

STANDING COMMITTEE ON LEGISLATION

TAXATION LEGISLATION AMENDMENT BILL 2014

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

SESSION EIGHT

Members

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

Hearing commenced at 3.19 pm

Mrs KARLIE MUCJANKO

General Manager, Grower and External Relations, CBH Group, sworn and examined:

Mr EDWARD KALAJZIC

Chief Financial Officer, CBH Group, sworn and examined:

Mr ANTHONY LIAW

Group Tax Manager, CBH Group, 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 oath.]

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 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 like to make an opening statement to the committee?

Mrs Mucjanko: We would, thank you for the opportunity. We have provided the opening statement to the committee and I will read that for you now. The CBH Group is a cooperative owned and controlled by Western Australian grain growers and operates on a not-for-profit basis for the benefit of the agricultural industry. CBH has proudly worked in partnership with our grain growers over the last 80 years to build the Western Australian grains industry into a \$3.5 billion export industry. CBH is a non-distributing cooperative, whereby any surplus funds are reinvested to maintain an efficient and low-cost supply chain for the benefit of Western Australian grain growers.

Our core purpose is to create and return value to Western Australian growers and to promote the development of the grain industry in Western Australia. We provide storage and handling services, grain quality management, transport and freight management, and marketing and trading services for the growers of Western Australia. CBH is driven by grower member needs and these are overseen by a majority grower board. We are committed to the long-term sustainability and livelihood of WA growers and the rural communities, in which they live, do business in and socialise.

The predominant method of creating and returning grower value over the last 80 years has been through significant and ongoing re-investment into grain storage and handling infrastructure to create a supply chain that provides benefits for growers, grain buyers and end-user customers so they choose to come and do business here in Western Australia; research into innovative means of

preserving grain quality and therefore value; value-sharing initiatives designed to improve farm efficiency and profitability; and through community investment programs spread across some 320 000 square kilometres of the Western Australian wheatbelt.

Due to our cooperative structure CBH adopts a long-term view when making investment decisions. There are no requirements for quarterly profit reporting pressures and therefore CBH is able to spread capital return over a longer time period. This has allowed CBH to make significant infrastructure investments such as our Kwinana port terminal and our recent purchase of rail rolling stock, which have changed the landscape of the grain industry in WA and brought significant efficiency to the supply chain through reduced fees and increased demand for Western Australian grain.

Under common law, CBH is recognised as a charity. This definition has been tested and reaffirmed by the 2010 full Federal Court's conclusion in CBH's federal tax exemption case where it was confirmed that CBH was established for the purposes of promoting the development of the Australian agricultural resources by promoting the development of the grain growing industry in Western Australia. CBH is prohibited by law from directly or indirectly paying any income to its members by way of dividend or bonuses. CBH carries out activities for the benefit of all growers—not just our shareholder members—the industry and the community, which do not always deliver a commercial return for CBH.

Over the last five years, CBH has invested over \$805 million in grain supply chain infrastructure to provide growers with the most efficient, least-cost pathway to international markets, critical to WA growers' long-term competitiveness. We have introduced a rebate of charges program designed to reduce the supply chain costs of grain growers. That allows any trading, operational or investment surpluses above the capital requirements of the growers' own storage and handling network to be returned to them in the form of a rebate off their storage and handling fees, having a direct impact on their farm gate return. Over the past six years up to \$14 per tonne has been rebated to growers through our rebate program. CBH has also invested \$28 million in research and development programs over the last five years to ensure our grain network infrastructure and systems are providing grain growers with the efficiency and benefits they will need to compete in an increasingly competitive global market. CBH's presence in and commitment to local rural economies has positive effects in these communities through capital investment, salaries and knock-on employment.

Prior to its payroll tax and land tax exemption, CBH committed \$350 000 annually to rural communities or organisations that support the Western Australian grains industry through sponsorships and partnerships. Often these organisations deliver critical services to rural communities that would not otherwise be offered on a commercial basis. Following CBH's exemption, our board tripled this annual sponsorship investment and committed \$1.5 million per annum to be provided through partnership and sponsorship programs to communities across the wheatbelt.

As some background for you, the Western Australian grains industry produces 11 million tonnes of grain on average and this represents 40 per cent of the national grain crop. Most importantly, over 90 per cent of that is exported each year at an estimated value of \$3.5 billion. Farm profit margins have been reducing as production costs increase, grain quality advantages are eroded as end-users become adept at utilising non-Australian origin grain and emerging grain exporters develop their capabilities—for example, increasing grain exports from the Black Sea and South America that our grain growers are now competing against. The Western Australian agriculture industry is challenged to compete with grain produced on a global scale, some of which is supported by foreign government subsidies. Given the non-distributing status of CBH, the ultimate effect of this exemption is that a greater proportion of the global grain price is returned to growers as a result of lower supply chain charges. WA grain growers then pay taxes on any increased profits they may

make and may expend greater amounts in the Western Australian economy. It is therefore crucial that for Western Australia to continue to enjoy the benefits of a strong export grain industry, grain growers must have access to a low-cost, efficient supply chain and healthy communities from which to live and work. Should CBH be impacted by the Taxation Legislation Amendment Bill, we roughly estimate it could increase growers' supply chain costs by around \$1 per tonne.

