

CHARITABLE TRUSTS AMENDMENT BILL 2010

Second Reading

Resumed from 21 September 2010.

HON KATE DOUST (South Metropolitan—Deputy Leader of the Opposition) [5.31 pm]: I rise on behalf of the opposition to say a few words in support of the Charitable Trusts Amendment Bill 2010. The main aim of this bill is to amend the Charitable Trusts Act 1962 to enable trustees of certain kinds of trusts to be able to make gifts to eligible recipients, even though the recipients are not “charitable at law”. Under the current legislation, trustees of a charitable trust cannot make gifts for non-charitable purposes, be they property or benefits, to those organisations. The trusts to which these amendments relate are those referred to in item 2 of the table in section 30.15 of the commonwealth Income Tax Assessment Act 1997. This covers a particular class of trust that is philanthropic in nature, and gifts made by those trusts to eligible recipients are tax deductible. The regulations may extend the kinds of trusts to which the new provisions apply. An eligible recipient is defined as a deductible gift recipient within the meaning of the commonwealth Income Tax Assessment Act 1997. These include entities that are not technically charitable at law, such as entities with a connection to government—for example, the State Library, and the state’s museums and art galleries. That is a brief outline of what this bill is about.

I want to take this opportunity to talk about this legislation in a positive light, because it opens up a few opportunities for our state. Although this legislation is quite technical in nature, the parliamentary secretary will be pleased that I am not going into that detail and I do not have any technical questions for him, because the opposition is supporting this bill and I have no intention of going into committee,

Hon Michael Mischin: I will remember you in my will!

Hon KATE DOUST: That is on the public record, and I will keep the parliamentary secretary to that—but I do not want his cats!

I understand that this bill is similar to legislation that has already been passed in New South Wales, Queensland and Victoria. When members look at the issue of charities making donations to organisations, it is useful to go back to the original 1962 legislation because they will see that there has been a change in approach when thinking about what is “charity”. I understand that there is a raft of different types of legislation. I was reading a paper titled “Modernising Charity Law”, edited by Myles McGregor-Lowndes. It is quite an interesting document that goes through the work that has been done over the past few years to try to modernise legislation in Australia in relation to charity and who can make donations and how, and the definition of charity and how it could be changed. In this paper, Professor McGregor-Lowndes refers to 15 pieces of commonwealth legislation and 163 pieces of state and territory legislation that refer to charity and how moneys can be applied in this area. It is quite a complex area of law right across the country. The bill we are dealing with today hopefully will provide some assistance to those organisations that would like to provide support to bodies such as the Museum, the Art Gallery and places like that.

I note that in the second reading speech that was made by the parliamentary secretary quite some time ago, he referred to private ancillary funds, which are the types of groups that are covered by this bill, and the growth in the number of those groups from 220 in 2004 to more than 500 at present and that the amount of money they currently hold is about \$500 million. This is money that could be distributed to a range of charities and is a very healthy nest egg that we would want to see tapped into and distributed to appropriate causes and groups in our community. If members read the legislation that was introduced in 1962, they will see that it was obviously a different mindset, a different time and a different way of thinking about what charity is. The act explains how charities should be able to assist in the provision of facilities for recreation or other leisure-time occupations if the facilities are provided in the interests of social welfare. Part II of that act then sets out the types of facilities that those funds could be applied to. Again, this comes back to that particular time in our history. It states that the funds would be provided in the interests of social welfare and would be for things such as public halls, community centres and women’s institutes. I do not know whether we have too many women’s institutes left now, but I imagine that in 1962 there would have been a few. I am not too sure if the Country Women’s Association would have been considered to be one of those types of organisations, or the Legion of Mary or something like that.

Hon Michael Mischin: It probably went the way of mechanics institutes and those sorts of quaint organisations.

