

**TAXATION LEGISLATION AMENDMENT BILL (NO. 2) 2014**

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 17: Section 39 replaced —**

Debate was interrupted after the clause had been partly considered.

**Ms R. SAFFIOTI:** Before we were rudely interrupted by question time, we were talking about the definition of retirement villages. We are trying to comprehend two aspects. Firstly, what will continue to be seen as an exempt purpose in relation to retirement villages? Secondly, there are some timing issues. I understand that in the Aveland case, which brought this whole issue to the forefront, vacant land was going to be developed for housing later and that exemption was applied to that vacant land initially. Can we clarify this? Exactly what will continue to be seen as exempt? Does the definition of “retirement villages” include centres used by the retirement village? There is also the timing aspect. For example, will there still be a full exemption until the rest of the land is sold for residential purposes or does the exemption apply only to where the retirement village stands at that time?

**Mr D.C. NALDER:** The exemption will apply to that land that is specifically utilised for retirement purposes. Therefore, if there is a community hall or other things on that land, that is fine. It is really targeted at land beyond that which is used for retirement purposes, which will not receive the exemption for land tax. Only that excess land will be subject to land tax.

I think I know where the member is getting to, and I am trying to clarify this. If a piece of land is part of a garden that is considered to be part of that retirement village today, it will be exempt from land tax. Should the purposes of that land change in the future, it will not be exempt. I think that is where the member is trying to get to. If there is all this excess bushland, it will not be exempt from land tax; it is only that land that is specifically utilised for the purposes of a retirement village.

**Mr W.J. JOHNSTON:** One of my problems is with the wording in the explanatory memorandum. It referred to that wonderful word “appurtenant”, stating that the exemption does not extend to residential premises. I was confused. The minister has clarified that. Now the minister is saying that if the land is vacant and awaiting construction, it is not exempt. If it is being built on at the time, it is not exempt.

Several members interjected.

**The SPEAKER:** Leader of the Opposition, settle down, please.

**Mr W.J. JOHNSTON:** They were not disturbing me. They might have been disturbing the minister.

I understand that we are interacting with two separate pieces of legislation. We have the land tax assessment on the operator of the village, but separate legislation currently being dealt with in the other house relates to what a centre operator can pass on as an appropriate cost to the residents of the village. Obviously, the land underneath a unit will not be subject to land tax and, although I had this wrong, the minister has clarified that the land underneath the sports centre or whatever else is also not subject to land tax, but the vacant land—if it is not considered a garden, because we know there will be massive gardens—is not exempt, and is therefore subject to land tax. Under the legislation that covers retirement villages, the cost of operating the retirement village can be passed on to the residents. We are now interacting between two separate pieces of legislation. If we are to charge land tax to the village operator, will the operator not pass that on as part of its charges to the residents so that in fact the residents will end up paying the land tax, and not the developer?

**Mr D.C. NALDER:** We do not know whether there is a limit to what can be passed on, but we are dealing with this specific piece of legislation, and that is all I can focus on. We are focusing here on trying to ensure that the exemption continues to apply to those areas that are directly related to an area in which an exemption is intended to apply. We are trying to remove these land-banking and development opportunities that exist on the side. That is all we are really trying to deal with here. I understand the issues that the member raised, but I cannot get too far into that.

**Mr W.J. JOHNSTON:** It might be worthwhile for the minister to have a look at this issue while the bill passes between the houses. I draw his attention to the Karrinyup Lakes Lifestyle Village report of the Economics and Industry Standing Committee of 2008, which had a very long inquiry into the unfair treatment of the residents in that village. It was all about cost shifting by the developer onto the residents. I also draw to the attention of the minister—I cannot recall the exact title of the regulations—that the other house at the moment is dealing with a regulation that defines what costs can be passed on from the operator of a village to the residents of the village. The specific issue being dealt with in the other place is that the proposed regulation will allow membership fees of the Chamber of Commerce and Industry of Western Australia to be passed on to the residents by the village

