

STANDING COMMITTEE ON LEGISLATION

TAXATION LEGISLATION AMENDMENT BILL 2014

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 30 OCTOBER 2014**

SESSION FIVE

Members

**Hon Robyn McSweeney (Chair)
Hon Sally Talbot (Deputy Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Lynn MacLaren**

Hearing commenced at 1.43 pm**Ms MEREDITH HAMMAT****Secretary, UnionsWA, sworn and examined:****Dr TIM DYMOND****Organising and Strategic Research Officer, UnionsWA, sworn and examined:**

The CHAIR: On behalf the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you now like to make an opening statement to the committee?

Ms Hammat: I will, thank you. Can I say at the outset thank you to the committee for the opportunity to appear before you today and outline our concerns regarding the proposed Taxation Legislation Amendment Bill. I did want to make a short statement that outlined the key issues as UnionsWA sees it. In doing that, it is not my purpose to really just repeat the points that we have already made in our written submission, but I did particularly want to expand on a few points. UnionsWA is the governing peak body of the trade union movement in Western Australia. The proposed bill is significant for us and for the union movement because we feel that it specifically singles out trade unions and deals with them unfairly. We understand and recognise why the state government has moved to respond to the recent decision of the State Administrative Tribunal that found that the Chamber of Commerce and Industry of Western Australia was a charity and thus eligible for payroll tax exemptions. We agree that organisations should pay their fair share of tax. What we do object to in this bill is that the state government has chosen to use this opportunity to provide for legislation that we think will politicise charities and taxation status, and we think it will especially penalise trade unions. According to the second reading speech by Minister Nalder in June this year, he said —

Although trade unions and political parties do not currently fall within the common law definition of a charity, the legislation will specifically exclude these organisations from obtaining an exemption in the event of any future expansion of the definition of charity to these classes of organisations.

We are concerned that this bill seeks to specifically exclude trade unions, and it is worth making the point that the SAT decision made no finding about the charitable status of unions. As far as we

understand, there is no court that has made a finding that challenges the definition in relation to trade unions, and few other jurisdictions, either in Australia or around the world, specifically exclude trade unions. I think in our written submissions we pointed out that the only other example we were able to find was in Ireland, where that legislation not only excludes trade unions but also employer organisations specifically. This bill contains no specific exclusion for employer associations, and that is really the heart of our submission—that is, that unions are treated differently. We cannot see any public policy benefit in specifically excluding trade unions in this bill, and there is no legal development that we have been able to identify that would suggest that unions in particular should be singled out and treated differently. It was the Chamber of Commerce and Industry of Western Australia that found and exploited the loophole in the current legislation, and yet, as I have said already, we note that employer associations are not specifically excluded in the provisions of this bill; and, further, they are more than given the opportunity to seek special exemptions from the minister if they apply for an exemption and fail in the first instance. Again, trade unions are prohibited from being able to seek those sorts of special exemptions from the minister.

Our submission, in short, is that the CCI and other employer groups are given special and privileged treatment, while unions and political parties are singled out and penalised. We think it shows a very unequal treatment of organisations. We think it is partisan in nature. We think it has the potential to politicise charities and their taxation status, particularly by giving the minister the ability to make determinations in relation to exemptions. So, we strongly object to those provisions. We think that good public policy and good taxation law should really require that organisations be treated fairly, they be treated equally and they should all pay what is a fair share of tax. Really, the key consideration should be whether an organisation is engaged in charitable acts, in which case an exemption should apply; and, where they are not, then they should pay tax. It is for these reasons that we are deeply concerned about the current legislation. We think it is overly complex, we think it is partisan, and for those reasons it should be withdrawn and fundamentally redrafted.

The CHAIR: I think you have a set of questions in front of you. I think you have just answered question 2, so unless you had anything else to add to question 2 —

Ms Hammat: I think the concerns are really clear—that it specifically excludes trade unions. As I have said, there has been no finding of any body that deals with the charitable status of trade unions, and there is no other jurisdiction. The only other one we have been able to identify is in Ireland, where, as I said, employer organisations and chambers of commerce are similarly excluded. It is for these reasons that we are particularly concerned about the definitions of “relevant body”.