Hon KATE DOUST: The Karrakatta Club is another example. The act also refers to the provision and maintenance of grounds and buildings to be used for the purpose of recreation and leisure-time occupation, and extends to the provision of facilities for the purposes of organising any activity. I suppose that in 1962 people would have been trying to build communities and social infrastructure in their communities, and the act would have enabled people to make donations to grow those facilities. That would have been the way they thought at

that time. However, as we have seen, we have moved on in our community and in industry. There is a change in thinking about what needs to be given. A lot of our industry bodies and businesses are now thinking how they can be good corporate citizens and put back into the community. This bill will remove the barriers that may have been in place for those organisations to make donations to bodies, other than that which was originally stipulated in the 1962 legislation.

I went to an event down south on the weekend, and I think Hon Simon O'Brien may have been at the same event.

Hon Simon O'Brien: Quite possibly.

Hon KATE DOUST: I think the minister was; I did see him there. I had cause to look around the room at the large venue that we were in. There was a lot of money represented in that room that night through various industries and businesspeople there. Thinking about this legislation, I thought there were a lot of good corporate citizens in that room who probably would like to give money to a range of activities, ideas and opportunities in the state. I thought it would be a good thing to remove the barriers. Australians, and particularly Western Australians, have always been generous and very keen to help their mates and the community. People do not hesitate to put their hands in their pockets to provide money to assist people down on their luck, or to build a sporting community or to provide some piece of equipment at school. Those things are a given. We still have to work hard in Australia to build that other arm of giving; that is, the greater pool of money to provide funding. When we go to places like America, one only has to walk up and down the mall in Washington to look at the Smithsonian museums there and a range of other large buildings that house pieces of history. I am sure that Hon Lynn MacLaren will provide better detail on that. When I was there a couple of years ago I was bowled over by the level of generosity provided to those types of organisations. I am not too sure whether they are totally private or have some public engagement, but there was a level of generosity—not just with items or buildings but also in dollars—that ensured facilities are open and available, and updated on a regular basis, for public access and consumption.

We are starting to see that type of attitudinal change in Australia. We are starting to see more and more people from the business sector give very generously. But there are restrictions. Whilst I am very pleased that barriers will be removed to support facilities such as the Art Gallery of Western Australia and our state museums, I thought this would be a good opportunity to talk about other avenues of support that could be provided. Maybe the parliamentary secretary will let me know whether this legislation will provide for what I am about to talk about. This might be my only question to him. In my shadow portfolio of science and innovation I meet a lot of people who do some pretty amazing research in this state. A lot of them work at universities or through government. They might be receiving government support in one way or another. It is very hard to know what their future will be because they rely on this type of support. Through these funds, will the business sector or industry be able to provide financial support to organisations such as Scitech? In 2013 Scitech will be looking for another home because its lease will expire. I imagine it will need funding, which government may not be able to totally provide. Scitech may need external assistance. Will this type of change facilitate a private charity fund to assist Scitech to either relocate or build a purpose-built facility, or to design and develop a particular event or structure? Another example would be the Zoo. Although these places receive some government funding, they always need further assistance.

I have looked at the type of research done in our hospitals and through our universities. A couple of weeks ago I had the good fortune to visit Sir Charles Gairdner Hospital to meet Professor Peter Klinken from the Western Australian Institute for Medical Research. Some amazing work is being done there; the vast majority of it depends upon funding. It now receives some funding from private organisations. I want to know whether, for organisations such as the WAIMR, and for others attached to the Muscular Dystrophy Association—not the fundraising element but the research element, which survives on the smell of an oily rag—these types of funds will be able to directly provide charitable donations into the research arm that is looking at muscular dystrophy. It could be any other type of health research. We are seeing quite a dramatic and drastic reduction in government funding and support, particularly in science. Somewhere along the line money has to be found from somewhere to provide for the continuation of those areas of research or for the facilities. Although the focus of this bill relates to museums and art galleries, which are very important, I wonder how this will apply to those other types of facilities.