owners, so that the owners can lobby for changes to the villages act, to achieve better circumstances for the developers as opposed to the residents. I am concerned that, although our intention is to charge the developer land tax—that is the way our system works; a developer pays land tax—we are also opening the door for those costs to be then passed on to the village residents through the charges by the operator of the village to the village residents. I accept that that is not specifically part of this bill, but it is still an important issue arising from the operation of this bill. I accept that the Minister for Finance is not the relevant minister, and that he does not immediately know. That is why I am saying that it would be very worthwhile if, by the time this bill gets to the other house, that issue is clarified, not by the Department of Finance, but by the government of Western Australia, so that we know whether those costs can be handed on.

**Mr D.C. NALDER:** We are very happy to have a look at this issue. I will say now that this is a bit like the earlier assessment around productive and primary producing land. We will be taking a very pragmatic approach to the assessment of what land is deemed to be taxable. If there are genuine areas that are part of a retirement village, they will continue to be part of that retirement village.

**Ms R. SAFFIOTI:** I want to just clarify who the affected groups are. I understand that the only group that is currently not paying land tax for a retirement village, but will now practically pay land tax as a result of this legislation, is the group that is the subject of the State Administrative Tribunal decision, Aveland Pty Ltd, and that no-one else has taken advantage of the full exemption as yet. That is how I understand it. Can we have that confirmed?

**Mr D.C. NALDER:** Aveland is the only one that I am aware of. We will honour the SAT decision in that situation. This provision will restrict anyone else from being able to make the same application for exemption over vacant land.

**Ms R. SAFFIOTI:** As further clarification, not only will this provision prevent anyone else prospectively seeking access to this full exemption status, but also the nature of the legislation prohibits them, because it is retrospective in the sense that between 2013 and 2014 no-one can use the SAT decision to try to claim any reimbursement of tax paid.

**Mr D.C. NALDER:** That is correct, but it is done on the basis that the purpose of this piece of legislation is to reinstate the original intent. The original intent of the law is being put back in place, after being changed by the SAT decision. Everybody has lived under that rule up to that time, and most have. It is just that Aveland challenged it through SAT and succeeded, and hence we are tightening the legislation to reinstate the intent from the time this act was first introduced back in 2003.

**Mr C.J. TALLENTIRE:** I note that the term “retirement village”, while it has a specific meaning under the Retirement Villages Act 1992, is often used as a generic term, referring to other types of places for elderly people to find a cheaper form of accommodation. In my electorate a property that is covered under the Residential Parks (Long-stay Tenants) Act 2006 is up for renewal and revision. I am curious to know how that property in my electorate, Riverside Gardens, and similar properties around the Perth metropolitan area, would sit alongside the definition of a retirement village, and whether their land tax arrangements are likely to change.

**Mr D.C. NALDER:** There is a Retirement Villages Act, and it would need to be a defined scheme under that act for us to be able to do it. I am not in a position to be able to determine that situation here, through this bill.

**Mr C.J. TALLENTIRE:** Can the minister tell me whether a property covered by the Residential Parks (Long-stay Tenants) Act 2006 is currently subject to land tax? Will it be in the future? I would have thought that this would be a fairly important question for a number of types of properties around the state. I would hope that amongst the minister’s advisers there is some knowledge about this. If there is not, this is just the sort of thing that shows that when members are not given an adequate briefing, questions cannot be answered properly. It almost defeats the purpose of consideration in detail when consultation with the opposition has not taken place so that we can foreshadow these questions and the minister can get the answers, so that we can have sensible debate. I hope that there is a sensible answer to my question from the minister’s advisers.

**Mr D.C. NALDER:** This bill specifically deals with retirement village schemes. There may be other areas that are exempt under the act, but we are specifically dealing here with those that are under retirement village schemes. As far as getting into the specifics, consideration in detail of legislation is not the time to get into a specific case.

**Mr C.J. Tallentire:** It is a generic thing.

**Mr D.C. NALDER:** I have said that we are dealing with a specific retirement village scheme under the act, and if it qualifies under that act, it will qualify for the exemption.