The CHAIR: In your submission you raised concerns that the bill would remove the state tax exemption status of CBH in force because CBH is a fourth-limb charity, and this will add significant costs back into the grain sector. The bill proposes to amend three state taxation acts—the Duties Act, the Land Tax Assessment Act and Pay-roll Tax Assessment Act. Does the proposed amendment to any of these acts in particular impact on CBH?

Mr Kalajzic: Yes, they do. From a payroll point of view we estimate it is approximately \$8.5 million a year. When we look at the land tax, we think that is about \$1 million a year. So, it is by \$9.5 million a year that we think will impact the grower community. If you break that down into those three points you mentioned, from an operational impact, it is primarily financial. Obviously, that means less cash in our business to reinvest into the network and as you have seen with other supply chains in east coast, when you stop reinvesting in the network, you have a longer term problem. We have even seen that in rail here. From a grain industry point of view, as Karlie mentioned in the opening statement, the world is becoming more competitive in terms of our traditional markets. Where we used to have the advantages into South-East Asia, that is now diminishing rather quickly as countries such as Ukraine, southern Russia, South America and even North America start to be more competitive in those landscapes. More worrying is the trend that the flour millers in those areas are getting more comfortable using the quality grain that is coming out of there. Any additional cost to our growers' supply chain is making them less competitive on a global scale. From a WA perspective that is very important because, as Karlie said, we export 90 per cent of our grain to those sorts of markets. Unless WA has some sort of significant population boom, which is highly unlikely, we are always going to be a very strong export focused state; therefore, having a competitive supply chain for our growers is critical. From a community point of view, ignoring the multiplying impact of money that we all know does exist, Karlie also mentioned around the sponsorship programs that we put through, and how that has increased since we got the exemption through the state payroll tax. Across three different categories we have that significant impact going to the grower community.

The CHAIR: Maybe you can just tease this out for me just a little bit. Why are you a fourth-limit charity now?

Hon DONNA FARAGHER: Can I just add to that? May I ask how long have you had the exemptions for?

[3.30 pm]

The CHAIR: Given that I am a farmer's daughter, and on your side; I need to clear up a few things.

Mr Liaw: We have been retrospectively endorsed since 2008. That is from State Revenue. From a federal point of view we have been endorsed retrospectively since 2000.

Hon SALLY TALBOT: Was this as a result of the Federal Court case that you referred to earlier?

The CHAIR: So you went to court to become a fourth-limb charity?

Mrs Mucjanko: Post that ruling.

Mr Liaw: Yes, post-ruling. So we went through the full Federal Court process. The outcome of that was that we reviewed all our articles with the help of advisers, just to ensure whether or not we were in the right space in terms of legislation. Post that review, we realised that we were not. We went to State Revenue to seek some clarity. At the same time we went to the ATO as well, and

on both fronts—both State Revenue and the ATO, and including the ACNC—agreed that we are a charity.

The CHAIR: That is because you are a growers cooperative and you give back.

Mr Kalajzic: Everything is for the benefit of the WA grower.

Hon SALLY TALBOT: So the court case? Where does the court case come in?

Mr Liaw: The court case tested what our purpose is, and whether or not we fit into the not-for-profit space. As I said, the Federal and the full Federal Court—two rounds—reaffirmed that position.

Hon LYNN MacLAREN: When was that? What was the date of that?

Mr Liaw: The full Federal Court was 2008, and we had judgement in 2010. Then we went to the full Federal Court appeal —

Mrs Mucjanko: In 2011 we received the final decision.

Hon SALLY TALBOT: Was this because you were in dispute with the ATO or one of the state departments about your status?

Mrs Mucjanko: The ATO had raised that with us, yes.

The CHAIR: Your submission states at one point that CBH would likely be affected by paragraph (d) of the definition of “relevant body” in the bill, being the provision that denies a body with the purpose of promoting trade, industry or commerce state tax exempt status. There are four dot points down there. Do you want to answer those?

Mr Liaw: Yes. From a technical reading of the drafting, and given the broad nature of the drafting, we believed we would be caught. I think, jumping to point 2, the proposed amendment, we believe, misses the larger picture here. The beneficiary of the exemption is not really us; the beneficiary of the exemption is the grower community—the rural community. We, technically, are a facilitator; we are a conduit. In every sense, profits after capex are put back into the community. Lastly, in terms of whether or not there are any amendments that we deem appropriate to the bill, probably no amendments is better, meaning that the bill should not be passed. It comes back down to what is the bigger picture here. It is not that simple or easy to receive a charity endorsement. Can I just explain that there are a lot of not-for-profits out there, but not all not-for-profits are charities. The charity law dates back to the statute of Elizabeth, which is the sixteenth or seventeenth century. So it is not that easy. People do not go into business to become a charity to make money, because we are not into that business.