I attended the Innovator of the Year Awards late last year. A number of corporations donate to a range of categories, and that is to be commended. It is an outstanding opportunity to promote and congratulate the innovators in our state. A new award stood out for me at last year's event. It was an award sponsored by the new chair of the science council, Mr Charles Morgan. He donated his sitting fee as the chair of the council and topped it up with another \$10 000 to provide an innovation award. I thought that was great. Is there a way that we can encourage these types of charities to go into this area as well? I must admit Mr Morgan has moved on and

donated \$1 million of his own money to a particular research project. That type of philanthropy in this state needs to be encouraged and applauded.

This type of change is good. Although we have talked about the growth in the number of private ancillary funds and the amount of money currently sitting in these funds, once people start to see this money flowing through to what are traditionally non-charitable organisations, it may encourage others to participate. That is very important because, as we keep hearing, we are going through another period of boom in Western Australia. We know that in the north of our state things will only get better in terms of job creation and the boost to our economy. I hope we have this boom period for many, many years. At the function on Saturday I spoke to a number of businesspeople who asked me, "What's the vision for Western Australia?" I replied that when we have a time like this it is a good opportunity to have a bit of a renaissance period. It is very important that not only government has a vision for this state but also we bring in other types of organisations who have the funds to assist in developing this vision and making sure we leave a lasting legacy for the state. That may be funding the science and innovation area so we are at the cutting edge and a leading force in this area, or we may do what has been done in the past and build theatres, stadiums and monuments for history. We may do other things such as ensure we have enough housing for people, and enough police and hospitals, and all those other pieces of infrastructure. These types of changes are important to help facilitate the delivery of a vision for Western Australia. I do not know what this government's vision is for the future of Western Australia. I do not think this government has actually quite drawn it together nor has it been articulated. Growing and encouraging people to give, and to give to these different areas, may assist in the long course.

When I have visited places over east I have seen the benefits of corporate donors, for want of a better term, who have made a difference. During my Christmas break I spent a bit of time in Canberra with family, and also in Sydney. It was great to go through places like the National Gallery of Australia and look at the Ballets Russes exhibition which has been provided because of corporate donations and government purchase over a period of time. That is a fantastic display, which might not have been available if there had not been some sort of private donation.

The National Portrait Gallery in Canberra has been the recipient of the same kind of generosity, not just in the art that is on the walls, but also in corporate sponsorship through donations. The names of some great Western Australians are displayed on the walls of that gallery to note their contribution to that wonderful new building. It is because people have made the decision to give a cash donation, or a donation in kind, that we as a community have gained the long-term benefit of being able to access that facility and see that fabulous Australian art.

I traipsed my children through almost every art gallery and museum in Sydney and Canberra over a matter of a few days. We also had the good fortune to go to the Art Gallery NSW and see the terracotta warriors again. Private funding through the corporates would have contributed to that display being brought to Australia. We also visited the Museum of Contemporary Art near Sydney Harbour, and the Powerhouse Museum in New South Wales. Those museums are also the recipients of extensive private corporate donations, covering all areas of interest, and that helps those types of facilities to survive and thrive. I must say to those members of my generation who are sitting in the chamber that I fully recommend the ABBA display that was being held at that museum at the time.

Hon Ljiljana Ravlich: *Dancing Queen!*

Hon KATE DOUST: Yes, absolutely!

These are examples of galleries and museums that exist in other places in which legislation has been changed to remove the barriers and thereby facilitate these types of charitable donations. This legislation is, therefore, a very positive move.

At Christmas time we also went to the National War Memorial in Canberra and saw the display of Victoria Cross medals. We know the role that Kerry Stokes, a prominent Western Australian, played in tracking down some of these Victoria Cross medals and purchasing and donating them to our country so that we can not only view these medals but also learn about the great blokes who were awarded these medals.

Hon Liz Behjat: The Hall of Valour display opened just yesterday.