**Clause put and passed.**

**Clauses 18 to 21 put and passed.**

**Clause 22: Schedule 1 Division 4 Subdivision 3 inserted —**

**Mr D.C. NALDER:** I move —

On page 22, line 5 — To insert after “**exemptions**” —  
**and rural business land**

And give explanation! Give explanation! What is “explanation”?

Several members interjected.

**Mr D.C. NALDER:** I am sorry; I read it out! I got caught out there!

**The SPEAKER:** Okay, minister—give an explanation!

Several members interjected.

**The SPEAKER:** Members!

**Mr D.C. NALDER:** I am sorry; I got caught. All right; I messed up!

Several members interjected.

**The SPEAKER:** Members! **Mr D.C. NALDER:** The amendment listed on the notice paper under my name will retrospectively apply the secondary production amendments. Without applying these amendments retrospectively, a number of producers may receive significant tax bills for the 2012–13 and 2013–14 assessment years. This would unfairly impact on a number of taxpayers. Back in 2011, the commissioner received advice that the process of wine production did not fall within the term “viticulture”—that is, the growing of grapes. From 2012–13 the commissioner no longer allowed a primary production exemption, full or partial, on new applications for land used for secondary production. This has resulted in nine taxpayers paying tax as though they were on land used for secondary production. The legislative amendments currently before the house seek to restore the commissioner’s original interpretation and the preferred policy position of this government.

**Mr W.J. JOHNSTON:** I seek clarification from the minister. Is that commentary in respect of all three amendments or only the one moved by the minister? If it is in respect of all three amendments, only one has been moved. We all know what they are, and the minister can interject on me if he wants to agree.

**Mr D.C. Nalder:** It is agreed.

**Mr W.J. JOHNSTON:** It is for all three?

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

**Mr W.J. JOHNSTON:** Yes—for all three. That is actually slightly contrary to what I thought we were doing.

**Mr D.C. Nalder:** I am sorry.

**Mr W.J. JOHNSTON:** I understood that the reason it is effectively cost-neutral is that we are not changing the nature of the taxation arrangements. The minister is now saying that there will be a retrospective bill for certain businesses —

**Mr D.C. Nalder:** Not a bill—a refund.

**Mr W.J. JOHNSTON:** A refund; sorry.

**Mr D.C. Nalder:** It is the nine we talked about.

**Mr W.J. JOHNSTON:** Yes, the nine we talked about; okay. So it is just those nine who would get a refund if we did not make this amendment.

**Mr D.C. Nalder:** Correct, but because some of the previous years have not been finalised by the commissioner, more could be picked up and that is also one of the reasons that we want to make it retrospective. It is not just the nine; there could be additional ones picked up by the commissioner.

**Mr W.J. JOHNSTON:** Sure. There is what the words mean, and then there is what we thought the words meant. This amendment is to ensure that the words we now use are what we meant rather than the words we currently use, which have been determined to mean something else. I am just clarifying that. In respect of taxpayers, that is what we are doing: we are making sure that the commissioner’s understanding of the words will be the meaning of the words, as opposed to what the tribunal determined the words to mean. Anybody who has dealt with drafting knows exactly what I am talking about.

**Mr D.C. NALDER:** We are making sure that we are adding the secondary processing concept into those previous years and making that clear so that it can be interpreted that way. Because of the findings and the changes in the interpretation, if there was any secondary processing, there was no exemption on the primary production. So we are making it very clear about what the secondary processing is to clarify that for those previous years.

**Ms R. SAFFIOTI:** This is an interesting set of amendments. Conceptually, I assumed that we would basically look at the new law in the future and retrospectively apply it to 2012–13 and 2013–14, but it appears that we are going back and amending the existing provisions to ensure that everyone is picked up. What I do not quite get is whether this will now allow more people than the nine directly affected—for example because of the publicity this legislation may get—who never sought a partial exemption to now have access to a partial exemption, not only retrospectively but also for the past two years. I assume that these changes will allow people who had not identified themselves to be eligible for a partial exemption to now have access to the partial exemption, as I said, not just into the future but also for the previous two years. Would I be correct in saying that?

