

TAXATION LEGISLATION AMENDMENT BILL 2014

Second Reading

Resumed from 21 August.

HON KEN TRAVERS (North Metropolitan) [8.35 pm]: I indicate that I am not the lead speaker. Hon Sally Talbot will be the lead speaker on the Taxation Legislation Amendment Bill 2014. Members will understand that she has done considerable work. I suspect she will be able to provide a lot more information in her contribution to the house than I could ever possibly hope to; nonetheless, I will make some comments on this bill.

It is fair to say that on face value this is simple legislation to deal with some unintended consequences. As I dug deeper to understand this bill, I realised I have to give due credit to all members of the Standing Committee on Legislation. It has become clearer that the issue to be erased by this legislation and the method for trying to solve it are very complex matters. In my view, it will have the potential to create further consequences. I could say unintended consequences, but as we debate the bill it is fair to say we will be able to highlight that some of the consequences were predicted.

I believe that one thing this bill will do is create a lobbyist's picnic. It will set up an opportunity for lobbyists in this city to make an awful lot of money by selling to organisations a process to gain tax exemptions.

Hon Robyn McSweeney: No, that will not happen.

Hon KEN TRAVERS: Hon Robyn McSweeney will get an opportunity to respond when I finish. In the time I have available, I am happy to explain that to members.

The Taxation Legislation Amendment Bill 2014 seeks to amend the Duties Act 2008, the Land Tax Assessment Act 2002, the Pay-roll Tax Assessment Act 2002 and the Taxation Administration Act 2003. As the second reading speech states, the government seeks to amend those acts to improve the efficacy of existing state tax exemptions for charitable institutions. This bill was introduced because Western Australian laws enable charities to seek exemptions from three substantive taxation acts—the three main sources of taxation for state governments around Australia. I am sure that members who have read the report would understand, and there is a reference to it in the second reading speech, that charities are often described as first, second, third or fourth-limb charities. Interestingly, under current legislation fourth-limb charities have always, since those acts were enacted, been eligible to seek an exemption. A number of fourth-limb charities had never sought an exemption from those taxes, but a number of years ago the Chamber of Commerce and Industry of Western Australia took a case to the State Administrative Tribunal to claim an exemption under those provisions. They were successful in obtaining that and, as a result, a number of other fourth-limb charities realised they were in a position to obtain an exemption and, therefore, sought to do so. As a result, the government decided as a matter of policy that it does not want those fourth-limb charities to seek those exemptions. That is a legitimate policy decision of government. In fact, I note that we have spent an awful lot of time over the past six years dealing with government policy decisions seeking to ensure that more and more people pay more and more tax to deal with its uncontrolled expenditure. I am happy to go through some of the many other laws we have dealt with over the last six years that have sought to increase the amount of revenue the Barnett government can get. As we know, the government cannot get revenue in fast enough to match its spending. Despite receiving record levels of taxation since being elected, the government cannot control its expenditure so it needs more and more. It is interesting to read the minister's second reading speech in which he said —

It is expected that these state taxation integrity measures will have an immaterial or no impact on the budget forward estimates.

That statement may be correct. That is to say that if this bill is passed, the government will impose a tax on a range of fourth-limb charities that will generate significant revenue. Although it may be difficult to quantify for those organisations alone, I suspect that when Hon Darren West speaks on this matter, he will outline the impact on organisations such as CBH Group, in particular. Although it may not have an impact on the budget and the state's forward estimates because these matters have not been previously incorporated into the forward estimates, the government will get significant revenue that it would not otherwise get if this bill were not passed. One of the things I ask of the Leader of the House in his response to the second reading debate is to indicate the revenue implications for the government if this bill is not passed, and how much revenue the government can collect as a result of its passage.

As I say, the government has chosen what I believe is a very interesting mechanism for the way it will deal with this matter. Rather than seeking to define those fourth-limb charities that the government wishes to remove from the capacity to seek these exemptions, all fourth-limb charities within the legislation will be considered to be exempt from the concessions. However, they may apply to the minister to be readmitted. I find that to be an

extremely concerning process. As I say, the committee report is very instructive about the way this legislation will operate. Members will see that when those charities lose their capacity to claim an exemption and seek to be exempt from paying the various taxes under those three acts, they can apply to the minister and the minister will then make a decision around what the minister believes to be in the public interest.