Hon KATE DOUST: In Canberra?

Hon Liz Behjat: Yes.

Hon KATE DOUST: Well, we saw it in December. It is a great display.

These are some examples of how this change to the Charitable Trusts Act will facilitate these opportunities and hopefully encourage others to participate. I did not want to spend a lot of time on this, Mr Parliamentary Secretary, but it is an opportunity to canvass some issues that perhaps were not covered in the second reading

speech. I have met with a number of people who are attached to government and have talked to them about how they receive funding. This bill might also provide an opportunity for them to tap into some of this money to assist them in the work they do. We need to find a balance. People feel very comfortable about giving to the arts, the ballet, the opera, the art gallery or the museum. We need to make sure that people also feel comfortable about giving to the sciences. I hope the government will encourage that as well, because whether people give for research or for practical application, that will be of great benefit to our state. I hope the government will also take steps to encourage charitable donations to the various groups that are involved in the sciences.

We will support this bill. We look forward to its swift passage through this chamber. We will have no questions in committee for the parliamentary secretary.

HON LYNN MacLAREN (South Metropolitan) [5.55 pm]: The Greens (WA) will support the Charitable Trusts Amendment Bill 2010. As we have heard, this bill will amend the Charitable Trusts Act 1962 to make it easier for the community to support bodies such as the State Library of Western Australia, the Western Australian Museum and the Art Gallery of Western Australia through charitable trusts. The Greens support legislative measures that will aid philanthropy. I note the list of prominent Western Australian philanthropists that Hon Kate Doust has just given us. That makes one proud to be a Western Australian. It is notable that in Western Australia, alongside the growing number of homeless people and families who are struggling due to the high cost of living, there is also a growing number of financially wealthy individuals, thanks to the resources boom, and some of these individuals do contribute generously to charities, particularly when there is a tax advantage to doing so.

Hon Kate Doust mentioned the amazingly thriving benevolent societies that exist in the United States. I do not have any personal experience of that culture. But I support the comment made by Hon Kate Doust that in the United States there does seem to be a culture of sharing the wealth. I believe this bill will be a good step forward in enabling that same culture to develop in Western Australia.

This bill originated from a request by the Minister for Culture and the Arts. In our view, culture and the arts in Western Australia is underfunded. This bill will be one method of attracting some additional funding for culture and the arts. A good recent example of the lack of funding for culture and the arts is the *Indigo* journal. I have mentioned this issue previously. *Indigo* is the journal of Western Australian creative writing. I mention at this juncture that members may like to attend the event that will be held at the University of Western Australia on 5 March to mark the publication of the last volume—volume 6—of that journal. Unfortunately *Indigo* is one of the many exciting and creative projects in Western Australia that has somehow missed out on funding from government and is struggling to keep going. Hopefully the opening up of charitable trusts through this bill will benefit projects such as *Indigo*. I regret, though, that it will be a bit late for that project.

I now want to ask the parliamentary secretary a couple of questions, along the same lines as those asked by Hon Kate Doust. Will this bill have the effect of allowing greater access to donations by charitable organisations other than the culture and the arts organisations that are noted in the second reading speech? In particular, of course, my interest as a member of the Greens is non-government organisations such as environment groups and charities that are deductible gift recipients. I would like to get an indication from the parliamentary secretary about the breadth of charities that might benefit from these changes.

I have asked the Attorney General about who was consulted on this bill. The Attorney General has advised me that the Department of Culture and the Arts, the State Solicitor's Office and the Supreme Court were all consulted on this bill. However, I was a bit dismayed to learn that not one non-government organisation was consulted. Non-government organisations play a vital democratic role as advocates and providers of services. As we in this house would know, they have contributed invaluable experience in the preparation of previous bills of this kind. Many non-government organisations rely on charitable donations. It would have been interesting to seek their input on this bill to see whether the scope of this bill might have been broadened a bit. It might well be that this bill will encompass their needs, and that would be a great thing. However, it is notable that non-government organisations were not consulted. It is notable also that even charitable trusts were not consulted in the drafting of this bill.