**Mr D.C. NALDER:** They will be treated in the same way as all other taxpayers. They had access to that recourse anyway. The member is correct: if some have not claimed the exemption, they could claim it, but they could have done that as part of their reassessment irrespective of these changes. However, it makes it very clear that they would be entitled to it, whereas the new interpretation potentially changed that. Yes, as the member said, there could be some people who have not previously claimed it and who can now claim it. However, we are saying that they could have done that anyway.

**Ms R. SAFFIOTI:** I do not think they could have claimed it anyway, because the interpretation of the act by the commissioner before this legislation was brought into this place was to not allow a partial exemption where secondary processing was taking place. As I said, the structure of these amendments is interesting. We are allowing a retrospective reimbursement to those who have never claimed a partial exemption. All I can say is that that is interesting. I am not sure whether it could have been done in a different way to relate only to the nine people who have been hit with this land tax and who were previously partially exempt.

**Mr D.C. NALDER:** We are making it consistent between those who have claimed an exemption and those who are yet to claim an exemption from the commissioner—they will be treated exactly the same as those who already have. There is therefore the ability for those who have not yet sought an exemption status for their property to seek an exemption. I am not sure how many there are of those, and there is no way of identifying that number, but they will be treated in the same way as those who have already claimed an exemption status in the past.

**Mr W.J. JOHNSTON:** I must say that I missed the fact that this is a schedule; I thought it was only a clause. There are a lot of amendments in this schedule. Does the commentary read out by the minister cover everything that we are doing for all the proposed amendments?

**Mr D.C. Nalder:** That is what I think I have done; I have actually covered my amendments to lines 5, 7 and 11.

**Mr W.J. JOHNSTON:** I did not realise how long this clause was, as the minister has proposed new clauses 12A and 12B standing in his name on the notice paper. He has not moved those amendments. However, I wonder whether, Madam Deputy Speaker, for ease we could make sure that the minister runs through the effect of all the amendments, even though he has not formally moved them. Alternatively, he could seek leave to move them all together and we could deal with them as one, because I think the minister is saying that they are all directly interrelated and need to be dealt with together. Perhaps the minister could move them all.

**The DEPUTY SPEAKER:** I thank the member for Cannington. The minister has moved the first amendment and subsequently, when we have dealt with that, he could probably move the rest en bloc. He would have to seek the leave of the house to do that. However, this amendment has already been moved and I do not think the minister can add others into it at this stage.

**Mr W.J. JOHNSTON:** Why do we not vote on this amendment and then deal with everything else, because it is probably worth having them all together?

**Amendment put and passed.**

**The DEPUTY SPEAKER:** Order! The minister can now seek leave to move the remainder of the amendments relating to clause 22; and, if leave is granted, that is how we will proceed.

**Mr D.C. NALDER** — by leave: I move —

Page 22, after line 7 — To insert —

*2012 to 2014 assessment period* means the period —

(a) beginning on 1 July 2012; and

(b) ending on 30 June 2014;

Page 22, after line 11 — To insert —

***modified rural business land provisions*** means Part 3 Division 3 as in force immediately before the amending Act section 6 comes into operation, as modified by inserting after section 29(4):

(5) For the purposes of this section —

- (a) income produced or derived from carrying out a rural business, or businesses, includes income produced or derived from the sale of produce or stock in a processed or converted state; but
- (b) the processing or converting of anything for the purpose of selling it is not carrying out a rural business or businesses.

Page 22, after line 18 — To insert —

***rural business land assessment*** means an assessment in respect of land for an assessment year during the 2012 to 2014 assessment period that land was exempt, or subject to a concession —

- (a) due to the application, or purported application, of Part 3 Division 3; and
- (b) based on income that was, or included, income produced or derived from the sale of produce or stock in a processed or converted state;

Page 23, after line 24 — To insert —

**12A. Application of modified rural business land provisions during the 2012 to 2014 assessment period**

The modified rural business land provisions apply, and are taken to have always applied, for the purposes of assessing, or reassessing, land tax for an assessment year during the 2012 to 2014 assessment period.