The CHAIR: Question 3: do you consider that the bill could have been drafted in another way to achieve what was intended, but limit the impact on fourth-limb charities; and, if yes, how would you do this?

Ms Hammat: Without providing specific drafting, I think there are a number of ways the bill could have been improved. Our view would be that the bill could remove any reference to trade unions without leading to an imminent change in the way trade unions are currently paying state taxes. As I say, there has been no decision of the State Administrative Tribunal and no decision of courts that calls into question the status of trade unions and how we pay tax. Alternatively, for consistency, this bill could have been drafted to specifically exclude employer associations and chambers of commerce and industry in the same way that it excludes trade unions. If trade unions are to be prevented from having the minister make a determination in relation to their status, we would argue that, similarly, so should employer associations be dealt with in the same way.

The CHAIR: It is all political parties, is it not?

Ms Hammat: Yes, it is true that political parties are treated in the same way as well.

I also note that the one provision in proposed section 42A that deals with the broadly defined bodies that are promoting trade, industry or commerce, if the sole or dominant purpose of the body is relief of poverty, education or religious, provides for some exemptions as well. But, again, there is no such consideration for trade unions. For those reasons, we say trade unions—and also political parties, but they make their own submissions in relation to this—are treated differently, and there is no sound reason for that to be the case.

The CHAIR: I think you have just answered the first part of question 4. Was there any part of question 4 that you would like to answer, or all of them?

Ms Hammat: Perhaps what I could do is talk generally, and then perhaps if you have more specific questions I am happy to take them.

Part of our concern is that the bill does exclude bodies that are related to excluded bodies. That is particularly a concern to trade unions, because we are specifically excluded—we are prevented from any mechanism of having the minister make the determination—and so any bodies that are related to trade unions, regardless of their purpose, would also be excluded. Trade unions in particular have a long history of being involved in providing aid, support—providing additional benefits that go, for want of a better expression, beyond providing workplace representation for members. There are many examples of that, and perhaps I could just mention a few. For example, the ACTU has established an overseas aid organisation known as APHEDA. APHEDA does not operate in Western Australia or pay payroll tax, but it is indeed an example of trade unions being involved in charitable works and having organisations and related bodies that undertake that. In Western Australia, our predecessor, the Trades and Labour Council, established an organisation, commonly known as the Welfare Rights and Advocacy Service, as a way of providing assistance and relief to people, not in the context of their workplace, but in the context of their broader place in society. Individual unions are also engaged in community and charitable works. I will briefly mention two. The CFMEU provides support through an organisation called Mates in Construction, which is around addressing mental health and suicide issues for people involved in construction work. Another organisation, the AMWU, is involved in charitable works in alleviating hunger amongst children. Without going to the legal entities that have been established—it is not really my role to be making detailed submissions about how those organisations relate—those are a few quick examples that illustrate that the union movement has a long history of being involved in providing community charity support, and clearly the way this bill is drafted runs the risk that a body that is established to deliver genuine charity relief, and provide genuine charity work, would be prohibited from the other exemptions that would apply to other organisations, and have no ability for the minister to make any determination about whether that is proper. Again, this really points to the fact that there is no sound reason for trade unions to be particularly named and excluded in this way relative to other organisations.

The CHAIR: Thank you. Question 5: the government has tabled a supplementary notice paper proposing amendments to the bill. These proposed amendments provide that a public benevolent institution and a body the main purpose of which is a public benevolent purpose is not a relevant body and therefore will retain tax exemption. Does this proposed amendment address any of your concerns?

Ms Hammat: No, because the fundamental construction of the bill is to exclude trade unions to provide no mechanisms for appeal against a decision, and to exclude any related bodies, regardless of what work they are involved in.

Hon DONNA FARAGHER: With reference to those related bodies, and you have provided a couple of examples, have any of those—I appreciate that you mentioned that some of them were at a commonwealth level—ever received any exemptions that you are aware of?

