

**TAXATION LEGISLATION AMENDMENT BILL 2014**

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 4: Section 3 amended —**

Debate was interrupted after the clause had been partly considered.

**Mr W.J. JOHNSTON:** I make the observation that the Premier gave us an outline of discussions in cabinet during question time today, and I wonder whether that would help the minister to reflect on the questions I asked when we discussed the short title of the Taxation Legislation Amendment Bill 2014.

However, moving on to clause 4, I draw the minister's attention to the definition in the bill of "trade union" that states —

... any of the following —

- (a) an organisation registered under the *Industrial Relations Act 1979* section 53;
- (b) an association of employees registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);
- (c) an association of employees registered or recognised as a trade union (however described) under the law of another State or a Territory;
- (d) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;

I note that the minister has limited this to the unions of only employees, not employers. I draw the minister's attention to the fact that, for example, if it simply said "an organisation registered under the Industrial Relations Act 1979", it would include both registered employer unions and registered employee unions. I am not as familiar with the Fair Work Act and the way it operated because it became law after I ceased to deal with industrial tribunals. Why is only a union of employees being chosen? For example, in subclause (a), either "section 53" could be deleted from that paragraph, or just add "and section 54" after those words because that would make it clear that unions of employees and employers are being included. What is being done here—remember, no union has the fourth limb exemption—because of developing case law, is to try to make sure that when and if the courts move beyond their current understanding of fourth limb, is preventing unions gaining the advantage from some future court action. No unions are fourth limb charities.

**Ms J.M. Freeman:** No unions have even applied for that status.

**Mr W.J. JOHNSTON:** No unions have even applied for it.

**Ms J.M. Freeman:** No unions have sought to go to court about it.

**Mr W.J. JOHNSTON:** No unions have sought to go to court about it, but a comparable organisation, the unregistered Chamber of Commerce and Industry of Western Australia, which is registered under a different act, has done these things, so surely the government is just opening a massive barn door for, for example, organisations registered under section 54. The fact that the legislation mentions only section 53 organisations and not section 54 organisations means that the government is leaving that barn door open. When the courts come to interpret these words, because the government has deliberately allowed employer unions to be outside the definition, the only thing that the courts will guess is that it has been done on purpose. This is not about what is happening now; it is about possibilities in the future. When the courts get around to changing the common law understanding of a charity, the government has left the door open for them to include employer associations. Surely the government wants to make sure that this big barn door is shut. Either "section 53" should be deleted or the words "and section 54" should be inserted.

**Mr D.C. NALDER:** I think the member for Cannington makes a fair point, and we would like to consider that. I think it should be the same principle for unions of employees and of employers, so we just need to work through the process. Would the member be happy if we took the approach of doing this between houses? It is potentially an oversight on our part, and I commend the member for raising it.

**Mr W.J. JOHNSTON:** I had an amendment ready to move. Where is the Treasurer? I am flabbergasted. Thank you very much, minister. The minister can take it up in cabinet next week and point out to the Treasurer that the bush lawyer got it right again.

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**Mr D.C. Nalder:** We are not saying that. We are saying that we want to consider it.

**Mr W.J. JOHNSTON:** If the minister is saying that the government's commitment is to ensure that unions of both employees and employers are covered by this provision, I will allow it.

**Mr D.C. Nalder:** I want to consider it, because I think the principle of what you are saying is correct. I just need to see whether there is a reason we shouldn't do that, and we will communicate with you if there is a problem. We will do that on the way between houses if you are comfortable with that.

**Mr W.J. JOHNSTON:** Seriously, minister, I think this is an important issue. If the minister says that the principle is right, and both unions of employers and unions of employees should be included, I would accept that; but if the minister is going to leave wriggle room for the government to come back and make some other decision, that is not acceptable.

**Mr D.C. Nalder:** I am happy to make that offer, because I agree with you—the principle sounds right. I just want to make sure that we are not opening ourselves up to something that we should not do. That is what I want to basically explain.

**Mr W.J. JOHNSTON:** Does the minister want to postpone consideration of the clause so that we can deal with the matter later? To me, that would be the right way to do it, otherwise we will not be satisfied. I take the minister at his word at the moment. We are happy to postpone the clause and move on to clause 5.

**Clause 4 postponed until after consideration of clause 21, on motion by Mr W.J. Johnston.**

**Clause 5: Section 95 amended —**

**Mr W.J. JOHNSTON:** I have a quick question here. Is this the clause under which a person can ask for an exemption, or is that the next clause?

**Mr D.C. NALDER:** No, this is the clause that removes the exemption.

**Ms R. SAFFIOTI:** This section removes the current exemption, to be replaced by section 96, which determines a new class of exemptions. Is that correct?

**Mr D.C. NALDER:** This clause qualifies the exemption, but it also provides for appeal to the minister to seek that exemption.

**Mr W.J. JOHNSTON:** That is what I was getting at. They are not exempt; therefore, they must pay the duty because they are relevant bodies?

**Mr D.C. Nalder:** The section relating to that is proposed section 96B.

**Mr W.J. JOHNSTON:** We will deal with that under clause 6. An organisation is a relevant body in accordance with proposed section 96A, unless it has the agreement at proposed section 96B.

**Mr D.C. Nalder:** Yes.

**Mr W.J. JOHNSTON:** If it does have the exemption, section 95(1) applies, which is not in the bill because it is already in the act, and section 95(2) will not apply, but whether subsection (1) or (2) applies depends on proposed sections 96A and 96B.

**Mr D.C. Nalder:** Correct.

**Mr W.J. JOHNSTON:** Thank you.

**Mr D.J. KELLY:** Clause 5 has reference to a relevant body, and a relevant body includes a trade union. I want to get clear from the minister why he has decided to include trade unions in the definition of "relevant body". During the second reading debate, perhaps by way of interjection, the only comment I heard the minister make to explain why he included trade unions in the definition of a relevant body was that in his view unions have considerable political clout. That was a comment I heard the minister make. I would like to get an explanation from the minister of why, given that trade unions have not been involved in any of the cases that are supposedly the genesis of this legislation, they are included in the definition of a relevant body and therefore excluded under this legislation from seeking exemption from paying the relevant taxes.

**Mr D.C. NALDER:** The union movement, like political parties, is not a charity at the moment, but the law is evolving around charities. We are trying to ensure that we put in place certain protection measures so as to not provide exemptions from taxes to political parties and unions. It is just a protection measure from the perspective of generating taxation revenue; it is not a personal attack on unions or political parties. We just believe that they do not meet the community's expectation of organisations that should receive a benefit from the taxation measures that we have in place.

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**Mr D.J. KELLY:** The minister keeps mentioning unions and political parties as though they are one and the same. I do not think there is any doubt across both sides of the house that political parties should not be exempt from paying tax. That is not an issue. We are seeking clarification from the minister of why he believes unions should also be excluded from potentially seeking exemption from paying these taxes. I am not saying that they should or they should not. It is not good enough for the minister to say that the government is excluding them in the same way that it is dealing with political parties, because unions are not political parties; they are very different from political parties. The minister should not just say that the community expectation is that unions should be treated this way. I want to hear why the minister believes that unions should be treated differently from other organisations.

In my view, unions do amazing work. For example, most unions provide free or heavily subsidised legal advice to their members. They provide free or heavily subsidised representation in workers' compensation matters so that injured workers do not have to seek advice from some of the more commercially oriented law firms around town. Unions provide valuable health and safety advice to workers. It is well known that unionised workplaces are safer workplaces in general than non-unionised workplaces. The community generally has a view that many professions are underpaid when we look at the work and the value that they provide to the community. It is a widely held community view that people such as childcare workers, aged-care workers, teachers and firefighters are not well remunerated for the work they do. It is only the unions that they are members of that do anything to increase their rates of pay. From a range of points of view, unions do very commendable work.

I just want to hear from the minister why, of all the other organisations in the community, putting aside political parties because they are different, he has treated unions in this way in this legislation.

**Mr D.C. NALDER:** We see unions offering benefits to members. The question here is: what is the benefit to the broader community? The government does not believe that unions should be classified as charities for exemption from taxation revenue that other associations and bodies have to pay and we expect them to pay.

**Mr D.J. KELLY:** The only thing that the minister has said is that unions provide a benefit to their members as opposed to providing a broader benefit to the community.

**Mr D.C. Nalder:** I asked what benefit they provide to the broader community. That is the challenge from a charity perspective.

**Mr D.J. KELLY:** It is a bit of a bugbear at times within the trade union movement. For example, when UnionsWA goes to argue in the state wage case what the minimum wage should be, it does not argue that case just on behalf of union members. The people who benefit from any outcome of that wage case are all workers covered by those awards, whether they are union members or not.

**Mr W.J. Johnston:** Common law rules.

**Mr D.J. KELLY:** Yes, it is getting to that.

Basically, with the state minimum wage, people throughout the community benefit whether they are union members or not. I would also argue that small business people benefit when wages go up because people have more money to spend in the shops. That is basic economics. We have the state minimum wage. We then have unions that argue for awards under the state system. When the rate of pay in an award is increased, it applies to all workers who are bound by that award and all their employees, not just union members. When unions negotiate enterprise bargaining agreements with individual employers, those enterprise bargaining agreements apply to all employees employed by that employer, not just union members. It is a misunderstanding on the minister's part if he believes that unions benefit only their members.