**12B. Validation of rural business land assessments**

- (1) A rural business land assessment made, or purported to be made, in respect of land for an assessment year during the 2012 to 2014 assessment period is to be taken to be, and to have always been, valid and effective to the same extent as it would have been if, when the assessment was made, the modified rural business land provisions had been in force.
- (2) The rights, obligations and liabilities of all persons are taken to be, and to have always been, the same as if a rural business land assessment had been validly made.
- (3) Anything done, or purportedly done, before commencement is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a rural business land assessment had been validly made.
- (4) In this clause, a reference to the doing of anything includes a reference to an omission to do anything.

The explanation that I provided earlier covered all aspects of these amendments.

**Mr W.J. Johnston:** That was pretty brief. Is the minister saying there is no separate explanation for each of these amendments?

**Mr D.C. NALDER:** No. I will see whether there is anything further, but that is what I was provided with. I am happy to read it again if that would be of benefit. This is to do with the land tax, secondary production, commencement date issue. The amendments listed on the notice paper under my name will retrospectively apply the secondary production amendments. Without applying these amendments retrospectively, a number of producers may receive significant tax bills for the 2012–13 and 2013–14 assessment years. This would unfairly impact a number of taxpayers. Back in 2011, the Commissioner of State Revenue received advice that the process of wine production did not fall within the term “viticulture”—that is, the growing of grapes. From 2012–13, the commissioner no longer allowed a primary production exemption, full or partial, on new applications where land is used for secondary production. This has resulted in nine taxpayers paying tax as though they were on land used for secondary production. The legislative amendments currently before the house seek to restore the commissioner’s original interpretation and preferred policy position of this government.

**Mr W.J. Johnston:** Did the minister say that if we pass this, they will get a tax bill?

**Mr D.C. NALDER:** No. We are saying there are nine who have had a tax bill. If we did not pass this, they would not get a refund. We are seeking to restore the commissioner’s original interpretation, which goes way back, which was that they would be exempt. As I have said, from 2012–13 the commissioner no longer allowed

a primary production exemption, full or partial, on new applications where land is used for secondary production. This has resulted in nine taxpayers paying tax as though they were on land used for secondary production. The legislative amendments currently before the house seek to restore the commissioner's original interpretation, which goes back to when the law was produced in 2003. Therefore, it is the original interpretation that stood from 2003 to 2012. That is what we are trying to restore by these amendments. The retrospectivity is that those taxpayers who have been picked up from 2012 until today will get a refund.

**Ms R. SAFFIOTI:** What precipitated this change of heart between the time of the original legislation, under which they would be ineligible for the exemption, and now, when they will get a refund? I know a number of the people involved, and I am sure they are very happy about this.

**Mr D.C. NALDER:** There are two elements to this. The first is to ensure there is equity among taxpayers. We did feel that this was not the intent of the law. Even though there had been a change in interpretation, we wanted to restore the situation. We felt that if we did it from now, a couple of people who were not intended to be picked up would be picked up. It is not a huge amount of funding. We just felt that was not the right thing to do. The second element is there are assessments that have not yet been undertaken, and by leaving it open and not making this retrospective, potentially more taxpayers would be picked up. We wanted to remove the possibility that any additional taxpayers would be picked up, so we have fixed this law to go back 12 months earlier.

**Mr W.J. JOHNSTON:** Is this partly because the tax obligation is retrospective? The date of 30 June is when land tax is assessed, but the invoice —

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

**Mr W.J. JOHNSTON:** Is one of the issues that it has to be fixed for last year for the purposes of this year's bill?

**Mr D.C. NALDER:** Yes, and the year before. There were more that could potentially be picked up than the nine that are currently being picked up. The first is refunding the nine and putting on an equity basis what the intent was. The second is we believe there is a risk that more than the nine that currently exist could also be picked up, because the previous years have not been finalised.