Again, there is no guidance in the act for how the Minister for Finance will determine what is in the public interest. In fact, there is no requirement for the minister to develop guidelines that are made public so that the public can understand what is in the public interest, and there is no requirement for the minister to make public the reasons for a decision to either grant or not grant an exemption to a fourth-limb charity. Under the amendments moved by the Leader of the House, there will be a requirement for the government to provide reasons to the group that has made the application, but that will not then be made public. That is why, I suspect—in fact, I more than suspect; that is why I am confident—that lobbyists up and down the Terrace of Perth and all through West Perth will be rubbing their hands in glee, because they will be able to see that information if they act for a company. The details of that information—that is, the specific details about the client they represent—will not be able to be conveyed to another party if they are acting with integrity. I suspect that the vast majority of lobbyists act with integrity, but they will have knowledge of how and on what basis the minister made the decision to grant an exemption. That information will be available to them and their clients, and to nobody else. If a lobbyist begins to be seen as a specialist in this area, they will constantly get feedback about the way the minister of the day is looking at these matters, treating these matters and ultimately determining these matters. That will give that person an advantage to sell themselves to potential clients like nothing else, because there are significant amounts of money to be made. An exemption from paying these three taxes could have a significant impact on the revenue of a fourth-limb charity organisation, so a fourth-limb charity will actually pay someone who is able to convince them that they are the experts in putting to the government a claim for exemption from paying these taxes. That is why I make this point: this will set up a framework in which lobbyists will be in their absolute element. Not only will they be the only people who will be able to consistently, if they do this on a regular basis, collect the knowledge of the basis on which and how the minister arrives at their decisions, but also they will be able to argue, as they do, that they have some sort of special understanding and contacts, connections, and all the rest of it, to allow them to put forward a case to grant the exemption in the best possible light to the minister. They already have that in the way they operate, but all of a sudden they will be able to indicate that they understand the way this process works.

Even if the organisation itself says, “No, we have very good people working for us, we will get them to research this matter and come up with a proposal for how to put these matters before the minister,” they will find it almost impossible to get any meaningful information. On top of that, I have absolutely no doubt—certainly based on the way the government provides answers to this house currently—that should they then go to the opposition and ask the opposition to ask some questions to try to ascertain how the minister makes the decisions, the answer that the opposition will get is that it would infringe upon the privacy of existing taxpayers and, therefore, the government cannot release any information about the way ministers make decisions. My point is that that is nonsense. In my view, the government could very easily provide that broad information. One of the things that are constantly reinforced to me is the way in which this government uses secrecy to avoid scrutiny. It goes beyond avoiding scrutiny because it causes damage to good process in Western Australia. The government and its agencies constantly and regularly fail to understand the processes and procedures of the Freedom of Information Act. Again, the government constantly uses commercial-in-confidence and privacy concerns to avoid providing meaningful information that could be provided. So that the Leader of the House does not think I do not realise it, I note that when the government grants an exemption, it needs to make public the fact that it has granted the exemption and the organisation to which it has been granted. My point is that the government does not have to provide the reasons for the decision.

I suspect that as we proceed through the detailed sections of this bill, it will become clearer to us that the government is unable to explain to the house exactly which fourth-limb charities it intends to capture. There is an interesting conundrum in all this. I use the Chamber of Commerce and Industry as an example because the minister referred to it in his second reading speech. The CCI was able to successfully obtain the exemption in the first place, which created this bill, because it was able to demonstrate at the State Administrative Tribunal—I am sure Hon Sally Talbot will correct me on this point if I am wrong—that there was a broader public benefit or interest in it obtaining that exemption and that it was not only about its personal benefit.

Hon Sally Talbot: There was a public benefit.

Hon KEN TRAVERS: There was a broader public benefit, and that is how the CCI originally achieved the exemption. If a taxpayer obtains the exemption in the first place through SAT on the basis that there is a public benefit, how does the minister decide whether to grant an exemption on the basis of public interest? How will a government explain to the chamber how a SAT decision on public benefit will be different from a minister

acting in the public interest, other than for those organisations for which the minister's discretion is removed to make that decision? That is another issue that needs to be addressed as we go through and deal with this bill.

As a house of review we are required to explore those issues. As I said earlier, I congratulate the government for sending the bill to the committee and the committee for its work on this incredibly complex and technical bill. The committee has, I believe, come up with a range of positive measures and the government has adopted those. Sadly, I note the committee report refers to some of the challenges the committee faced. Despite its best endeavours, the committee has not published a report that is able to provide complete clarity on all the issues. I note committee members had differing opinions.