I suspect that most people in the community believe they are better off because of the efforts of the trade union movement, whether they are members or not. Survey after survey shows that most members of the community feel that Australia would be a less fair society if not for the trade union movement. I mentioned childcare workers and aged-care workers. Some unions represent people on reasonable rates of pay. For example, the Maritime Union of Australia is a union that government members often have a crack at. In years gone by, to work on the wharf, people used to have to queue up outside the Esplanade Hotel in Fremantle. Employers would drive past in the morning and pick out which workers they wanted for a day's work on the wharf. That was an appalling way to organise labour, but that is what happened. People got paid very little to work on the wharves and it was a pretty dangerous job. Only through the activities of a number of unions that represented people who worked in that industry has that changed so that workers now get reasonable rates of pay and are able to raise a family, buy a house and live comfortably in retirement—all the things that are of benefit to the community.

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I seek further clarity from the minister. Given that there is a widely held view in the community that unions provide not only a benefit to their members, but also a broad benefit to the whole community, why would the minister single them out for treatment in the way that he has in this legislation?

**Mr F.M. LOGAN:** I will talk about some specific issues. The minister said that the government does not see trade unions as providing broader benefits for the community that would justify their charitable status. That was basically the minister's argument. I will provide some specifics. Dealing with my own union, the Australian Manufacturing Workers' Union, does the minister think that the work that the AMWU has done, for example in Broome, where it has bought a vehicle to deliver food to homeless people in Broome—it is a substantial member of the Feed the Little Children program in Broome—is not helping the community? Does the Minister for Finance think that the role of the Australian Manufacturing Workers' Union in funding a major cultural event at the Midland railway workshops during NAIDOC week in order to provide some stimulus and benefit for Aboriginal people in the eastern suburbs of Perth is not being involved and bringing some benefit to the community? Does the minister think that the role of the AMWU, the Maritime Union of Australia and the Construction, Forestry, Mining and Energy Union, working with Aboriginal organisations in the community to try to overcome the long-term unemployment that young Aboriginal people face, by helping them get apprenticeships and get jobs, is not of benefit to the community? None of the people I have just referred to are members of those respective unions. They are homeless people in Broome. They are Aboriginal people who cannot find a job and are completely dispossessed in the eastern suburbs of Perth. They are young Aboriginal people in our northern and southern suburbs who cannot find jobs. That is what trade unions do. They do not just work for and on behalf of their members; they are actually a part of the community, helping people in the community who are not members of a union overcome their problems. Does that not justify charitable status? Of course, it does. Many other organisations that do exactly the same work receive charitable status, and the minister thinks that because the names of those groups have "trade union" in them it does not justify that! They do exactly the same work as other organisations that get charitable status.

I cannot understand where the minister is coming from, particularly as there are other organisations that the minister calls professional organisations—for example, the Australian Hotels Association, Restaurant and Catering Australia, and the Master Cleaner's Guild of WA—which play an active role in political lobbying for particular outcomes and very often support the minister's side of politics and which will somehow get an exemption, or will possibly be given exemptions, because we do not know yet, but trade unions will not. Those groups certainly do not do the same work—I would be surprised if they do—in the community that trade unions do.

**Ms J.M. FREEMAN:** I want to ask the Minister for Finance that when he says that unions benefit only members to think about the campaign that unions undertook for equal pay for women in the workforce and whether that benefited only union members or the whole community, the productivity of the community and the participation of women in the workforce, and whether that has been shown to be one of the critical factors in the health and wellbeing of our economy in Australia. Does the minister think that when he says that unions do not benefit the general community that the superannuation that we all now have in our community is not a benefit to the whole community? That was driven by the union movement to make sure that everyone in the community, not only its members, had a retirement income and benefited from that, and that that enhanced and ensured our economy has a savings and investment system that is the envy of many in the world. Does the minister think that it benefited only union members when the union movement pushed for occupational health and safety laws that protected our community and made sure that they were out on the front line so that we stopped using asbestos and poisoning everyone in our community, including homeowners, people in schools —

**Mr D.J. Kelly:** Bank managers.

**Ms J.M. FREEMAN:** Yes, everyone. Does the minister think that it benefited only union members when the union movement ensured that we have annual and sick leave, work-life balance or paid parental leave so that women and families can participate in the workforce? I know that the minister is trying to say that under common law and the fourth limb, unions are currently not a charitable organisation. I know that. I am not arguing that. No union has come to the minister and asked for the exemption that his mates in the Chamber of Commerce and Industry of Western Australia wanted and got paid. Opposition members think it is appalling for the minister to stand there and justify excluding unions from any capacity to claim an exemption in the future because he thinks that they have not benefited the community. That is wrong—so wrong!

**Mr D.C. NALDER:** Our position here is not to be targeting unions.

**Ms J.M. Freeman:** Then take it out of the legislation.

**Mr D.C. NALDER:** No, the government will not, because the government does not believe that it should be subsidising unions. That is what the opposition is saying. Unions are not a charity today. There are a number of

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other types of organisations that do a lot of good work in the community. There is no question that they put a lot of money, time and resources into supporting the community, so I do not expect that we should justify that those organisations because they do this work should be exempt from paying these taxes. The government is preserving the current situation when it comes to unions.

**Mr P. Papalia:** You are explicitly naming unions by contrast to those other organisations.

**The ACTING SPEAKER (Ms L.L. Baker):** The member for Warnbro needs to be on his feet to contribute.

**Mr D.C. NALDER:** I hear the points opposition members are making, but unions are currently not a charity. They pay tax and the government believes that they should continue to pay tax. We should not be creating an environment in which unions can seek an exemption from paying tax. That would only be subsidisation of unions by government, and I do not think that should be entertained.

**Ms R. SAFFIOTI:** I want to add something to this debate. I understand what the Minister for Finance said, but the member for Mirrabooka has said a number of times that no union has come forward seeking an exemption from taxes. However, what I find difficult to understand and comprehend is that over \$66 million has been paid to groups in the community that clearly are not charities. That is \$66 million of taxpayers' money that has gone to groups that, as I said, are not aligned to the Labor Party but are traditionally and will continue to be aligned to the Liberal Party. I make the point again, because it is extraordinary, that if a Labor government were refunding \$66 million to a union movement because it could not or did not get legislation in in time to close a loophole, there would be a royal commission. Ministers would be sacked.

I understand what was happening on the commonwealth level, but, again, what would happen if it were the other way around? I notice government members are looking a bit confused. The Minister for Emergency Services always looks a little confused, but he looks more confused today. This is what happened—\$66 million left the consolidated account and was refunded to a number of organisations, primarily the CCI, and they continued to not pay tax for a couple more years. That was a significant and direct benefit to organisations that the Commissioner of Taxation did not believe deserved that exemption. An amount of \$66 million of taxpayers' money went to business organisations. Again, I ask: if that had been a Labor government doing it to the union movement—and that is above the amount that the CCI gets through other mechanisms; this was just taxation refunds—imagine what would happen? As I said, there would be a royal commission and ministers would have to resign. Yet, we cannot even find out when cabinet made the decision. The Premier is not here now, but time and again we have heard when cabinet has made decisions about particular issues. I recall Geoff Gallop asking questions of one minister about when a particular issue was being discussed in cabinet—what date the issue was discussed in cabinet and what the issue was. Yet in such a serious matter, when \$66 million has left the consolidated account to go to some business groups, we cannot find out when cabinet made that decision. It is absolutely incredible that we cannot find that out. I do not know what the government has to hide. If it is because of what is happening at the commonwealth level, I do not blame the department or the bureaucrats—I never do—but I do believe that there could have been some hesitance around the cabinet table to move on this issue before an election because the people who would directly benefit from this taxation refund are traditional conservative supporters. I do not know why the minister cannot provide that information; I do not know why he cannot tell us when cabinet made that decision. As I said, if it were the other way around, there would be a royal commission into what happened.

**Mr D.C. NALDER:** I thank members for their contributions on this issue, but, as I say, I am not going to refer to the dates on which cabinet made or did not make decisions.

**Ms R. Saffioti:** Why not?

**Mr D.C. NALDER:** Because as I said before, it is privileged.

**Dr A.D. Buti** interjected.

**The ACTING SPEAKER (Ms L.L. Baker):** Member, you need to be on your feet and have the call.

**Mr D.C. NALDER:** We do not believe that a government should ever subsidise unions or union movements, and that is why we have put this in.

**Mr R.H. Cook** interjected.

**Mr D.C. NALDER:** They are not a charity; this is about charities. The law is evolving around charities, and we are trying to tighten it up so that we do not have these people jumping through these loopholes. Regardless of their political persuasions, this is not a politically driven thing. We do not believe that unions or political parties should be entitled to receive a benefit back from government; that is our position as a government.

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**Mr D.J. KELLY:** The minister is treating unions differently from everyone else. If this were just about tightening up the process, he would leave the position as it is and unions would have to seek an exemption like everybody else, but the minister is deliberately cutting off the exemption process for unions in a way that he is not doing for anyone else. Based on the explanation he has given, I put it to the minister that this is a blatantly political piece of legislation on behalf of the Liberal Party because he sees the unions as his political opponents. It is nothing more than a blatantly political exercise we are going through at the moment. I also take up the issue raised by the member for West Swan: if it had been a union that applied for an exemption in the same way that the Chamber of Commerce and Industry of Western Australia had done, the government would have immediately sought legal advice to see whether there were any possibility that that union could be successful in its application, and even before the case was dealt with, I reckon there would have been amending legislation brought before the house to make sure that the law was changed to snuff out any potential for that application to be successful.