**Ms R. SAFFIOTI:** I am not arguing against what is being done. I think it is the right thing to do, and it is probably administratively a fair thing to do, because otherwise the Office of State Revenue may be required to chase down other taxpayers over the past two years. As I understand the cabinet process or the government process in relation to legislation, there is approval to draft, and that goes to cabinet, and there is approval to print, and that goes to cabinet. This legislation went to cabinet in the current form. What happened between the time that approval to print was given by cabinet, and now, to make people realise that, hang on, we need to make it retrospective to 2012?

**The DEPUTY SPEAKER:** Before you answer, minister, Leader of the Opposition, if it is going to be a long conversation, could you go out of the chamber. It is starting to disturb us. Thank you.

**Mr D.C. NALDER:** I am not going to go into cabinet discussions and details. However, it was realised on the way through that there was potentially a gap, hence the processes have been followed to seek redress. The mechanisms have been put in place to go through the processes to ensure that we can add this to the bill.

**Ms R. SAFFIOTI:** I am not asking the minister to tell me what happens in cabinet—I would say not much, given what has happened. I am not disputing the process, and I am not disputing the legality. I am not disputing any of that. What I am asking is what changed between the time that approval was given to print and when it went to cabinet, and this legislation that is before us today, that enabled the reimbursement for the nine?

**Mr D.C. Nalder:** Sorry. Can you repeat that?

**Ms R. SAFFIOTI:** Why are we doing this, and why was it not picked up in the cabinet process beforehand?

**Mr D.C. NALDER:** It was identified as an issue late in the piece.

**Mr W.J. Johnston:** Was there any discussion with the taxpayers, or lobbying?

**Mr D.C. NALDER:** It was brought to me from the department as a potential issue. It was not something that I had necessarily picked up. After consideration, it was decided that it was the fair and equitable thing to do, and therefore we put in place the processes to get it added to the bill. The mechanisms are there for parliamentary counsel and so forth to write it up and draft it properly. Yes, it was, I think, an oversight. It was recognised late in the piece, and it has been added to the bill subsequently.

**Ms R. SAFFIOTI:** It is interesting. I am not arguing against it. The department brought it to the minister. Was it identified in any of the 18 submissions that were made? The minister is shaking his head, so I assume that is a no.

**Mr D.C. Nalder:** Yes, it is a no.

**Ms R. SAFFIOTI:** It was not identified in any of the 18 submissions. It is a policy change. Was it brought to the minister by the Treasurer or the Treasurer's office in any capacity? Can the minister rule out anyone from his ministerial office or the Treasurer's ministerial office bringing this issue to him?

**Mr D.C. NALDER:** No, it was the department that brought it to my attention. I understand that one of the primary reasons for that was that the department investigated unfinished tax years and realised that there is the potential for a sum to be caught up in this, and that is when the retrospectivity came into play. I can rule out my office, and I can pretty much rule out the Treasury, unless staff there spoke to the department. It was the department that approached my office on this issue.

**Ms R. SAFFIOTI:** Can the minister definitely rule out anyone from the Treasurer's office approaching him or the department?

**Mr D.C. Nalder:** I can definitely rule out anyone approaching me.

**Ms R. SAFFIOTI:** Nobody approached the minister, but did anybody approach the Office of State Revenue?

**Mr D.C. NALDER:** They said it came from them; that is all. The advice I have is that it was an internal concern that was then raised with Treasury, and they did it in consultation with Treasury, but it was initiated by the Department of Finance.

**Ms R. SAFFIOTI:** I am not arguing against this provision, but I find it interesting that the department went through the process of a two-year internal discussion and there was a consultation paper. It was taken to cabinet twice, and this issue was very late in the piece. I am not saying that someone external instigated the change, but I find it curious that very, very late in the piece there is such a significant policy change, and that a number of taxpayers have been reimbursed. If the minister can categorically rule out anyone from his office or the Treasurer's office having any role in that, and if the minister stands up and says that, I will take his word for it.