The committee has certainly improved the quality of the debate that we will be able to have on this bill in this chamber. If members have not read the committee report, I urge them to look at paragraph 1.10. I might read a couple of sections of that paragraph to the house because it is really quite important to understand that. In paragraph 1.9, the committee states that we asked it to —

inquire into the potential unintended consequences of the Bill, if any, on fourth limb charities.

That becomes clearer in some of the comments that I am about to read in paragraph 1.10, which states —

There were a number of challenges in fulfilling the Committee's task in this inquiry, including:

- It is often difficult to identify in detail and with certainty the 'intended' consequences of the Bill, and of particular clauses of the Bill. The intention of the Bill and clauses is often stated in general terms, rather than by specifying organisations that will or are likely to be impacted.

Clearly, there is an issue there. It goes on to state —

- The term 'legitimate' fourth limb charity (as stated in the referral) has no known or certain meaning in charity law or otherwise.

That is really important to understand. If members have not followed this debate, one of the arguments that has been put forward is that the whole law and common law around charities and the way in which charities develop has been evolving relatively rapidly recently. The report goes on to state —

A charity is either a charity or not at common law.

I think that is the test. Once we start to try to determine what we consider to be a legitimate charity, it becomes quite complex. We need very clear work from the government to ensure that we have a proper mechanism for doing that. The report of the committee goes on to state —

The Committee does not know and can find no way of establishing what types of organisations were intended to be included in the term 'legitimate' charity. Therefore, the Committee in this inquiry considered the impact of the Bill on all fourth limb charities.

- There is no publicly available list of fourth limb charities operating in this State. Furthermore, the Committee was not able to obtain from the Office of State Revenue, Department of Finance ... any names of fourth limb charities currently exempt from the three State taxes.
- It is difficult to reconcile the evidence of OSR with other witnesses' evidence and submissions at times because OSR did not provide the names of organisations that they consider may potentially be affected by the Bill, and because of the complexity of charity and taxation law.
- The referral was based on the assumption that the Bill affected only fourth limb charities, and professional associations which are fourth limb charities. The Committee considered it appropriate to bring to the attention of the House circumstances where first to third limb charities are potentially impacted by the Bill.
- The Committee had limited time in which to report to the House.

I say to all members of the committee that I am in awe of the quality of the report that they provided to the house and the way they dealt with it in the time available. I do not know whether the members who wrote the minority report were assisted by the committee staff, which they are obviously able to. Having been on committees in the past, I know that writing minority reports is often very difficult. They are often written towards the end of the process when members are under real time pressures. Again, I note that the minority reports and findings are also very impressive in the way they have been put together for the benefit of the house.

I think that raises one of the great complexities in this whole process. It may be that the government's intention is that those professional organisations such as the Chamber of Commerce and Industry of Western Australia—we could all name numerous of those sorts of organisations that we are aware of in Western Australia—should pay appropriate taxes. It could legitimately be argued that they should be paying their taxes, as every other taxpayer in Western Australia does. The complexity that then arises, of course, is that many of those

organisations also have, either as affiliated or actual parts of their structures, sections or associated entities—related bodies—engaged in what we would all accept are legitimate one to three-limb charities. In some cases they may be engaging in public benevolent work.