That is what the government would have done in that situation, but in this case, it let the Chamber of Commerce and Industry run its case, it won that case, and then it let this matter drift along for a considerable period so that the figure is now \$66 million. The fact that the minister is not prepared to tell us the date on which cabinet made that decision is a complete joke. In case the minister has missed it, there is another little controversial issue in my electorate around the disability justice centres. The minister responsible, Hon Helen Morton, told us that 4 June 2013 was the date on which cabinet made the decision to locate those centres in my electorate. What is so secret about that? Has she breached cabinet confidentiality by sharing that with the public? Governments all the time tell the public the dates on which decisions are made; it happens all the time. I suspect that the reason the minister does not want to tell us when cabinet made the decision on this legislation is that it will in some way embarrass the government: it will be either further evidence of the mismanagement that has come to be associated with this legislation because the government, by not dealing with the issue, has effectively cost the taxpayer \$66 million, or it will be evidence of the minister's own incompetence.

The minister is engaging in a blatantly political exercise by ensuring that unions and unions alone will be unable to seek exemption under the same process that any other organisation would be able to, regardless of the work they do. I want to hear an explanation from the minister as to why this is not a blatantly political process, because as the member for Kwinana said, we on this side of the house are not idiots; we know what the government is doing, and the minister could go some way towards remedying what he has done by 'fessing up and telling us the date on which cabinet dealt with this matter.

**Ms J.M. FREEMAN:** When the minister was speaking to clause 1, he talked about why he had chosen to expressly exclude unions from access to the exemption that other organisations, such as the CCI, will have to come to the minister and be accepted as charitable organisations under the legislation and therefore be exempt from payroll tax. He mentioned that there was speculation in the press that they may be charitable organisations. Can the minister tell me when that speculation was, the press source, who made the comments and in what context the comments were made? Was it in the context of the federal legislation? Can the minister give me a better general understanding of why he made that comment? I wrote it down at the time he said it.

**Mr D.C. Nalder:** When did I say that?

**Ms J.M. FREEMAN:** At the beginning of consideration in detail the minister said that there was speculation in the press that unions could be regarded as charitable institutions; that is what I heard and wrote it down as he said it. Obviously I have not looked at *Hansard*. I want to know when that speculation was, what the speculation was, and who made it. I have googled it and there is no speculation that I can see to suggest any great threat that that was the intent of any unions.

**Mr D.C. NALDER:** There was an article published in *The Age* on 12 January 2014 that read, in part —

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

**Ms J.M. Freeman:** So it was *The Age* in January 2014 referring to a successful application by “the group”—which group?

**Mr D.C. NALDER:** The article is headed “Victorian Employers’ Chamber of Commerce and Industry seeks charity status”, so the article is referring to the VECCI. The article basically said that if that organisation was successful, it would essentially allow other business organisations, professional associations, unions and think tanks that already operate as non-profit entities to become eligible to claim charitable status.

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**Ms J.M. FREEMAN:** So in January 2014 there is an article that says that the Victorian Chamber of Commerce and Industry is applying for charitable status, and *The Age*, not doing its research as it should have, could have gone and looked at the fact that the Chamber of Commerce and Industry of Western Australia had done that some four years earlier, in 2010. That was when the CCI made its application to the State Administrative Tribunal. In 2008 Victorian Women Lawyers was successful in claiming charitable status. At no stage during the four years since the Chamber of Commerce and Industry of Western Australia—the minister’s comrades, mates, supporters—claimed charitable status was there any indication that the union movement in Western Australia had sought a similar charitable status, yet the minister can stand here and say that because of one line in a newspaper article, the government will single out the union movement and not allow it an exemption. I put it to the minister: does he not think that that is extraordinarily unfair and biased and without any evidence that the union movement needs to be covered by this jurisdiction?

**Mr D.C. NALDER:** I think this article supports what we are doing in our legislation. I repeat: this government does not see that it is necessary for any government to provide taxation or subsidies back to the union movement, and we do not think it should ever. That is not to say that the union movement does not do good work, as do other bodies. They have paid tax to date and we expect them to continue paying tax; they should continue paying tax.

**Clause put and passed.**

**Clause 6: Sections 96A, 96B and 96C inserted —**

**Ms R. SAFFIOTI:** This is the clause we have particular issue with. It relates to the process by which a body can seek an exemption from paying these taxes. As we have been told and as we understand through the legislation, those bodies, apart from trade unions and political parties, can apply to the minister, and that minister, with concurrence from the Treasurer, can exempt any particular body from, in this case, stamp duty. We have some significant concerns about this process. First of all, as I outlined in, I think, my speech on the second reading, whenever there is a situation in which a particular organisation can lobby a member of Parliament for exemption from taxation, we have a significant problem. We believe it is rare. I am not sure how often this power is allowed under other legislation, but it is the first time I have experienced it. It creates perception and probity problems for years to come because there would always be questions about why a certain organisation would become tax exempt. We are not talking about religious organisations as they are already exempt and we are not talking about charities that are exempt. We are talking about those organisations that are in the grey area, and they are the ones to be particularly concerned about because they, like the Chamber of Commerce and Industry of Western Australia or other bodies, can, as CCI did, try to manufacture a status and try to lobby for direct exemption from these taxes. As I said, we have significant problems with this. We do not believe that the minister should have the decision-making role—the final decision—in relation to any particular organisation paying a tax. This is not even a class of organisation. I want to make the differentiation. This is any particular body or organisation. We have a significant problem with this and we will go through it in a lot of detail. In the first stage of considering this clause, I would like to ask about the justification for having a minister placed in this role, and, again, for this Parliament to be given an explanation about why it would be necessary to create this power and this role for the minister.

**Mr D.C. NALDER:** I just want to share a bit of background here. The powers that will be bestowed upon the minister are not dissimilar to what exists under the Financial Management Act, under which an act-of-grace payment can be approved. Also, from 1984 to 1997, all charitable applications had to be approved by a minister. We have had this in the past. I think it is exactly where the responsibility and accountability should sit because I think it provides a lot more scrutiny and transparency to the broader community about why any body should be made exempt. With the powers the finance minister will have, any decision will have to be made concurrently with the Treasurer and all determinations will be required to be published in the *Government Gazette*. Mechanisms are in place to ensure the appropriateness of the decisions made. They include the fact that the decision cannot be made without the concurrence of the Treasurer, as I stated—that is the independence. There is a requirement for the application of a public interest test, so the decision must be justifiable, and all decisions to reinstate an exemption must be published in the *Government Gazette*. I think there is a great deal of transparency here and I feel it is a responsible approach. I would like to think that this is among the rare exceptions and we are talking about managing exceptions. The difficulty with exceptions and bureaucratic processes is that we always try to regulate away exceptions. Good leadership comes from making appropriate decisions for those exceptions and I think we should take on those responsibilities.

**Ms R. SAFFIOTI:** As I said in my contribution to the second reading debate, this is difficult law, and I do not pretend it is not. Trying to continually define particular classes is always difficult and I accept that. Taxation law,

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in particular, is always difficult because there are always very, very highly paid lawyers trying to find loopholes. I understand and accept that.

**Mr D.J. Kelly:** Even bush lawyers!

**Ms R. SAFFIOTI:** Even bush lawyers!

However, one of the issues is the role we are giving the minister. I have seen the application of act-of-grace payments. They are very rare and they go through a very thorough process. This is the tax; this is the application of the tax. It is very, very different. Imagine having a situation in which I could lobby Joe Hockey—or who is the federal Minister for Finance?

**Mr W.J. Johnston:** Cormann!

**Ms R. SAFFIOTI:** Mathias!

Imagine a situation in which any individual could lobby the Minister for Finance not to pay their income tax—that is the equivalent situation. I do not think that is the process we should be establishing. As clumsy as it is, if we pass these laws without this provision and someone claims they were taxed when they should not have been, we can fix the legislation. However, as I said, this could create a situation in which, for example, someone lobbies the federal Minister for Finance because they do not believe they should pay income tax because they are a really good person. They might believe they are a really good person because they do all these things. They might be the chairperson of the local P&C or they might play basketball with the kiddies on the weekend. They might say, “I’m good person; I shouldn’t be paying income tax.” That is the equivalent. I do not think those powers should rest with a minister, because regardless of what we say here and regardless of our best motives, ministers of the day will always be subject to significant lobbying pressure. We know that. That is why the taxation system has been established in such a way to try to limit things. I am not talking just about the lobbying power or the impact of lobbying or vested interests, but the perception as well. As those interested in accountability in this place know, this applies when not only a conflict of interest-type situation occurs, but also when there is a perception that there is a bad process in a bad system. This provision creates a system.

I think the point that was being made by some of my colleagues in relation to the union movement was quite interesting too. As members would expect, I do not believe political parties should be exempt from these taxes, nor should the CCI or trade unions. This provision allows for organisations such as the CCI, but not a trade union, to lobby for an exemption. I find that bizarre. Why would it be done like that? We allow organisations such as the CCI, which created this problem in the first place, the potential avenue to lobby a minister for an exemption, but we do not give that same right to a trade union.

I will find the article later, but the point was made by a lawyer in this field that this basically corrupts the process. If an organisation is doing charitable things and is dependent on this exemption from the minister, it will not criticise the government of the day. It has already got to that point anyway through the normal grant system, but it creates other conflicts of interest. It is a real problem. I do not see why we would put ministers of the day in this situation. This speech will be read in 10 years’ time, when someone gets caught doing it. This will create a very difficult problem to manage.