**Mr D.C. NALDER:** Yes, I can categorically rule out that it was initiated by Treasury or my office. The advice that I have received—I trust the advice that I have received—is that it was initiated within the department under my control.

**Mr W.J. JOHNSTON:** I seek to understand how the dates work, because the dates in the amendment are referenced to other actions. The third amendment states —

*modified rural business land provisions* means Part 3 Division 3 as in force immediately before the amending Act section 6 comes into operation, ...

I understand that section 6 comes into operation on the day of royal assent. The final amendment inserts proposed subclause (3), which states —

(3) Anything done, or purportedly done, before commencement is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if a rural business land assessment had been validly made.

I seek to understand that, because we have this rural land arrangement that comes into effect on the day of royal assent—that is cool. Proposed section 12B is titled “Validation of rural business land assessments”. How can that have been done before the provision comes into effect? Can I have that clarified? I am sure that one of the minister's advisers must understand the point I am getting to, and it is easy to answer, I imagine.

**Mr D.C. NALDER:** It is a technicality. We are getting into technicalities here. It is to do with validating all the existing assessments, so we do not need to go back and validate all those.

**Mr W.J. Johnston:** The assessments are validated, even though they are made under a different provision.

**Mr D.C. NALDER:** Correct; we validate them.

**Mr W.J. Johnston:** I understand.

**Mr D.C. NALDER:** The member understands, yes.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 23 put and passed.**

**Clause 24: Section 36 amended —**

**Mr W.J. JOHNSTON:** These are the exciting provisions about mining permits and the misuse amendments, whatever they are. During the second reading debate I asked a question about whether there had been

consultation with the Association of Mining and Exploration Companies, but I said that I would be happy to have the answer during consideration in detail. Although it is not specific to this clause, but relates to the entire legislation, I am raising the question of the gatekeeping unit now. I note that all the minister's advisers were nodding at the back of the chamber. Did the minister have discussions with AMEC before he introduced the legislation and what was its view about the gatekeeping unit?

**Mr D.C. NALDER:** On the first question about AMEC, no, there was no consultation with AMEC. It was seen that these are clarifications of existing provisions, rather than new provisions. With regard to the statutory regulatory gatekeeping unit, yes, those provisions have been run through.

**Mr W.J. JOHNSTON:** I make the point that in his second reading speech the minister said —

It is the most comprehensive review of this exemption in over 35 years.

I know that the minister was specifically referring to the rural exemptions, but he has slipped in these other provisions. I made the point in the second reading debate that if the minister had undertaken a more public process, he would have received a wider set of commentary. As the bill has come on in the way that it has—we dealt with that yesterday—we were not given the opportunity to consult stakeholders. I would have liked to, and I am sure Madam Deputy Speaker might have wanted to, talk to AMEC about the issues involved here, given the concentration of mining tenements in the Kalgoorlie state electoral district. I do not know what people in the industry would say about this, because the words in the explanatory memorandum state —

Some taxpayers continue to argue that significant portions of transaction values for dealings in mining tenements particularly should be attributable to information and that the value of that information is not subject to duty.

Of course, it is their right to argue that. It may be that the government does not want them to argue that, but it is their right. I accept that the minister is changing the law to make it harder for them to do that, but that is not a justification for the change. It might be an explanation of the change, but it is not a justification for it. Whether we like it or not, I go back to the High Court under former Chief Justices who forced us into such detailed black letter law because their interpretations have always been in favour of taxpayers, but one way or another, they have a right to argue what they want. I understand that the minister is arguing against that. That is fine by me, and I might even agree with him if I had a better understanding of the impact of the particular changes. In my view, that is not a justification for a change. To say that the courts might change our understanding of the words of the legislation might be a reason for a change, but it is not a justification for a change. I think the gatekeeping unit has fallen down if it has allowed the legislation to come to the floor without ensuring that one of the main stakeholders was consulted about the changes.