One area that jumps out the most is being involved in training work. North Metropolitan Region is very fortunate that in the Joondalup area, where I have my electorate office, there are a couple of training organisations. East Metropolitan Region members have the Master Plumbers and Gasfitters Association; when I was shadow Minister for Water, I visited the Master Builders Association of Western Australia, which is based just down the road from this place. In the Joondalup electorate we have the Motor Trade Association of Western Australia, and the National Electrical and Communications Association, which runs training programs for future electricians. Each and every one of those organisations I can think of has two arms, although I do not know exactly how the CCI operates. I have certainly been into the two organisations I mentioned earlier, and there is a connection between the training arm and the representative organisation. When entering the buildings, it is hard to differentiate between the two, and their structures are incredibly closely linked. In the case of the Motor Trade Association there used to be two quite distinct, separate organisations that were completely at arm's length from each other—the Motor Industry Training Association and the Motor Trade Association. A number of years ago those two organisations came together, and now the Motor Trade Association has moved in and the relationship between the two organisations is very closely intertwined. They operate together at the site of the former Motor Industry Training Association. I and Tony O'Gorman were very proud to have assisted that organisation to secure land in Joondalup and add to the learning precinct. We now have a diverse range—probably the greatest diversity—of training and education opportunities anywhere within Perth. We have a fantastic state training provider, commonly called TAFE, a fantastic university, the Police Academy, and two industry training bodies. The vast majority of that land at Joondalup is used for training purposes or is held for future training. Tony O'Gorman and I—Tony more so than me—were very active in ensuring that the organisation was able to purchase sufficient land to allow future expansion at that site. At the time, many people did not want them to be able to buy that land, for fear that they would be land-banking. In fact, their argument, and one that I fully concurred with, was that they had commenced in Balcatta, and they had outgrown their premises in Balcatta, to the point at which they had bought neighbouring properties, and they had then moved to Joondalup, and they did not want to reach capacity again and have no opportunity to expand a further time. My view was always that if in the future they were no longer able to use that land for training, or did not use that land for training, and were to sell that land, under their articles of association, the profit from that land would need to go back into a similar purpose. It was not as though the profit from that land would go into someone's private pocket; it would go back to a public benefit. I say all of that to make it clear that if ever there was an argument about why they need to have such a large area of land, the majority of that land is clearly set aside for future training purposes. Ironically, it is interesting that the changing nature of the motor training industry may mean that less and less training is done at premises like MITA and more and more is done directly with the industry players at their workshops, because of the complexity and expense of the equipment that is involved. The fundamental question that we have to ask is whether an organisation like that should be exempt. The same goes for the Master Plumbers and Gasfitters Association of Western Australia. I have not been to their premises for many years, but they have a significant complex in Maylands, with a large training wing. That is clearly another organisation that is targeted by this legislation.

I look forward to the minister explaining in his address, using that as a case study, how this matter will be dealt with. I suspect we will discover that if an organisation is predominantly a training organisation, and if the land that it holds is predominantly for training purposes, at best it will be given an exemption. However, it will be a massive process to arrive at an outcome, with a lot of bureaucratic red tape. When did we have red tape reduction week? Was it last week?

Hon Sue Ellery: It was red tape half-hour.

Hon KEN TRAVERS: It seemed to go by in a flash. We are supposed to have removed red tape. But the government is now creating a scenario in which people will be forced to go through a massive amount of red tape. I expect that, at best, we will find that for the majority of the site, and for the salaries of the people who operate at the site, these organisations will be exempt from having to pay the respective taxes. We will also find that these organisations—this is certainly what I would be doing—will limit the amount of money that they provide to further the interests of the professional organisation to the point at which, with a bit of luck, they will come under the threshold and will not have to pay land tax or payroll tax, and that many of these organisations will now not buy new properties so that they will not have to pay duties. Therefore, we will have created an enormous amount of red tape and an enormous amount of angst, and it will be interesting for someone waiting for a decision from the minister. With the process by which these exemptions will be obtained, it will be interesting how the potential liabilities will be accounted for in the books at the end of each financial year prior to the formal exemption being received. In fact, I am of the view that it would have been better for the

government to do a bit of further work to clearly identify who is in and who is out, and to have that done by legislation rather than by executive decision, which although is made public, is never justified or explained to the public of Western Australia. We will create a whole lot of red tape that will create a whole range of complexities, worry and difficulty at the end of each financial year if these matters are transitioned, and if the Leader of the House can correct me, I would be very pleased to hear whether I am wrong on these matters.

The net effect of this is that the amount of stamp duty, land tax or payroll tax that organisations will pay is insignificant compared with the effort they are required to put into this process. We really have to wonder whether it is worth us, as a state, putting those organisations through those hoops and hurdles. Of course, those who will find it hardest to work out a way to structure themselves so that they can be exempt from this are some of the grower cooperatives like Co-operative Bulk Handling Ltd. My colleague Hon Darren West will talk a bit about the impacts of this for organisations like CBH. As we proceed through this debate it will be interesting to see how members in this chamber who profess to stand up for the farmers of Western Australia act and behave when dealing with this legislation. It is my view that there is an opportunity for us to make amendments to provide exemptions for those organisations. It is not as if they are not already getting additional costs and burdens put on them by the actions of this state government. Again, the benefit that those organisations receive goes back into our regional areas of Western Australia. That money gets spent in regional Western Australia and by requiring those organisations to pay these taxes we will be putting a burden on regional Western Australia.