**Mr W.J. JOHNSTON:** I want to emphasise a couple of the issues here. We are providing the Minister for Finance with a power to secretly provide a benefit, and the reasons will never be told to the public. I asked a series of questions about the procedures that would be used by the minister to provide these exemptions. The minister said he would answer those questions during consideration in detail, yet the minister has chosen not to do that.

**Mr D.C. Nalder** interjected.

**Mr W.J. JOHNSTON:** The minister has the questions. I gave them to the minister when I made my speech. He has already spoken on this clause but he did not mention the issues that I raised. The minister could have done his job, and done it properly, during his reply to the second reading debate but he chose not to follow the practices of the Parliament, and adopted this other practice. The minister has refused to provide the answers that he said he would give, just like he did to the written questions. He stands in Parliament and says, “I’m going to give those answers tomorrow.” Two days later, those answers have still not been given to me. There is a problem with taking the Minister for Finance at his word. Every time it happens, we are disappointed.

Imagine this: the minister is at a 500 Club meeting when the Chamber of Commerce says to him, “If you don’t give me this exemption, we’re going to spend millions of dollars running a campaign against the Liberal government.” How will the minister react? Will the minister say, “Okay, do your worst”, or will he roll over?

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During question time the Premier talked about the former member for Kalgoorlie, John Bowler, who is the only minister of the Labor Party, through that CCC stuff, to have been demonstrated to have broken the law. It is interesting that the Premier ended up relying on his vote in this chamber to form government! We know the standards of the Liberal Party. The Corruption and Crime Commission investigated half a dozen Labor Party ministers and found that only one had acted improperly. The Premier relied on that person's vote to form government in this chamber. We know what sorts of things happen in the Liberal Party—it gets into bed with people who have been found to be corrupt. We can see it in New South Wales right now.

*Point of Order*

**Mr J.M. FRANCIS:** I have listened to this for about two minutes now. Seriously, whatever the relevance is, it has absolutely nothing to do with —

**Mr W.J. Johnston:** What is the point of order?

**Mr J.M. FRANCIS:** Relevance. It has absolutely nothing to do with this clause in consideration in detail.

**The ACTING SPEAKER (Lisa Baker):** Thank you, member. Member for Cannington, please address the clause specifically. I agree we are a bit off the point.

*Consideration in Detail Resumed*

**Mr W.J. JOHNSTON:** No, we are not. That is the point I am making. This provision, and the fact that the minister will not tell the truth in this chamber, is the problem. The minister is creating a system that will allow secret deals to be done by Liberal members of Parliament with Liberal supporters in back rooms over 500 Club lunches where money will change hands. That will be all completely allowed under these provisions. Unless the CCC has a bug in the room at the time, nobody in the community will find out.

Look at New South Wales if members want to see what happens—illegal donations were received by the Liberal Party in return for political and economic favours to political donors; illegal donations from Liberal businesspeople. That is what has happened inside the New South Wales Liberal Party. This law will bring that type of corruption to Western Australia; that type of continued back room secret dealing over 500 Club dinners and over the sorts of activities the Independent Commission Against Corruption in New South Wales exposed in the Liberal Party. This sort of law is introduced when people want to do those things. The minister has not explained where the discussions will take place. He has not explained what the procedure and the mechanism will be and whether there is an application. They are all things I asked during my second reading contribution but none of those things has been explained. This minister is deliberately hiding the truth. He can answer those questions but he has chosen not to. Nobody made him behave in the way he did; he chose to do it. It is outrageous. Why is it that he does not trust the Commissioner of State Revenue to make these decisions? Why is it that he is not prepared to answer the questions I have asked? Why is it that everything is to be done in secret? It is outrageous and it is typical of the Liberal Party and its corrupting influences.

**Dr A.D. BUTI:** As I am sure the Minister for Finance would agree, the Commissioner of State Revenue would have more expertise than any minister of the day about the complexities of revenue raising and revenue for the state. It is an incredibly important position because every time someone is granted an exemption on charitable status grounds, that is money forgone to the community. I imagine that the minister as a former banker would have been in favour of the Reserve Bank's independence in determining interest rates. If the minister remembers the history of that, it was the Hawke–Keating government that first advocated that proposal, but I think it was the Howard government that put it into force. Why was that done? That was done because it was believed that the interest rates could be subject to political pressure; governments of the day could manipulate interest rates to suit their own political point of view or political position. We have the independence of the Governor of the Reserve Bank in determining interest rates.

It is all right for the minister to say that he believes the minister of the day should take on this responsibility to show they are up to it. That is not the point, though. It really is not the point to show whether the minister is courageous enough to make a decision—it is what is the best decision. The Commissioner of State Revenue will not be subjected to political pressures, either real or perceived. As we know, perception can be just as damaging or powerful as reality. Under this legislation, giving the minister the power will open this whole area up to political pressure. As the minister has stated time and again, one of the reasons he has included trade unions as a relevant body is that the area of charitable trust and the fourth limb is a moving feast—it changes over time. The minister wanted to ensure that bodies such as trade unions should not be able to use any argument in the development of the law. By that admission, the minister would have to agree that this is a moving feast and bodies that the minister has not even thought about will come to him. They will not be prescribed as a relevant body under the act and will have the ability to seek an exemption from paying revenue to the state. That is being left to the minister of the day to decide. This Minister for Finance or another finance minister—unless they were

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a former Commissioner of State Revenue—will not have the expertise that a Commissioner of State Revenue has. If the minister remembers, in question time I think the Minister for Corrective Services said, “We should leave it to the judge, or the magistrate or the President of the Children’s Court to make a decision.” I totally agree with the Minister for Corrective Services. That is why there is always a problem with mandatory sentencing. I will leave that aside for a moment, but we should leave it to the experts.

I know the minister will be a bit annoyed by today’s debate and probably thinks we are filibustering, but this is actually an incredibly important issue. The amendments to be moved by the member for West Swan soon will try to improve the workability of the act, will try to improve the governance structure and will try to also ensure that if a body does receive charitable status—that is, if the commissioner does give someone an exemption for charitable status—the public can agree or not agree about that charitable status, but they will not be able to argue that it was due to political pressure. If the minister of the day has the ability, the public can quite easily argue that the minister has made that decision for or against the body because of political pressure or political considerations.

**Mr W.J. JOHNSTON:** Madam Acting Speaker, I am interested in the member for Armadale’s contribution to the debate.

**Dr A.D. BUTI:** I thank the member for Cannington.

Another issue is the temporal issue in the sense that I talked about the Reserve Bank and its governor having the independence to determine the interest rate. Its mandate is based on fighting inflation. It is subjected to economic pressure, but not necessarily the political pressure of the day.

At the moment, for instance, there is a budgetary issue with the state budget. The minister of the day and the Treasurer would be loath to give an exemption to a body if it meant a reduction in revenue to the state because they need the revenue to build whatever the government wants to build—maybe a railway line, for instance! In other circumstances when there is not such a strict budgetary consideration or budgetary crisis, as the federal minister might like to say, the minister may be more relaxed about giving an exemption to a body. Therefore, political pressure, the minister’s biases or prejudices, or the economic conditions of the day may be determinant factors in whether a body receives an exemption. Those factors should not be relevant in determining whether a body should receive an exemption for charitable status. Whether a body should receive an exemption for charitable status should be because it is a charity. The minister’s legislation, under clause 96C(3), states —

The Minister may make, amend or revoke a beneficial body determination only if the Minister is of the opinion that it is in the public interest ...

There is no guideline as to what public interest is. I ask the minister: What does he mean by public interest? If this legislation is passed and there is a determination that comes before him, how will he determine public interest?

**Mr D.C. NALDER:** I will start at the beginning, because there were comments made about the other powers that ministers hold that have nothing to do with tax, and this is about implications on tax. I draw the member for West Swan’s attention to section 20 of the Land Tax Assessment Act that allows the minister to override the decisions the Commissioner of State Revenue may make. Also, section 17 of the Planning and Development Act outlines that the minister may give the commissioner direction, which essentially gives the minister power over commissioners. What we are proposing here is not different from a lot of powers that exist for ministers across a number of other acts. Also, if we vest all the power with the commissioner, the decisions of commissioners will be reviewable by the State Administrative Tribunal and the courts. We do not believe it is appropriate for SAT and the courts to decide tax policy. We believe it should sit here. We believe we have a valid reason for giving the powers through to the minister.

Responding to the member for Cannington’s question on process—I apologise that I did not provide that earlier—the application does not go directly to the minister. The commissioner must first determine the status of the organisation. Application for reinstatement can be made only after the review rights have expired or surrendered. The departments will provide advice to their respective ministers to apply the public interest test. The finance minister must then consult the Treasurer based on that advice, and the decision, where exemption is granted or revoked by the minister, will be published in the *Government Gazette*. That is the process that will be followed on this matter.

The final thing was the public interest test. I now give to the member for Armadale a fair bit of information. Except for political parties or trade unions, a relevant body is able to apply to the Minister for Finance to be classified as a beneficial body, and, as such, entitled to enjoy exemption from state taxes. The minister, with the Treasurer’s concurrence, can make such a determination if it is considered to be in the public’s interest to do so. Factors that may be considered in making a determination include the extent of the organisation’s intrinsically commercial or non-charitable activities; the extent of public funding relied upon by the organisation, including

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from governments; the extent of competitive neutrality issues in relation to an organisation's non-charitable activities; and how an organisation is treated for tax purposes in other jurisdictions. Each case will be considered on its merits. The Treasurer is responsible for policy matters relating to state taxes, and it is for this reason he has a role in making these determinations.

