

Hon. Sue Ellery MLC  
Leader of the Opposition in the Legislative Council  
Parliament House  
PERTH WA 6000

4 September 2014  
Via email to - [sue.ellery@mp.wa.gov.au](mailto:sue.ellery@mp.wa.gov.au)

Dear Hon Sue Ellery MLC

**RE: Tax Law Amendment Bill 2014**

I am writing to bring to your attention the concerns held by the Western Australian Council of Social Service and others in relation to the potential unintended consequences of this Bill for charitable organisations delivering community services in Western Australia.

The Council notes the stated intention of this Bill as outlined in The Minister for Finance, Dean Nalder's second reading speech is to restrict the access of "fourth-limb" charities and professional associations established to promote trade, industry or commerce (such as the Chamber of Commerce and Industry) to the benefits of State tax exemptions or concessions (including payroll tax, transfer duty and land tax).

We do not have a problem with the WA Government seeking to ensure that the benefits of charitable status (and concomitant costs to the public purse of foregone tax revenue) are targeted to ensure they are supporting what the community would consider genuinely charitable purposes that benefit of vulnerable and disadvantaged Western Australians and the community as a whole.

We are concerned however by advice we have recently received from a number of trusted sources including the Australian Charities Law Association, the Law Society of WA and other experts in charities law who regularly advise the community services sector. They suggest that the manner in which the Bill has been drafted may result in unintended consequences for some of our member community service organisations of a charitable nature. I have attached for your information a recent article from Pro Bono News and a media release from ACLA that outline some of these concerns with the Bill.

We are concerned that the measures within the Bill are defined in a way that is likely to affect many more organisations that are intended, and that decision making powers to enable an exclusion from its provisions are at the discretion of the Minister of Finance the day, which could leave the door open to the politicisation of decision making about charitable status.

The Council is particularly concerned by the manner in which the Bill applies a 'catch-all' test relating to a purpose to "promote trade industry or commerce" from which organisations then



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need to seek an individual exemption (rather than narrowly defining industry bodies). We are concerned that the administrative interpretation of this test could see it potentially apply to charitable organisations engaged in disability employment, Aboriginal organisations and others promoting the economic development of disadvantaged people, community housing providers and charities developing or promoting social enterprises. Professor Ian Murray has raised concerns that advocacy bodies and peak organisations may be more at risk under these measures should this decision making be politicised in the future. We have also been advised it is likely to apply to agricultural associations such as growers associations and fruit cooperatives.

We note that there is an exemption for organisations whose sole or dominant purpose is relieving poverty, advancing education or advancing religion, but this definition is narrower than that usually used in charities law. Our initial analysis suggests that different types of charitable organisations in two ways – firstly it may directly affect the charitable status of those organisations who are Incorporated Associations under the WA Act (predominantly smaller charities). Secondly, it may also indirectly affect those organisations who are constitutional corporations or have DGR or PBI status under Federal Law – by removing their access to State concessions (such as payroll tax, land tax or stamp duty concessions). For example - while around 1/3 of (smaller) community housing providers may be directly affected through their tax status, larger community housing providers may also have their financial viability affected by the impact on their access to stamp duty and land tax exemptions.

We are seeking assurances that the legislation is not passed before these issues are clarified and resolved and that the Bill be amended to address any unintended consequences.

We note that this legislation has already passed through the Legislative Assembly and is currently being debated by the Legislative Council, and so are seeking your support to ensure that the passage of this Bill is delayed until these concerns are addressed, the legislation is referred to committee for public debate and amendments are put forward to address any unintended consequences.

We would welcome the opportunity to discuss our concerns with you further and would be happy to arrange a discussion with some experts in charities law who have been advising us on this issue.

I look forward to receiving your response.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Steve Joske', with a stylized flourish at the end.

Steve Joske CSC  
WACOSS President