In the time I have left, what concerns me most about this legislation is that I understand that corruption always comes about because someone behaves corruptly. We could follow the American logic of “guns do not kill people; people kill people”. I have never subscribed to that. I have always been one of those people who say we need gun control and limited access to guns. By limiting access to guns, the number of people killed by guns is limited. Anyone comparing the statistics of the number of gun deaths in Australia each year compared with America will see very quickly that as well as the decision of the individual, if a framework is allowed to be established, it will flourish. My view is that the structure of this legislation for the way it will deal with granting exemptions—in some cases it will deal with a reasonably significant amount of money—will open up the opportunity for people who make application, if not for corrupt behaviour in the sense of persons personally pocketing money, to get a visit from someone at Menzies House saying, “Would you like to become a member of the 500 Club? You can come to the Premier’s offices for drinks at the end of the year and you might want to make a donation to the Liberal Party.” The money may not be put in by the individual minister making those decisions, but there are plenty of examples of, surprisingly, within a year or two of decisions made by this government, significant donations are made to the Liberal and National Parties in Western Australia. It is my view that the structure of this legislation will allow that to happen as people seek exemptions.

Hon Martin Aldridge: They don’t do that.

Hon KEN TRAVERS: They do.

Hon Jacqui Boyde: No, they don’t.

Hon KEN TRAVERS: We can have that debate tomorrow about one case of a donation to the National Party after the former leader led the charge —

Hon Martin Aldridge: Settle down! Take a pill!

Hon KEN TRAVERS: Members deny that donations were made to the National Party, and we can have a debate tomorrow about a very good example. It is interesting to note that the former leader of the National Party, Brendon Grylls, led the charge for the closing of tier 3 rail —

Hon Paul Brown: He didn’t!

Hon KEN TRAVERS: He did.

Hon Paul Brown: When you say that, we’ll debate that tomorrow.

Hon KEN TRAVERS: I will. The point I am making is that National Party members should not deny in this chamber that very soon after that decision was made, they got a substantial donation from a beneficiary of that decision.

Hon Paul Brown interjected.

Hon KEN TRAVERS: Hon Paul Brown may want to deny it; the point I make is that it occurs. It may be that National Party members do not have as sophisticated a mechanism as the Liberal Party. If the Minister for Finance and the Treasurer in concurrence are making these decisions, perhaps it will be the Liberal Party and not the National Party that will be the beneficiary of this particular decision. However, I do not accept the argument that the National Party, in the way it operates, is never a beneficiary of that process in the state of Western Australia.

I believe that the way in which this bill is currently drafted and the way in which it will open itself up to that sort of operation is a very serious and concerning matter. The other side of it, of course, is interesting. If that is not to occur, and the Treasurer is desperate for money and he recognises that it is actually more important to keep the revenue coming in as the budget is in such a bad state that he needs every last cent because he is running deficit budgets, it will be interesting to see what happens. If the Minister for Finance determines that it is a legitimate fourth-tier charity that is entitled to be given an exemption, what will happen if the Treasurer sits on that and fails to give his concurrence? Members may say that it would never happen. I suggest that members go back to the days of old when a very diligent Minister for Transport used to ensure that the agency completed its statements of corporate intent by the due dates, would send them off to the Treasurer's office to seek the Treasurer's concurrence and they would never resurface—for years in some cases! Even in one year when we started asking questions in Parliament about why they had not surfaced, it still took about another 12 months to get the Treasurer's concurrence. The poor Minister for Transport—a minister well known to many of us in this chamber—who had been very diligent in his work, was left to carry the can for the Treasurer who would not give that concurrence. That, again, of itself is an issue in my view, and I look forward to hearing from the minister in charge of this bill about how the government expects to see those issues dealt with. In the time I have had to speak on this bill I have only scratched the surface of the many issues raised by this bill. I have not had the chance to go through the large number of bills this government has put through this chamber: revenue laws, duties and taxation legislation amendment bills. It seems to be a never-ending saga of another day, another bill from the Barnett government to try to get more money into government. I have the explanatory memorandums for those bills here and it is \$120 million here and \$260 million there, it is a deferral on real profit and it is duties on non-real property. Daily, weekly and monthly we get another piece of legislation from the Barnett government because it simply cannot control its expenditure. Today, due to that, we have another piece of legislation.