**Dr A.D. BUTI:** I thank the minister. The matters that he referred to that will determine whether something is in the public interest are matters that are not really utilised in determining whether a body has a public benefit under charitable laws. That is quite interesting. Whether an organisation gets public funding does not relate to whether it has a charitable status under the law. Of course, we can always have legislation that differs from that. If the minister is of the opinion that a body is in the public's interest—he mentioned those factors—those factors are not prescribed as statutory factors that he has to consider. By the sound of it, they are policy factors that may change from time to time or at the whim of the minister. The legislation gives the minister incredible discretion under 96C(3). It states —

... only if the Minister is of the opinion that it is in the public interest ...

It is purely an opinion. In that opinion, the minister may talk about these other factors, but there will be a subjective factor. It will differ according to whether the minister's side is in government or this side is in government, because, as we all know, we come to this job with certain ideological positions, certain prejudices and certain biases. Therefore, what the minister may consider to be in the public interest may be something we do not consider to be in the public interest—and vice versa. That is why the decision should be taken away from the political process. I think the Minister for Finance has allowed the minister to make the determination because he is concerned about upsetting some of the potential supporters of the Liberal Party who may in future seek this exemption. The minister knows that nowhere in my speech during the second reading debate did I advocate that trade unions should have exemption. Under general charitable law, they do not have an exemption—and as we all know, they have not asked for an exemption. However, this opinion or discretion that the minister has in the provision is there because I think he wants to ensure that certain bodies that may be supporters of the Liberal Party are not put offside too much by the minister prescribing that they cannot seek an exemption or by his taking it out of the political process. Why not take this out of the political process? If it is the minister who should determine this, why have a Commissioner of State Revenue? Why not have the minister or the Treasurer make a determination on all matters of revenue? I will wait for the adviser to stop talking with the minister. Madam Acting Speaker, can we stop time? It is a bit hard for me to talk when I can hear the adviser —

**The ACTING SPEAKER (Ms L.L. Baker):** No, we cannot stop time, member.

**Dr A.D. BUTI:** I know that the minister is not superman, and it is hard for him to hear two conversations at once. My argument is that if it is the minister and the Treasurer who make this decision, in the end it will be a political decision. Why not take the commissioner out of all aspects of revenue raising, because this will involve a revenue-raising decision? Why not have the minister and the Treasurer make all decisions with regard to revenue raising? The government sets the policy on revenue, but making the determination should be left to the experts, just as Parliament makes the laws and the judges are allowed to determine whether something or someone conforms to the law. We should leave this to the experts. We should not leave a minister of the day open to political influence, and the perception of political influence and bias.

**Mr D.J. KELLY:** I want to add comments to this quite extraordinary notion that the minister will set him or herself up as the ultimate arbiter on whether an organisation gets exemption under this legislation. I find it quite extraordinary that the minister would propose to set himself up to be the person who decides whether people get an exemption that would potentially allow them to accrue hundreds, if not millions, of dollars of personal or corporate benefit. On a purely practical level, the transparency of this provision is concerning. The minister is screwing up his face at that comment. If I read in the *Government Gazette* that company or organisation X has applied for and got an exemption, with no reason published on why it got an exemption, and if my company does similar activities to that company or organisation because it is an organisation that occupies a public space, I might think it is worth my while also putting in an application for an exemption. The trouble is that I will not know on what grounds that exemption was granted. I can only surmise from what I know about that organisation and my organisation whether it is worth my while putting in for an exemption. I might go through the process and spend thousands of dollars on legal fees and time in order to pursue an exemption, only to have it knocked back because the minister may have given the first organisation an exemption on a basis about which I had no idea. This provision requires that organisations second-guess the minister to determine the basis for granting the exemption. Surely, from any logical point of view, it is terrible to put organisations into the situation in which they have to guess the minister's motivation for granting the exemption.

The other reason, of course, as the member for Cannington pointed out, is that this opens up the political process to an obvious avenue for corrupt activity. The minister can point to other bits of legislation that give the minister similar powers —

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**Mr W.J. Johnston:** No, he can't.

**Mr D.J. KELLY:** He has attempted to and I take him on face value. If it happens elsewhere, that is not an excuse to repeat that process with this legislation. Another Liberal member of the New South Wales Parliament stood aside today because of allegations that they took money from property developers.

**Mr W.J. Johnston:** Illegal donations.

**Mr D.J. KELLY:** Yes, illegal donations. That is the third Liberal member of Parliament who this has happened to in a matter of days. Political corruption does occur. If the minister sets up a process by which an organisation can seek to get a significant financial benefit based on a decision that the minister will make in secret, he will be setting up a mechanism whereby persons in the future can act corruptly and there is cover for them. Nothing that the minister has said today tells us how this process will be transparent. Ultimately, it is the minister who will make a decision, and if the person whom he makes that decision in favour of is one of his political supporters, someone who has made political donations to the minister's side of politics, that will lead to the accusation that the minister made this determination based on corrupt principles. For reasons, firstly, of lack of transparency in that that people will not know the basis upon which the minister makes his decision and, secondly, because it will open up a clear avenue for corrupt activity, I cannot see why the minister seeks to do this.

**Ms R. SAFFIOTI:** We have outlined on a number of occasions why we believe this is bad law and why we should not be creating a situation in which the minister of the day is subject to lobbying or overturning a decision made by the Commissioner of State Revenue. This provision is basically plotting the commissioner against the minister, which is not a good process for us to establish. As I said, it would be comparable to any individual challenging the federal Minister for Finance about their income tax assessments. This is not a good clause. It could have been structured in a way that does not expose the Treasurer, and in particular the Minister for Finance, to political and lobbying pressure.

With regard to any decision made, I sought some information during the briefing about what happens once the decisions have been made but I did not get the information I needed. I know that they are put in the *Government Gazette*, but they should also be tabled in Parliament and be a disallowable instrument. We believe that any decision to exempt a particular body should be laid on the table of the house and be subject to disallowance, which would not be an extraordinary or crazy thing to do, and only then would we have full transparency and accountability. Frankly, that would remove the potential pressure that the minister might be under. I know that the Salvation Army will not come under this legislation but I will use it as a hypothetical example. If it said that it wanted to be exempt, and the minister decided that it could be, and that decision were laid on the table, it would probably be allowed. However, if the Chamber of Commerce and Industry of Western Australia came to the minister and asked to be exempt from this tax, what would the minister say? He might say that he wants to grant the CCI an exemption but that Parliament would not allow it, so it would not be a worthwhile process. It would give the minister some protection. It would add a little safeguard. Ultimately, the decision is still with the minister, so we are not changing the process that the government has established. We are putting in a safeguard that addresses the concerns that we on this side of the house have. If I were in the minister's shoes, I would accept this amendment and welcome it. It would be a safeguard and a protection. I move —

Page 9, after line 5, to insert —

- (11) A determination under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (12) Section 42 of the *Interpretation Act 1984* applies to and in relation to a determination made under this section as if the determination were a regulation.

I thank the staff and the Clerk of the Legislative Assembly for helping me draft this amendment. We are pretty sure that this amendment stacks up on a legislative basis. It tries to address the serious concerns that we have.

**Mr W.J. JOHNSTON:** I am very interested in the words of the member for West Swan, and seek to hear more.

**Ms R. SAFFIOTI:** This legislation seeks to remove the exemption from taxes of a number of organisations. Under this legislation, relevant bodies, apart from political organisations or trade unions, once they have exhausted their process with the commissioner, can make an application to the Treasurer of the day for exempt status. This is not a class of bodies; this could be one body. A class of bodies is different, because it is very difficult to be subject to conflicts of interest or other claims when a minister makes a decision pertaining to a class of organisations, but all these accountability and probity issues arise when a particular body or organisation is seeking exemption. We are creating a process by which the minister will be making a decision. We do not believe it is good enough simply to present the facts in the *Government Gazette* after the case. We believe it should be brought to Parliament as a disallowable instrument. This is good law, because it protects the minister

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of the day. If a legitimate charity were to be caught up in this net, it would go to the minister, who would have no problems bringing the proposal into the house, because who would vote against the Activ Foundation or the Salvation Army? However, if it were the Australian Petroleum Production and Exploration Association, the Chamber of Commerce and Industry of Western Australia or the Institute of Public Affairs, there might be some issues. This amendment would give protection to the minister.

When the minister is sipping his cocktail at the 500 Club in the new Aboriginal People's Room, or the new cocktail room that is being created, the representative of a particular organisation might come up and say that the organisation has restructured its affairs and is now doing something for kiddies and should not be subject to land tax, and it needs the land for a sporting organisation. I can foresee the various scenarios; there will be tonnes of them. It would give the minister protection. The minister can say that he would like to support the measure, but it would never get through Parliament. It would give that little extra safeguard. It would strengthen the process, not weaken it. It would create a safeguard and, more importantly, further protection for the minister.