This bill was also not considered by a committee. Another question that I would put to the parliamentary secretary is whether this bill should have been referred to the Standing Committee on Uniform Legislation and Statutes Review, given that the problem that is being addressed here in Western Australia has already been addressed in New South Wales, Victoria and Queensland. I have learned something, though. The legislative framework for charitable trusts is not uniform across Australia. I am not sure why Australia would not treat charitable trusts uniformly.

Sitting suspended from 6.00 to 7.30 pm

Hon LYNN MacLAREN: I was just concluding my remarks in support of the legislation before us. The Charitable Trusts Amendment Bill 2010 is supported by the Greens. I was concluding by saying that the legislative framework for charitable trusts is not uniform across Australia. I queried why Australia would not treat charitable trusts uniformly across all states. I would have thought that we could learn from the experience of other states. I note that in this particular instance we are using the New South Wales legislation as a framework, which I think is interesting. I would like to hear why we chose that legislation over the legislation of other states and what benefits that might give us.

In conclusion, members may be interested to learn that Philanthropy Australia charts the donations that are distributed by private ancillary funds and foundations. In my research I discovered that in fact culture and the arts had a spike in donations that were distributed to it in 2006–07. It was quite a considerable jump; \$40 million was distributed to culture and the arts that year. For some reason that dropped off dramatically in 2007–08 when less than \$10 million was distributed to culture and the arts. I am really hoping that we can see the impact of this legislation once it is enacted and see that figure for culture and the arts jump again.

Interestingly enough, as Hon Kate Doust mentioned, distributions of charitable donations to welfare organisations have consistently increased. The drop-off of donations to culture and the arts in such a dramatic fashion may indicate the need for this legislation. I think it coincided with the change in the federal legislation, which made it more difficult for people who were philanthropically inclined to give to culture and the arts. We are delighted to support such a positive direction that facilitates philanthropy in the state and in particular might benefit the State Library of Western Australia and the state’s museums and art galleries.

HON HELEN BULLOCK (Mining and Pastoral) [7.35 pm]: I would like to make a brief comment on the Charitable Trusts Amendment Bill 2010. This bill is actually quite technical. At present most of the charitable trusts’ deeds do not allow the trustees to make a donation to bodies that are not charitable at law, such as the State Library of Western Australia and the state’s museums and art galleries; these are not charitable bodies. That is why current laws do not allow those charitable trusts to make a donation to bodies like these. After this amendment bill is passed, this obstacle will be removed, so it will be easier for the community to support bodies such as the State Library and the state’s museums and art galleries through charitable trusts. This is certainly a positive move.

We have just experienced a historic economic downturn. During my time in this Parliament I have observed that the budgetary process seems to favour some sectors over others. Using the 2009–10 state budget as an example, which as we know was delivered in the midst of economic uncertainty, one thing I noticed is that the libraries, museums and art galleries were at the forefront of funding cuts. Over the past year and a half that I have been in this place, Western Australian museums have experienced funding cuts that have forced the Western Australian Museum and several other regional museums to close their doors one day a week. This same funding cut also led the Fremantle History Museum and several other museums to close their doors completely. This decision, however, was later reversed due to the improvement of the financial situation. The 2009–10 budget also proposed a 40 per cent funding cut to libraries. The reason this did not happen was partly due to the Labor Party’s fierce campaign and partly due to the improvement of the government’s financial situation through increases in household bills. However, it did result in the loss of 12 jobs at the State Library. In this budget we also saw the complete removal of the Labor Party’s commitment of \$550 million for a new museum building. These are just some examples that I have seen over the past year and a half. It just shows how vulnerable the funding for libraries, museums and art galleries can be compared with the funding for schools, hospitals and roads. It should not have been this way.