HON SALLY TALBOT (South West) [9.20 pm]: Thank you, very much, Mr Acting President. It is a shame in a sense that my contribution to this debate will be somewhat broken up, because we only have a little under half an hour left tonight. My comments will certainly go for more than half an hour. As Hon Ken Travers noted, this is a very, very complicated bill. It did not dawn on us overnight that this is a complicated bill. Those of us who have had a few years in this place are used to getting our heads around some complex subjects and we know anything to do with taxation is almost inevitably going to be complex. When we realised that we were looking at a taxation bill that addresses the tax-exempt status of a number of charities, we knew that we would have to wade through some very long grass. It is probably not too generous to say that our colleagues in the other place put a considerable amount of extremely productive effort into making this a better bill. Unfortunately, due to the way the other place operates—some of the details of which are certainly beyond me—we had to wait until the bill trundled into this place before we could get to grips with the content of the bill in the sense that it challenges, certainly, a house of review to ensure that every piece of legislation we pass is the best possible piece of legislation, and, indeed, to come directly to what I want to focus my opening remarks on, the question of whether the bill has unintended consequences.

I must say in passing, and I will say a little more about this later, that the referral of this bill came at exactly the right moment in that we did not embark on the second reading debate before we had the opportunity to ensure that that second reading debate would be informed by quite a comprehensive report by the committee. I think that it should be noted, particularly by newer members in the chamber, that one of the original intents—this point has been made a number of times in a number of different contexts—of setting up a legislation committee was that the committee could act to ensure that legislation that comes before this place has already been subject to a very high degree of scrutiny. I think probably all members in this chamber, on both sides of the house, would agree that we have a better bill as a result of the inquiry than we would have had without it. Before I go into some detailed opening remarks, I want to do something we do not often do in these debates, and that is to pay tribute to the help that the Standing Committee on Legislation received from committee staff. Our advisory officers are very highly skilled and they operate with an enormous amount of experience in law and the whole process of legislation, which, obviously, is what we do in Parliament. Again, when a committee gets into a very specialised area such as this, it can be challenging for staff members who perhaps do not have a special area of expertise that they can draw on. We were extremely fortunate to work with Suzanne Veletta, who is a very skilled practitioner in the area of administrative law, which of course was of enormous benefit to the committee. One of the things that I have come to admire enormously about the way that our committee legal staff operate is that they are never reluctant to confer with their colleagues if they think there are other ways of seeing things or other sources of advice that they can draw on. There were a couple of occasions during the committee's very lengthy deliberations when we asked Dr Colin Huntly to advise us on a couple of particular issues. He, of course, has professional expertise in this area of charities law. I am pleased to say that our report has been assisted in an extremely productive way by the help and advice we have received from our legal advisers. I wanted to put that

on the record. I am sure that other committee members will want to join with me in thanking Suzanne in particular for the work that she has done to help us.

I cannot talk about Suzanne without also talking about Mark Warner, the committee clerk. It is never an easy job to service the committee, but in the case of this referral, we had a very short time frame in which to report. I know that that time frame was extended, but only by a couple of weeks, and I thanked the house at the time for agreeing to that extension. The committee met for extraordinarily long sessions during the three-week non-sitting period that we had recently. We met during sitting weeks for very long hours; we started very early in the morning to accommodate people's special concerns and went long after the time at which most respectable people knock off. Also, because we were working very rapidly, a lot of documents were transported both electronically and by courier around the place, and I thank Mark Warner for assisting in that process.

I think the bill's referral to the committee was a sensible thing to do and it was done at the right time, but those members in the chamber who take an interest in these things will remember that the referral was specifically about the unintended consequences of the bill. In one sense, it appeared to be a very narrow referral. I think that probably resulted in me and perhaps every member of the committee—although they are more than capable of speaking for themselves—taking a few days to come to terms with the scope of our task. When a committee gets a referral in which the house specifically asks it to look at unintended consequences, there is a sense that the committee is clearly not considering the policy of the bill, which of course takes it into much wider territory. We would expect that many of those unintended consequences would be readily discernible from some of the debate, particularly when a bill has already gone through another place, and that it would not be particularly challenging to look for those unintended consequences. Perhaps tonight I can whet the appetite of honourable members who have not had a chance to go into this bill in some detail. It does not matter where they start—whether they start with the committee report, the second reading speech or the bill itself—they will get into some very interesting territory. When I started reading the material, I realised that the bill is structured around unintended consequences. It is a very unusual thing to find in a piece of legislation. Significant clauses of the bill exist only because other clauses of the bill will impose consequences on entities that are not supposed to be captured by the provisions of the bill. It was a fascinating challenge to be presented with as a committee member who was supposed to be looking for unintended consequences.