**Mr D.C. NALDER:** The powers that we would be bestowing on the minister with this legislation already exist in the Land Tax Assessment Act at section 20, and at section 17 of the Planning and Development Act 2005. There is nothing new with this measure. The legislation tells the commissioner to exclude, and it would not be appropriate for the commissioner to reinstate. It is an exception to the general rule established by the government. I expect that only a small number would be excluded. I believe that the highest order of public accountability exists in this house. We should have ministers who are prepared to make decisions and stand by those decisions and be held to account for those decisions. We do not accept this amendment, and we are looking for the legislation to stand as it has been put to the house.

**Ms R. SAFFIOTI:** If the minister is prepared to be accountable to this house and to back up his decisions, this amendment would not stop the minister from making decisions. The minister says that he can justify his decisions, and this amendment would allow him to justify his decisions and give him a forum in which to do so—that is, the Parliament of Western Australia. It would allow the minister to make a decision and provide him with a forum to justify that decision and to back up that decision. Without this amendment, a decision will be made and published in the *Government Gazette*. If it is done around the time that Parliament is sitting, we can perhaps ask a question about it, but that is it. Under this amendment the decision would become an instrument of Parliament, and the Parliament of Western Australia reflects the public of Western Australia, particularly in this case, in which organisations are seeking exemption from state taxes. This is the right forum in which to take that decision. If I were the minister, this is what I would want, because it is a safeguard; it is a protection. The minister said it would apply to only a few groups, but obviously I would not want any of those groups to have an exemption. This legislation should be written in such a way that does not expect any group to require an exemption, otherwise the legislation should not be written in this way. I would not want to see a huge number of companies or organisations listed in the *Government Gazette* as receiving an exemption. All that this amendment would do is create a more accountable and more transparent process. This amendment is not political; it is about improving the law and providing more safeguards for the minister. If I were a minister, it is something I would welcome and accept.

**Mr W.J. JOHNSTON:** In supporting the member for West Swan's amendment, I make the point that it is not as though this would be a decision of the minister in the first instance. The minister would make this decision only if the commissioner rejected the application.

**Mr D.J. Kelly:** Can't some organisations bypass the process?

**Mr W.J. JOHNSTON:** Absolutely, but I want to concentrate on the ones that are actually rejected. The member is right; that is something I asked about but I have yet to receive an answer. Let us concentrate on the occasions on which the commissioner has rejected applications. This would be the only situation under tax laws in Western Australia in which the minister gets to make a decision overturning the commissioner. There is no other case in which this occurs. We are providing an extraordinary power on an extraordinary power on an extraordinary power to do something that is not supported by evidence. The commissioner is making decisions every day on taxation laws, and we have an existing review procedure. In fact, that is why we are here today. When the Commissioner of State Revenue rejected the application by the Chamber of Commerce and Industry and those other bodies, they ended up at the State Administrative Tribunal and the SAT overturned the commissioner's decision. Even if we did not have a provision in this bill for the minister to make the decision, the decision of the commissioner is still subject to review, but it is subject to review by a non-political process—that is, by the SAT. The minister does not want to do that; he wants to get in the way of the ordinary procedures. For the first time ever, he wants to get in the way of that process and bypass all the established tax processes in the state. In doing that for the first time ever, he wants to do it behind closed doors—in secret.

**Mr D.C. Nalder:** That's not true.

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**Mr W.J. JOHNSTON:** It is true.

**Mr D.C. Nalder:** It comes under section 20 of the Land Tax Assessment Act. I told you that.

**Mr W.J. JOHNSTON:** What does that allow?

**Mr D.C. Nalder:** It allows the minister to overturn the commissioner's decision.

**Mr W.J. JOHNSTON:** In what respect?

**Mr D.C. Nalder:** In the application of certain exemptions.

**Mr W.J. JOHNSTON:** It allows a category of people to get an ongoing exemption.

**Mr D.C. Nalder:** It allows them to overturn the commissioner's decision. It gives the minister the power to overrule the commissioner.

**Mr W.J. JOHNSTON:** I find it strange that the minister raises this now when I am on my feet when he refused to do it during his reply to the second reading debate when he was supposed to do it. He refused to answer these questions when I raised them. Now the minister is interjecting.

Let us get back to it. We have a situation in which the ordinary procedures are gone through and are otherwise still available to the taxpayer, but the minister wants to have this special situation. As the Premier says, there is only one place in which ministers are scrutinised, and that is in this chamber. We want to do exactly what the Premier says. We want to allow ministers to be subject to scrutiny in Parliament through this process of allowing this instrument to be disallowable. This is not the procedure that we would have. Given that this is the government's legislation, this amendment would allow the government to do exactly what it wants to do, even though we think that is flawed. We are not attempting to change any other aspect of the powers of the minister. All we are asking is for that decision to be referred back to Parliament so that Parliament can ensure that we are all happy with that decision. There is no proper reason to reject this amendment. This amendment would allow exactly what the minister is asking for in this bill. Not a single word of the powers of the minister will be changed. That is not what we are discussing; all we are discussing is the accountability mechanism. The minister was happy to have a low standard of accountability. We are asking for a high standard of accountability. If the government wants a high standard of accountability, it will vote for the member for West Swan's amendment. If it does not, it will vote against the member's resolution. That means it wants a lower standard of accountability.

*Question to be Put*

**MR J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the ayes, with the following result —

Ayes (30)

Mr P. Abetz	Mr J.H.D. Day	Dr G.G. Jacobs	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr P.T. Miles	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Mr V.A. Catania	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Mr A.P. Jacob	Mr D.C. Nalder	

Noes (16)

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

**Extract from Hansard**  
[ASSEMBLY — Thursday, 14 August 2014]  
p5356b-5376a

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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Pairs

Mr S.K. L'Estrange  
Mr M.J. Cowper  
Mr J.E. McGrath  
Ms W.M. Duncan  
Mr T.R. Buswell

Mr D.A. Templeman  
Ms S.F. McGurk  
Mr B.S. Wyatt  
Mr M.P. Murray  
Dr A.D. Buti

Question thus passed.

*Consideration in Detail Resumed*

*Division*

Amendment put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the noes, with the following result —

Ayes (16)

Ms L.L. Baker  
Mr R.H. Cook  
Ms J. Farrer  
Mr W.J. Johnston

Mr D.J. Kelly  
Mr F.M. Logan  
Mr M. McGowan  
Mr P. Papalia

Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts  
Ms R. Saffioti

Mr C.J. Tallentire  
Mr P.C. Tinley  
Mr P.B. Watson  
Ms J.M. Freeman (*Teller*)

Noes (30)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr G.M. Castrilli  
Mr V.A. Catania  
Ms M.J. Davies

Mr J.H.D. Day  
Ms E. Evangel  
Mr J.M. Francis  
Mrs G.J. Godfrey  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr C.D. Hatton  
Mr A.P. Jacob

Dr G.G. Jacobs  
Mr R.S. Love  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Mr N.W. Morton  
Dr M.D. Nahan  
Mr D.C. Nalder

Mr J. Norberger  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.H. Taylor  
Mr T.K. Waldron  
Mr A. Krsticevic (*Teller*)

Pairs

Mr D.A. Templeman  
Ms S.F. McGurk  
Mr M.P. Murray  
Mr B.S. Wyatt  
Dr A.D. Buti

Mr S.K. L'Estrange  
Mr M.J. Cowper  
Ms W.M. Duncan  
Mr J.E. McGrath  
Mr T.R. Buswell

**Amendment thus negatived.**

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the ayes, with the following result —

**Extract from Hansard**  
[ASSEMBLY — Thursday, 14 August 2014]  
p5356b-5376a

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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Ayes (30)

Mr P. Abetz	Mr J.H.D. Day	Dr G.G. Jacobs	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr P.T. Miles	Mr M.H. Taylor
Mr I.M. Britza	Dr K.D. Hames	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Mr V.A. Catania	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Mr A.P. Jacob	Mr D.C. Nalder	

Noes (16)

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

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Pairs

Mr S.K. L'Estrange	Mr D.A. Templeman
Mr M.J. Cowper	Ms S.F. McGurk
Ms W.M. Duncan	Mr M.P. Murray
Mr J.E. McGrath	Mr B.S. Wyatt
Mr T.R. Buswell	Dr A.D. Buti

Question thus passed.

*Consideration in Detail Resumed*

**Clause put and passed.**

**Clause 7: Act amended —**

**Ms R. SAFFIOTI:** My question relates to the application of the Land Tax Assessment Act and the impact this change will have on the bodies that currently claim exemptions. The opposition understands that eight bodies have claimed exemptions from taxes, including land tax. The opposition also understands—I would like the Minister for Finance to confirm this—that the Land Tax Act is applied to property owned as at 30 June of the preceding year and that land tax notices are issued around September or October, and that the owner of the land as at the previous 30 June is the owner of the land that the land tax will apply to. If this bill is passed within the next few months, can I gain an understanding that organisations, including the Chamber of Commerce and Industry of Western Australia, which I understand would have a hefty land tax bill given its building on St Georges Terrace, would not be liable for land tax until the 2015–16 financial year because the exclusion from the exemption would not have yet commenced?

**Mr D.C. NALDER:** Yes, the member for West Swan is correct. Because of the way the provisions apply, that will not take effect until the 2015–16 financial year.

**Mr W.J. JOHNSTON:** I have two questions. When the chamber was dealing with the stamp duty provisions, there was discussion about eight bodies that would fit through the door. I understand that according to this clause, that applies for the next financial year's tax assessments. Is there any other body, other than those eight bodies, that could apply under the current rules for an exemption for the 2014–15 financial year? Is that a potentiality? I may have overheard the minister's adviser's answer, but I would appreciate the minister's answer.