Ms Hammat: I am not privy to enough information in terms of how those organisations are structured and how they relate to the parent body, for want of a better description. I am not

necessarily privy to that information. I provide them really as an example of the kind of broad range of works that unions might be involved in—everything from overseas aid through to providing for workers that might be in need of social assistance, whatever. There is a broad range of activities that unions are typically involved in. It is not inconceivable that there would be, either now or at some point in the future, a body that is set up by a union for the purpose of providing charity works, and that is clearly caught in the legislation.

Hon DONNA FARAGHER: So, in a nutshell, essentially your concern is not that you might be immediately affected, but the fact that this legislation would just exclude you now and into the future.

Ms Hammat: I do not know enough to be able to say that we would not be affected now. I could not say definitively that there is no union in Western Australia that would not be caught by these laws as they are drafted—there may well be—but it is easily conceivable that it would have impacts into the future as unions seek to undertake what is a very common thing for unions to be involved in; that is, providing those sorts of charitable relief activities.

Hon LYNN MacLAREN: Meredith, have you looked at the equivalent organisations, for example, in New South Wales, and are you aware of whether they have charitable status?

Ms Hammat: I cannot speak specifically of New South Wales, but our advice is that there is not the similar kind of prohibition that this legislation seeks to set up.

Hon LYNN MacLAREN: So you are not sure if, for example, the equivalent union peak body in New South Wales would be exempt from payroll tax?

Ms Hammat: I could not speak with great authority, but what I can say is that there is no prohibition on them just because they are a trade union organisation. Presumably, if they are involved in charitable works, then that charitable work gets the exemptions that might apply; and, if it is not, then it does not. I think the test that is usually applied is one that—it is the force of the common law definition, and, as I say, I do not think that is in dispute, and I do not think that has been challenged or changed by the recent developments in the State Administrative Tribunal either. It has not been trade unions that have pushed the envelope on this question to avoid paying tax; it has been another organisation entirely. I suppose I will just reiterate the point that the organisation that has pushed the envelope is not specifically excluded in this bill. So, again, we seem to be singled out for treatment and exclusion for no sound reason.

[2.00 pm]

Hon LYNN MacLAREN: What about in the commonwealth tax arrangements, does UnionsWA have a charitable status in the commonwealth? Are you listed in the ACNC?

Ms Hammat: We are not considered a PBI. We are a not-for-profit organisation.

Hon LYNN MacLAREN: So, you are one of the many not-for-profits, which might be caught by the way that this bill has been drafted, except you are explicitly identified as definitely excluded from exemptions.

Ms Hammat: In terms of payroll tax, we currently, obviously, do pay payroll tax, so it is not that it is an imminent change for us. But, as I said earlier, there may be unions that have particular charities that may be affected, and it certainly may provide issues in the future as organisations try to set up legitimate bodies to undertake charity work. They might not be able to claim the same exemptions that a similar organisation might, you know, and APHEDA might be an example of that.

The CHAIR: The last question I have is: do you want to comment on the proposed two-stage beneficial body determination? That is question 6.

Ms Hammat: I understand this is a reference to the ability to have decisions reviewed by the minister using the discretion. I mean, we object really to that provision because unions do not have

access to it. Again I reiterate the point that there seems to be no sound reason for us to be excluded from having those decisions reviewed by the minister. The only conclusion we can come to is that in fact it is probably a partisan consideration, because there does not seem to be any other grounds on which you would exclude trade unions or political parties. But I also believe that, having had a process where SAT has come to a decision to provide the minister with discretion to overturn that without providing published reasons or without having any kind of consideration about how such a decision might be made, would seem to me to be not a sound way to approach the law in any event. Ministers are human beings. Undoubtedly, they are subject to all sorts of pressures, considerations; and an individual making a decision about something like that, something of such significance and importance, I think people would be rightly concerned that there were perhaps considerations that led to an exemption being granted that are not necessarily related to the charity work that that organisation might be involved in. So, I think that kind of mechanism is flawed, and for a minister exercising that discretion, I think people would be concerned about what kinds of considerations, what kind of pressure might be brought to bear to lead to some organisations being granted exemptions and others not.

The CHAIR: Thank you. As we are out of time, on behalf of the committee, I would like to thank you both for appearing before us.

Hearing concluded at 2.03 pm
