake to have some transparency in this? I am asking the minister for an undertaking, so he might want to listen!

I have said very clearly that I think this legislation came about because the government wants to close the door on a certain group in the community that represents workers, not because it wants to react to the people who seek to be excluded from paying payroll tax. That is my belief looking at this legislation, the period of time and the fact that it was introduced after the Charities Act 2013. The minister told me that he will not be able to provide a list of people affected by this bill. There is no transparency and there is no assurance that the CCI will even necessarily be excluded because we will not have a list. Will the minister undertake to get the Commissioner of State Revenue to seek the permission of all organisations excluded because of this bill to make that public so that there is transparency? We want to know that this bill, when enacted, has actually done what the minister has sought. At this point the minister could pass this bill and nothing could change and we will not know any better because there is nothing to show, other than the fact we might have some increased revenue. Then again, that could be because there is a major employer in town that started paying payroll tax. Will the minister undertake to get a list so that there is some transparency?

Mr D.C. NALDER: We cannot make public the affairs of anybody—an individual or an organisation—in regard to tax matters. It is a challenge. I hear what the member is saying. We want to make sure that we have picked everybody up. We believe that these amendments will pick them up and that they would need to apply again for exemptions in the future. We cannot make public the eight entities that are currently exempt. We cannot do that.

Ms J.M. FREEMAN: I am not asking the minister to make them public. The section of the taxation act that the minister read out said that it can be made public with the permission of those organisations. I am asking the minister whether he can instruct the commissioner or the Department of Finance to seek permission from those organisations. If they do not give that permission, I get that the minister cannot do it. The Minister for Finance seeks to amend legislation so that those organisations he believes should not qualify for an exemption to pay payroll tax on the basis of being a “charitable institution” are no longer exempt. The minister believes those organisations should not gain the benefit of a charitable institution in terms of this act and therefore we are changing this legislation. I am asking the minister to instruct his department and the commissioner to seek permission from these people to give those details to the public so that this is transparent and it can be demonstrated that this legislation has done what it intended to do. Otherwise, it seems pretty clear to me that the only intent was to shut the gate on unions.

Mr D.C. NALDER: No, that is not the case. With the passage of this legislation, the commissioner will revoke the exemptions that exist for those eight entities and they will need to apply again. We cannot instruct the commissioner. The commissioner cannot provide us with any names. There is no way that he can enforce or go public with that information.

Sitting suspended from 6.00 to 7.00 pm

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