In a sense, we had to keep removing the onion skins around this bill. I will explain more specifically what I am talking about just to give honourable members who are paying attention a flavour of what I mean. It is actually quite simple to explain. There are lots of things about this bill that are not at all simple to explain, but this is actually quite simple. Again, I have to say that we were helped by staff who, at least in the initial part of the inquiry, were at least one step in front of us, and by a diagram on a whiteboard. This is not something that I usually warm to, but in this case it was enormously revealing. I am sure Hon Lynn MacLaren remembers the moment well, because what we saw in this diagram was a vast circle that contained, at its centre, a very small circle. In the area of the circle that was outside the very small circle but inside the very large circle there was shading. From studying that diagram, we came to understand that our task as a committee was to try to narrow the scope of the bill down from this enormous circle that took up most of the whiteboard to this tiny little circle, about the size of an egg, in the middle of the circle.

This happened because the government's stated policy intent was to remove tax exemptions from the Chamber of Commerce and Industry of Western Australia. That was stated right at the beginning of the second reading speech, it has informed the extensive debate in the other place, and it is clearly what we are all here to do—to see how, in a statutory form, we can remove tax exemptions from the CCI. The CCI was the little egg in the middle of the whiteboard. However, the problem that the government encountered—this is a journey on which I hope to lead every member of this place as I explain how the bill works—is that once we start to do that we realise that we have to take into account a lot of other considerations. We try to eliminate one, or two, or three—at this moment members may be raising their eyebrows and finding it slightly odd that we do not know how many organisations we are attempting to remove. It is probably actually nine, and these are not dreamt-up figures; they come from circumstances that I will explain a little bit later. When we try to remove organisations that either are the CCI or operate like the CCI we get into all sorts of considerations about things such as purposes and activities; whether purposes and activities are primary or secondary, dominant or sole, or principal. All of a sudden we realise that we have an immensely complicated task on our hands. The government's decision at that stage—remember I am still explaining this large circle on the whiteboard—was to step right back and remove the magnifying glass from Chamber of Commerce and Industry of Western Australia and cast an enormously wide net over a collection of charities—thousands of charities, in fact.

Hon Robyn McSweeney: Where would you get “thousands” from?

Hon SALLY TALBOT: Hon Robyn McSweeney knows very well where I get “thousands” from. It has been extraordinarily difficult to gather —

Hon Donna Faragher: Is that your favourite word?

Hon SALLY TALBOT: No, that is not my favourite word. I have a new favourite word, and when I get to it I will remember to tell Hon Donna Faragher that it is my favourite word. I discovered quite a few new terms during the course of this inquiry, and the one that we were conducting concurrently, which was into the Custodial Legislation (Officers Discipline) Amendment Bill 2013. It was extraordinarily difficult to get accurate information. I do not want to be diverted, because I only have a few minutes now, so I am going to keep on with what I am saying, but I will come back to explain where the 3 000 comes from later in my contribution.

The government takes a metaphorical step back and casts a very wide net over a cohort of charities that may number around 3 000. The government then has the problem that there are too many charities caught in this net that are not at all like the Chamber of Commerce and Industry of Western Australia, so it has to start throwing them out. Let me change the metaphor back to the one that we saw on the whiteboard. The government has to start tightening the net. It has to increase the shaded area so that the secondary circle comes as close as possible to the Chamber of Commerce and Industry, which was the egg at the beginning. That is the challenge. That is why I think it is reasonable to say that the bill itself recognises that there are unintended consequences from the initial policy challenge, which was to exclude the Chamber of Commerce and Industry from tax exemptions.

The specific measure that the bill contains to address the unintended consequences is the ministerial determination. “Ministerial determination” is just another name for an appeal process. What happened from day one of the inquiry into this bill, in almost every submission that we received, in almost every piece of evidence we heard from witnesses during the public hearings, was reference to the fact that charities will be captured by this. I could get into quite a lot of double negatives, because what actually happens is an organisation is eliminated from an exemption. An organisation is put on a list and classified, in the bill’s terms, as a “relevant body”. A relevant body is a body that cannot get a tax exemption. To keep it simple, it is assumed that the first name to be captured as a relevant body on the list will be the Chamber of Commerce and Industry. However, as I have explained, because the net is spread so wide there will also be a number of other charities. I notice that Hon Robyn McSweeney challenged my figure of 3 000; I am certainly not suggesting that there were ever going to be 3 000 names.

Hon Robyn McSweeney: Of course not.