In respect of my second question, in the earlier debate on clause 1 there was a discussion about approximately \$10 million of the ongoing revenue loss. It is my understanding that that answer related to the question of payroll tax, because obviously it is quite easy to calculate the payroll tax liability and therefore the exemption. If my understanding is correct, what is the estimate of the ongoing land tax relief for these eight taxpayers? I do not imagine the minister would have an estimate for anyone else who tried to drive through that door; that would be interesting to know, but I do not imagine the minister will have that answer, but I would like those two questions answered. The first one is: are there potentially other taxpayers who can drive through this door? Secondly, does the minister have an estimate of the forgone land tax of the existing eight taxpayers?

**Mr D.C. NALDER:** The answer to the first question is yes, there is the possibility of people taking advantage of the provisions for this financial year. In answer to the second question, the estimate is around \$1 million.

**Mr W.J. Johnston:** Is that in addition to the \$10 million?

**Mr D.C. NALDER:** It is in addition.

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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**Ms R. SAFFIOTI:** I am asking about the application of this section. Payroll tax is a little difficult because it is a continuing tax, but this land tax change is different. Was any analysis undertaken or advice given in relation to whether this could have been retrospective? I make this point because, as I understand it, the decision was made in July 2012, and in May 2013 it was announced in Parliament by the then Treasurer or Minister for Finance that this legislation would be removed. These bodies would have been well aware that they would have this exemption taken away from them, so there would have been forewarning back in May 2013. I am aware from a lot of taxation legislation that although a change might have been announced, to avoid distortion of activity, the change is actually backdated from the date of the announcement. That particularly happens a lot for stamp duty changes to avoid the creation of market distortions. In this instance, an announcement was made in this Parliament in May 2013 that the government would tighten this legislation. Why was it considered not necessary to backdate the exclusion in respect of stamp duty from the date of announcement, which was May 2013?

**Mr D.C. NALDER:** The decision was taken to treat the different acts commonly. We are going to do the same thing; we did not see any reason why we should treat it any differently from the payroll tax, to provide a degree of consistency and ease of implementation. That was the reason; it was as simple as that.

**Mr W.J. JOHNSTON:** I do not want to delay the house; I know that the bullying Leader of the House is probably going to jump up and shut down the debate and end democracy in the chamber for another day! Land tax and payroll tax are not analogous because there is only one bill a year for land tax. There was actually quite a long time between the announcement in May and the dispatch of the land tax invoices in September or October, compared with the monthly or quarterly payments of the payroll tax. I am wondering whether that is just the way it happened because no decisions were made for such a long time—which goes back to the discussion we had about clause 1—or whether it was a deliberate decision. It seems that the land tax was a very, very different category from the payroll tax and, particularly, stamp duty because I understand that that is only where transactions have occurred, and who knows how many times there has been a transaction for any of those organisations? But in the case of stamp duty, there is one invoice a year, and it seems that it would have been very easy to fix that.

**Mr D.C. NALDER:** The decision was taken to keep it consistent. The magnitude is not the same as the payroll tax, as the member obviously knows. We just felt that it was far simpler to keep it the same. Payroll tax is an annual tax; it is just payable monthly. For ease of implementation for all users, it was decided that it was far easier to treat them all the same.

**Mr W.J. JOHNSTON:** I also note that we have had two amendments to the Land Tax Assessment Act since May 2013; one last year and another this year. Given that we have dealt with the legislation twice and it is good practice to update legislation when dealing with it, I am wondering why the government is announcing this change after amending the act twice without having included the change in either of those two pieces of legislation. I also note that both those pieces of legislation increased the land tax payable by taxpayers in Western Australia and both at the time were argued in the chamber as being necessary because the government did not have enough revenue to cover the demands of the community. Okay, it was only \$1 million in round figures, but it all adds up. Look after the pennies and the pounds will look after themselves, as they say. I am just surprised, given that the government has already dealt with this act twice, that these two clauses were not included in those two pieces of legislation.

**Mr D.C. NALDER:** Those two clauses required a lot of thought; even though it is only two clauses, we wanted to do it properly. There was a common theme across these three acts, so the decision was taken that it was far better to put them all together at the same time. The previous land tax acts were to do with budget measures, so we decided to keep them all on a common theme, and get them done together and at the same time as the most efficient and effective way of approaching it.

**Mr D.J. KELLY:** I am curious about the timing, given the way that this thing plays out. The Chamber of Commerce and Industry of Western Australia leads the charge; it has a big win that is worth millions and millions of dollars and then a few other people follow it through the gate. The government hears about that and then makes a decision at some point—but will not tell us when—that it is going to close this loophole. It does not do it immediately and drags its feet so that the beneficiaries of that loophole continue to get that benefit in respect of payroll tax and land tax for another couple of years. The government did not move immediately to close the loophole, and even though it has now slammed the door shut, it left a get-out so that any one of those eight organisations could still make an application to the minister for an exemption. Given the timing and the ability to still seek an exemption from the minister, did the minister ever discuss any of these matters—the timing of the repeal or the new processes that would be put in place—with any of those eight? Did either the minister or anyone in his office or in the department have any discussions with any of those eight organisations about this matter and how it was going to be dealt with by government?

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**Mr D.C. NALDER:** The simple answer on that one is: not at all. We have not spoken with anyone; I definitely have not, and I have no record or indications from my office that anybody else has. No.

**Clause put and passed.**

**Clause 8: Section 37 replaced —**

**Ms R. SAFFIOTI:** My question relates to the application of this proposed section and also the application of the exemption. One of the questions I have is about land owned by an exempt body and how that exemption is applied. Is it the case for land owned by an exempt body regardless of the function being carried out? For example, does a charitable organisation, a religious organisation or an educational institution have no land tax applied to it regardless of what functions are carried out? Does the exemption still apply because the owner, being an exempt body, does not need to pay land tax on that private property regardless of what it is being used for?

**Mr D.C. NALDER:** No, they have to use it for a charitable purpose. That is the simple response to that question.

**Mr D.J. KELLY:** If, for example, the owner established a commercial use on that land and the money that they made was then used for a charitable purpose, would that satisfy the provisions? Does a religious organisation have to conduct a religious activity on the land or can it rent it, for example, to a third party but use the rent to progress its charitable purposes? Would this provision still apply in that circumstance?

**Mr D.C. NALDER:** It would have to use the land for a religious purpose. If it were used for any commercial purpose, the part of the land used would become assessable.

**Ms R. SAFFIOTI:** I thought that was not the case. I thought that land owned by, let us say, a religious institution would be exempt. Is the minister saying that if a commercial activity is being undertaken, it is liable for land tax regardless of who the owner is?

**Mr D.C. NALDER:** I confirm that what I said previously is correct.

**Ms J.M. FREEMAN:** Does that include opportunity shops? Many religious organisations have an opportunity shop attached to some churches—maybe in a garage next to it. Most of the funds from those shops go back into the organisation, which has a charitable purpose. Will they pay land tax on those op shops?

**Mr D.C. NALDER:** If it is used for commercial purposes. The member is getting into a technical aspect with the example of op shops. If land is used for a commercial purpose, land tax is applied. I do not know whether I can give the member further detail on that other than to say that if the land is used for a commercial purpose, land tax applies.

**Ms J.M. FREEMAN:** A religious organisation in my electorate gives the community assistance and financial advice, and distributes food in the area. The organisation has a building from which it gives clothes to people who access its services, but it is not allowed to advertise and sell its clothes. I have always thought that unusual, because I would have thought that if it advertised, it would be able to extend its charitable services. Is the distinction of a commercial purpose made when an organisation sells and advertises to the public? Is there a distinction if an opportunity shop simply makes clothes and household items available to people who are disadvantaged due to poverty—so, for charitable reasons? Is that where the distinction lies? If things are advertised and sold outside, does it therefore become a commercial property that attracts land tax? Is the distinction whether there is no advertising and things are done through the religious institution and the people with whom it deals?

**Mr D.C. NALDER:** This is dealt with under section 32 of the Land Tax Assessment Act, and we are not changing anything within that section. To try to answer the member's question, the commercial test applies; however, should the organisation carry on commercial activities, the portion of land being used needs to be worth over \$300 000 for land tax to apply. To the extent that it is not, if the organisation uses a little corner of a church and it is used for other activities, it is unlikely that land tax will apply. However, the amendments that we are making to the act here will not be making any changes to that part of it. This is not relevant to this part of the amendments.

**Clause put and passed.**

**Clause 9: Sections 38AA, 38AB and 38AC inserted —**

**Ms R. SAFFIOTI:** I want to raise a point about this clause that goes to the key point we have made about this bill. This bill gives the ability for a certain body to apply to a minister for an exemption. As I have outlined before, we do not believe that is the right course, and our proposed amendments would provide further protection and safeguards in this legislation. I do not know why the government would not want improved accountability

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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and more safeguards, in particular when it is looking at taxation. Therefore, I would like to move an amendment. I move —

Page 14, after line 28 — To insert —

(11) A determination under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(12) Section 42 of the *Interpretation Act 1984* applies to and in relation to a determination made under this section as if the determination were a regulation.

In speaking to this amendment, I hope that the Minister for Finance will seek counsel from the very level-headed Leader of the House, the member for Kalamunda. He would know that this is a sensible addition to the legislation. I hope the Minister for Finance will not seek counsel from the Premier, who would reject everything we said on the basis that we said it, but rather analyse the information in front of him. We have all had a long week in this place.