Hon DONNA FARAGHER: I suppose the challenge is, though, that there has been a decision with respect to the CCI, which has brought this bill before us today, so there is an example where it has occurred, and I suppose that is the reason why this bill is now being considered—to deal with those sorts of circumstances. But I do take your point.

The CHAIR: So you would actually fit into “promote trade, industry or commerce” in the bill, because you actually do each one of those, as well as what you are doing.

Mr Kalajzic: Correct.

Mrs Mucjanko: I guess we do that for the benefit of mum and dad farmers. They need their grain to get on that ship and get to the market.

Mr Kalajzic: An important point is that it is for growers, not just for our members; we do it for all growers.

Hon SALLY TALBOT: Did you get a payroll tax refund retrospectively after your court determination?

Mrs Mucjanko: Yes, we did.

Hon SALLY TALBOT: Did the CCI SAT ruling have any implications for you, or did you already have your exemptions in place?

Mr Liaw: No, we received exemptions post the CCI case. We put in our applications without knowing what was happening out there, in a sense. We did not go through the SAT like the CCI.

The CHAIR: Would you consider any amendments to the bill or paragraph (d) appropriate? You cannot just say you do not want the bill passed. Is there anything that should be changed?

Mr Liaw: We believe that ultimately the test should be a public interest test. It does not matter to us whether you are promoting trade, commerce or industry, but who the beneficiaries are should be the key here. Again, we are a conduit to facilitate that.

The CHAIR: Are you able to comment on whether, in your view, the bill will impact on more than a small number of fourth-limb charities? I am just interested to hear. You are one of them, but are there are others that you can think of?

Mr Kalajzic: I think it is hard to comment. Having sat at the back of the room for the last couple of sessions, I see that there are obviously other people who are being impacted, and I have heard numbers around 3 000 charities being registered. Without knowing the exact detail of every one of those individual charities, it is very hard to make a fair comment, other than to say that there are obviously quite a few people being impacted, maybe in different ways.

The CHAIR: Just remember that those 3 000 charities would not meet the payroll tax threshold, but certainly, I just wondered if there were others.

Hon Col Holt in Parliament inquired whether agricultural associations, growers' associations and cooperatives are affected by the bill. I think you have commented on that. Are you able to comment on, or name other fourth-limb charities that are associations and cooperatives of the type described above that would be affected by the bill?

Mrs Mucjanko: We considered that. We are unaware of specific situations here, so we would not be able to comment.

The CHAIR: You are quite unique, are you not?

Mr Kalajzic: Yes.

The CHAIR: For good reason.

The government has tabled a supplementary notice paper proposing amendments to the bill. These 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 exempt status. Does this proposed amendment address any of your concerns?

Mr Liaw: I think the short answer is no.

The CHAIR: No, I did not think so, but I thought I would ask.

As you noted in your submission, the proposed beneficial body determination process in the bill provides the minister with the power to reinstate taxation exemption if he or she, with the Treasurer's concurrence, is of the opinion that it is in the public interest to do so. Please outline your concerns about this determination process.

Mrs Mucjanko: I think we have a couple of concerns, first of all being the lack of certainty, and a sense that taxation law in particular should have certainty around that in order for businesses to plan and conduct their operations. We might have an annual harvest cycle, but we certainly operate our business on a longer time frame than that. In our case, as Ed mentioned, the quantum of the amounts involved are significant, so it is important for our organisation to have some certainty from year to year, minister to minister, and government to government in some respects. That uncertainty can increase costs for everybody. We also have some concern around the idea of legislation and

discretion and how those two concepts can work in practicality together, and a lack of an appeals process or a review of decisions—the non-review proposal there. Our preference would be for legislation that is clear and gives people the certainty that they are looking for, or returning to a reviewable process under an independent party. I feel that would be an appropriate mechanism to move forward.

The CHAIR: Do you prefer that guidelines should be provided by regulation, delegated legislation or otherwise?

Mr Liaw: Legislation.

The CHAIR: Are there any other aspects of the bill that concern you?

Mrs Mucjanko: I suppose just to say that it is something of a blunt instrument in having some of those unintended consequences and it is difficult to have a clear definition necessarily when it is such a broad group of organisations that are potentially impacted, and, in some respects, as Anthony mentioned, losing sight somewhat of the benefit that some of these organisations are delivering to the public, and what constitutes a public—certainly our grain growers in rural communities would feel that they constitute a public out there, in terms of public benefit. That is probably all that we need to comment on there.

The CHAIR: When CBH went to court to get that ruling, which court did it use?

Mr Kalajzic: The full Federal Court.

Mr Liaw: Federal and full.

The CHAIR: And what year was that?

Mr Liaw: In 2008, we started the process.

Hon LYNN MacLAREN: So it concluded in 2011?

Mrs Mucjanko: Yes.

The CHAIR: On behalf of the committee, I would like to thank you all for coming in and appearing before us. You have certainly left us with some food for thought.

The Witnesses: Thank you.

Hearing concluded at 3.41 pm