Hon SALLY TALBOT: Of course not; no. I am certainly not suggesting that. That indeed would be extraordinary. I will explain why it was never contemplated by the government or the Minister for Finance, or by the Standing Committee on Legislation, that there could be 3 000 names on that list. Nevertheless, some number of charities will be on that list headed “relevant bodies” and captured by the bill, and will be denied a tax exemption. Those relevant bodies can then appeal to the Minister for Finance for what is called a ministerial determination. The specific purpose of the ministerial determination is to reinstate the tax exemption. I suppose at that stage one would assume that the first name on the list of relevant bodies will be the Chamber of Commerce and Industry. Presumably, the first people through the door to request a ministerial determination will be the Chamber of Commerce and Industry, and presumably the first determination that the minister will make will be to deny that appeal from the Chamber of Commerce and Industry. Mission accomplished—all quite simple. But the problem is: who comes after the Chamber of Commerce and Industry on that list of relevant bodies?

If at any stage during the inquiry I had been convinced that anybody actually knew who would be on that list of relevant bodies, I would have been much happier, but the committee was never able to get that information. It is a breathtaking fact that a standing committee of this Parliament was simply not able to get that information. I am sure that Hon Robyn McSweeney and Hon Donna Faragher will not be happy to hear me say this: the committee was not even able to get a guesstimate about which organisations would be on that list.

I will justify my claim; I know what is going through the minds of members opposite.

Hon Donna Faragher: Don't be so sure.

Hon SALLY TALBOT: They will be saying that the Office of State Revenue went to some trouble to give us an indication of how many might be on the list, but I will have more to say about that at a later stage of my contribution. At no stage did I feel that the committee was able to get a handle on who would be on the list of relevant bodies; in other words, of who would be captured by the provisions of this bill and denied their tax exemption and who would then be beating a path to the minister’s door to request a ministerial determination. That suggested to me that the government’s failure was not in the way the policy of the bill had been determined. I need to repeat Hon Ken Travers’ earlier comments that the opposition does not disagree with the policy intent of the bill, insofar as the intent is to put in place some kind of statutory measure that will ensure charities are eligible for a tax exemption only to the extent they return a public benefit to the community of Western Australia. The opposition has no problem with that. The problem is that once the government realised it

had created its own unintended consequences with the bill, the steps it has taken to address that problem are inadequate to resolve all the difficulties. That is what I want to try to explain to the house during this debate.

Also by way of introductory comments, I think it is worth pointing out one of the things that happened in the debate in the other place. I am not sure how my colleagues in the other place initially saw the bill and whether they too were under the impression that it ought not to be such an extraordinarily complex task to serve this policy objective of essentially taking away the tax exemption status from the Chamber of Commerce and Industry of Western Australia. Certainly during that debate it emerged that the bill contained not only some very deep flaws, but also some fundamental contradictions. I do not make that comment lightly because it sounds like routine political point-scoring from the opposition saying, “Your bill is no good; if we’d done it, we could have done better”, et cetera. The reality is that almost as soon as the bill hit this place there was a government amendment. I have already said that I do not understand the ins and outs of the way the other place works. It is not clear to me why that amendment was not entertained there. Perhaps the Leader of the House can explain that to us, but I know that the amendment that stood on supplementary notice paper 1—the committee devoted a whole chapter to the consideration of that amendment—has disappeared, or Minister Collier might suggest that it has been rewritten. I gather it serves essentially the same objective as it was designed to serve originally but it is perhaps a little broader in its application.

Hon Donna Faragher interjected.

Hon SALLY TALBOT: Yes. I like to think that is because of the unanimous recommendations of the committee.

Hon Peter Collier: That is correct.

Hon SALLY TALBOT: In these introductory remarks I want to give honourable members a flavour of how very complicated this short bill is. Honourable members will know that the bill runs to only 30 pages, which, in our terms, is a short bill. Further to that, I point out for people who have not made a close study of the bill, that it is three bills in one, so there are pretty much identical measures. Members will notice that everything in the supplementary notice paper appears three times because, essentially, as Hon Ken Travers explained, the bill seeks to amend three tax acts. It is a very short bill and only two, or perhaps three, clauses in it really deserve to have energy devoted to them. It is a very concise bill; nevertheless, it has thrown up complexities that make it one of the most complicated pieces of legislation that I have ever considered in this place. I hope I can give honourable members a flavour of what that flexibility consists of.

Debate adjourned, pursuant to standing orders.