I am quite amazed by the fact, as stated in the second reading speech, that each year the Australian philanthropic sector distributes about \$500 million to charitable organisations. I do not know how much of that \$500 million is distributed to charities in WA; however, with the passage of this bill we hope to see more monetary contributions to support bodies such as the State Library and the state’s museums and art galleries. This inflow of funding from charitable trusts should be used as additional funding to the government’s normal budgetary allocation to the state’s libraries, museums and art galleries. It should not be used as a substitute to government funding of these bodies. That is the point I wanted to make.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [7.40 pm] — in reply: I thank members for their contributions to the second reading debate and the support for the bill across the chamber. It is an uncontroversial measure and allows some recognition that worthy recipients of philanthropic and investment largesse should be permitted beyond what the law currently regards, and has traditionally regarded, as a charitable purpose. The intent of the bill is to broaden the areas into which investment for philanthropic purposes can be applied, to the benefit of the recipients and to the community generally, and incentive would be in the form of some taxation benefit to the prescribed trust that makes that investment. This bill will work to the betterment and enrichment of our citizens. It is not true to say, if this is the suggestion made

by Hon Helen Bullock, that this is somehow intended as a substitute for government funding. This bill is simply expanding, for the benefit of the varied prescribed trusts, the sorts of investments that can be made, and there is a tax deduction that goes along with them. Hon Kate Doust asked whether bodies devoted to science and innovation and those sorts of purposes fall within the scope of deductible gift recipients. Proposed section 22A in clause 4 of the bill states —

eligible recipient means a deductible gift recipient within the meaning of that term in the *Income Tax Assessment Act 1997* (Commonwealth), whether or not the deductible gift recipient is a charity at law or (without limitation) is established for a charitable purpose or purposes;

Therefore, the state has no control over who happens to be, at any given time, a deductible gift recipient, which falls within the scope of the proposed amendments. However, to the extent that I have managed to research the subject in the last hour, subdivision 30-A of the *Income Tax Assessment Act 1997*, volume one, sets out in broad terms who deductible gift recipients may be. It includes, amongst a wide variety of bodies —

A fund, authority or institution covered by an item in any of the tables in Subdivision 30-B.

Subdivision 30-B sets out a variety of heads of recipients for deductible gifts including a variety of organisations dealing with health, education, research, welfare and rights, defence, environment, industry, trade and design, the family, international affairs, sports and recreation, philanthropic trusts, cultural organisations, fire and emergency services, and a grab bag of others. Under the categories of health, for example, public hospitals would be eligible gift recipients. Public authorities engaged in research into the causes, prevention or cure of disease in human beings, animals or plants would also be eligible, as would various professional organisations of physicians and other health-related bodies. “Education” includes public universities and so forth, and “environment”, includes a list of other sorts of institutions that can benefit from this measure. This will permit, and indeed encourage, prescribed trusts to invest in them and get a tax benefit from that investment, which would not ordinarily fall within the category of a charitable purpose.

Hon Lynn MacLaren asked whether this bill would have an effect on non-charities. Well, yes, that is the whole purpose of it—to allow the benefit that would ordinarily flow or be limited to charitable purposes to flow into a variety of philanthropic or general community benefit-type organisations that would not otherwise be authorised trustee investments within the meaning of the *Charitable Trusts Act*.

Consultation with non-government organisations: this question seems to suggest a misunderstanding of the purpose of the legislation; I will leave it at that.

Why are we using the New South Wales legislation as a model? I was not aware that we were, but if our *Charitable Trusts Act* happened to be based on New South Wales legislation from way back when, it could have been because that was the best that was on offer at the time and formed a useful model, which is one of the advantages of federation—as a government we can pick the eyes out of whatever is going in Australia and decide that we want to keep the good bits and leave the bad bits behind and model our own legislation accordingly, rather than have a one-size-fits-all approach.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, and transmitted to the Assembly.