**Mr D.J. Kelly:** Long but enjoyable!

**Ms R. SAFFIOTI:** Long but enjoyable!

I hope this amendment is treated on its merits. By that I mean that all it seeks to do is improve the legislation. As I said, the Leader of the House, who I have utmost respect for —

**Mr W.J. Johnston:** He's not listening to you!

**Ms R. SAFFIOTI:** He is not listening to me!

He is the steady but safe Leader of the House. When he got up to talk about the airport line the other day, what did the member for Victoria Park say? Thank goodness he is involved! I hope he has a quick look at the amendment. Although he might want to gag us, he probably might want to gag the person next to him a bit more than us at the moment—he wants to apply the gag more generally! I hope he looks at this amendment and says that all it does is strengthen the legislation. The minister can still make a decision, he still has the ability to justify that decision and, importantly, he can be held to account for that decision. The minister can do that in this forum in this place—the Parliament of Western Australia. When a decision is made to exempt a body from taxation, it is a serious decision. When the minister disagrees with the Commissioner of Taxation, it is an issue that needs to be brought to this place. As I said, it protects ministers when they are out with the 500 Club. I feel sorry for them when they are sitting at the 500 Club being lobbied. It helps protect them from when the big end of town says, “How about me?” My proposed amendment is a safeguard or a further protection. To vote against this is to vote against accountability—not that that should be a surprise in this place. This government does not support strong accountability mechanisms. The Leader of the House has gone. He obviously does not like the amendment! I was hoping he would like the amendment, but he has gone. I sincerely hope that the Leader of the House rushes back in—I doubt it—and that the minister accepts my proposed amendment. It will help improve the legislation.

**Mr D.C. NALDER:** The principles outlined for the Duties Act is why we decline to accept this amendment. We apply the same principles for this one and decline to accept it.

**Mr W.J. JOHNSTON:** I know it is now after five o'clock and that the Leader of the House is desperate to get home. I am sure many other people are desperate to get home too.

**Ms J.M. Freeman:** So is the acting Whip!

**Mr W.J. JOHNSTON:** Yes.

During discussion about the last amendment, the minister said that there was one other provision in a taxation act that gave discretion to the minister. Could the minister repeat which act that was and could he let me know whether that provision is done in the same manner; that is, is there a process that the commissioner undertakes? If the taxpayer loses through that process, is it then referred to the minister? In that arrangement, is there a separate provision that allows the bypassing of the commissioner's process, like the review process in the commissioner's office, directly to the minister? Do those two elements apply in that other provision? Which act gives the minister that discretion, and do those two elements apply?

**Mr D.C. NALDER:** Section 20(3) of the Land Tax Assessment Act 2002 states —

If the Commissioner refuses to grant the exemption or concession, the applicant may appeal to the Minister against the Commissioner's decision.

Section 20(6) states —

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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The Minister is to consider the appeal with all reasonable dispatch, and may either disallow it or, if the applicant satisfies the Minister that there are reasonable grounds for doing so, allow it wholly or in part.

**Mr W.J. JOHNSTON:** I do not know what exemption the minister is referring to under section 20. Why were the same procedures not included in this arrangement as were included in that section?

**Mr D.C. NALDER:** It is because in this one the commissioner does not have the power to reinstate; only the minister does. Did the member understand that?

**Mr W.J. Johnston:** No, I did not.

**Mr D.C. NALDER:** The commissioner is obliged to refuse the exemption but does not have the power to reinstate. Sorry; under this one, he has the power to give the exemption. Sorry; I have got myself twisted on it. Under section 20, the commissioner has the power to give an exemption and the minister can override it. Under the amendment that we are now considering, the commissioner does not have the power.

**Mr W.J. Johnston:** The minister is saying that if the commissioner exempts, under section 20 the minister can overturn, but here it is the reverse—the commissioner does not exempt and the minister does.

**Mr D.C. NALDER:** Yes, it can be overturned.

**Mr W.J. Johnston:** Is that correct?

**Mr D.C. NALDER:** Under section 20, the commissioner has the power to give an exemption, but if he refuses, the minister can overturn it—got that?

**Mr W.J. Johnston:** It is exactly the same as here. Why were the same arrangements not made?

**Mr D.C. NALDER:** Under this one, the commissioner does not have the power to give it; he has only the power to refuse it.

**Mr W.J. Johnston:** But he does have the power to give it. Sit down and I will ask another question. I know we are all going home, but these are important issues. If the Leader of the House allows the vote on the amendment, I can still ask questions about the substantive clause. It will take me only five minutes when we come back next Tuesday. Maybe that is a better way to do it.

**Mr J.H.D. Day:** Member, we will finish off this clause.

**Mr W.J. JOHNSTON:** I will continue to ask a question. I am sorry; it is a genuine issue and I am trying to get this straight. My understanding is that the provision we are inserting allows the commissioner to provide an exemption.

**Mr D.C. Nalder:** No.

**Mr W.J. JOHNSTON:** The commissioner has no discretion. Either the relevant body meets the rules or it does not, and now we are providing a provision for the minister to do something —

**Mr D.C. Nalder:** Yes.

**Mr W.J. JOHNSTON:** Why is it that in the minister's provision we have this instrument whereby the person can decide to bypass the appeals process with the commissioner? I am trying to work out what it is that they are —

**Mr D.C. Nalder:** The charitable status needs to be settled first. The fact that the organisation is then deemed to have charitable status needs to be resolved first.

**Mr W.J. JOHNSTON:** A body comes in and applies to be exempt. It is a relevant body but it is not a political party or a trade union. Let us say it is a professional association. It comes in and says that it wants an exemption. Is the minister saying that the commissioner cannot give it an exemption?

**Mr D.C. Nalder:** That is right.

**Mr W.J. JOHNSTON:** Is there no process of appeal or review internal to the decision of the commissioner?

**Mr D.C. Nalder:** Yes. If it is a relevant body, the commissioner cannot give it to them.

**Mr W.J. JOHNSTON:** Say it slowly, because it needs to be on the record.

**Mr D.C. Nalder:** For *Hansard*, I think I had better repeat that. If someone comes in and believes they are not an excluded organisation but the commissioner believes they are an excluded organisation, a right of appeal applies.

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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**Mr W.J. JOHNSTON:** Okay. I think this provision might be slightly different from the other ones. In the explanatory memorandum there is a section about a body choosing not to go through the appeals procedure. That is not in the land tax arrangement; that is in other parts of the taxation regime. I take it that is the case.

**Mr D.C. Nalder:** So that I have your question right, they can choose to surrender their appeal rights.

**Mr W.J. JOHNSTON:** Yes. Is that in respect of here or in respect of —

**Mr D.C. Nalder:** All three acts.

**Mr W.J. JOHNSTON:** If the commissioner cannot review the decision, what is the appeal right under the land tax arrangements?

**Mr D.C. Nalder:** Under the new provisions, they have the right to appeal but they can choose not to.

**Mr W.J. JOHNSTON:** But appeal to whom?

**Mr D.C. Nalder:** There is an internal process. If that fails, they can go to the State Administrative Tribunal and then the courts.

**Mr W.J. JOHNSTON:** So instead of doing that, they go to the minister. But at the moment they could go to SAT and the courts.

**Mr D.C. Nalder:** The District Court, yes, but to speed it up, if we think it is a legitimate charity, we can —

**Mr W.J. JOHNSTON:** So in respect of that section 20 arrangement, do they have the same right to go to SAT and to the court?

**Mr D.C. Nalder:** No.

**Mr W.J. JOHNSTON:** That is pretty fundamental. That goes to the heart of the complaint we are making that this is an extraordinary power that is not otherwise available because section 20 is a completely different technical arrangement. Anyway, I have used up my time. I am happy that I now understand things. I am not satisfied with the answer of course, but at least we know where we are at.

*Division*

Amendment put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the noes, with the following result —

Ayes (14)

Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Ms J. Farrer	Mr M. McGowan	Mrs M.H. Roberts	Ms J.M. Freeman ( <i>Teller</i> )
Mr W.J. Johnston	Mr P. Papalia	Ms R. Saffioti	
Mr D.J. Kelly	Mr J.R. Quigley	Mr C.J. Tallentire	

Noes (27)

Mr P. Abetz	Ms E. Evangel	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Mr J.M. Francis	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr M.H. Taylor
Mr G.M. Castrilli	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr T.K. Waldron
Ms M.J. Davies	Mr C.D. Hatton	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Mr J.H.D. Day	Mr A.P. Jacob	Dr M.D. Nahan	

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Pairs

Mr D.A. Templeman	Mr S.K. L'Estrange
Ms S.F. McGurk	Mr M.J. Cowper
Mr M.P. Murray	Ms W.M. Duncan
Mr B.S. Wyatt	Mr J.E. McGrath
Dr A.D. Buti	Mr T.R. Buswell
Ms L.L. Baker	Mr C.J. Barnett
Mr P.C. Tinley	Mr B.J. Grylls

**Amendment thus negatived.**

**Clause put and passed.**

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

**Extract from *Hansard***

[ASSEMBLY — Thursday, 14 August 2014]

p5356b-5376a

Mr Bill Johnston; Mr Dean Nalder; Ms Rita Saffioti; Mr Dave Kelly; Mr Fran Logan; Ms Janine Freeman; Mr Joe Francis; Acting Speaker; Dr Tony Buti; Mr John Day

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*House adjourned at 5.14 pm*

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