**Mr D.C. NALDER:** I am happy to take on the criticism about the reform over 34 or 35 years, but that was around the land tax to do with primary production. Yes, we have brought in this additional amendment. We have sought to simplify the process and to be very clear about the amendments to reduce the administrative burden on the court cases and everything else that goes on around this place. It is as simple as that. We stand by this clause as it is written.

**Ms R. SAFFIOTI:** This is a very interesting part of the bill. As I said, the Duties Act is an evolving beast. There are always challenges and businesses in particular try to change the nature of their transaction or the status of their transaction to minimise the duty. In relation to mining tenements, what were the respective values being questioned when splitting the land and the information? For example, was the information 60 per cent of the total value of the tenement? What was the logic behind this and what arguments were put forward?

**Mr D.C. NALDER:** It was argued that upwards of 50 per cent of the value of the land is due to information, so we are talking about an impact of hundreds of millions of dollars. We just wanted to simplify and clarify the provision. We felt that some companies have tried to extend the value of land through this argument around information, and hence there were often court cases. We have tried to simplify it and to be very clear about it so that it is easier for everybody and we do not have to go through those costly exercises.

**Ms R. SAFFIOTI:** Although I do not want to enter into an argument about this because the discussion about this bill has been very interesting, I do not think this provision is simplifying it. This provision will basically prevent revenue leakage. It is up to the minister to do that and that is what the Office of State Revenue is paid to do. However, we cannot say that it is simplifying the law; it is tightening the law, restricting any possible arguments, and preventing a revenue impact to the tune of hundreds of millions of dollars into the future.

**Mr D.C. NALDER:** I accept that the word “simplifying” might possibly be the wrong word to use and that “clarifying” might have been a better word. This provision makes it a lot clearer for all involved from the commissioner to the miners. I hope that it clarifies a lot of issues and saves everybody a lot of trouble.

**Clause put and passed.**

**Clause 25: Section 156 amended —**

**Mr W.J. JOHNSTON:** I will give the minister a brand-new \$50 note if he gets up and reads the clause and explains it to me.

**Ms R. Saffioti:** A brand-new one?

**Mr W.J. JOHNSTON:** Yes, a brand-new one. I will have to go to the bank to find one. Let me put it this way to the minister: this clause is not written in plain English. Proposed section 156(8) states —

- (a) if the entity has entered into an agreement to acquire an interest in the other entity, the agreement is to be regarded as having been completed even if it has not yet been completed; and
- (b) if the entity has entered into an agreement to dispose of an interest in the other entity but the agreement has not yet been completed, the agreement is to be disregarded.

**Mr D.C. Nalder:** I want to try and have a crack at winning \$50.

**Mr W.J. JOHNSTON:** Go for it, but the minister has to read the clause as well.

**Mr D.C. NALDER:** When a company has sold some land and that land has not yet settled, and then that company is sold to someone else, because that land has not settled, from a land tax perspective it is kept in the valuation process for the company that has just been sold, but when the sales process goes through, it will be calculated a second time.

**Mr W.J. Johnston:** Is it stamp duty?

**Mr D.C. NALDER:** I am talking about stamp duty and landlord duty. Sorry, it is the duty. Was I saying “land tax”?

**Mr W.J. Johnston:** Yes.

**Mr D.C. NALDER:** Sorry, I was thinking “duties” and saying “land tax”. The duties are calculated. Because it has not processed that land sale, it gets assessed in the overall corporations land values for duties from a duties perspective, but when it gets sold, it gets assessed again. This allows an opportunity for the duties to be paid twice, and it was never the intention for that to occur, so we are trying to make sure that we clarify—sorry, I am saying something wrong. I think I said at the start that it is a landowning subsidiary and when that has been sold off but it has not yet been processed, it gets caught up in the overall valuation. If it then gets on sold prior to this one being finalised, it complicates things. It means that we can collect two lots of duties, which is not the state’s intention. We are seeking to clarify the provision so that that opportunity will be removed and the process will be simplified. Does that clarify things?

**Mr W.J. JOHNSTON:** I am not quite sure. The minister said that the duty gets paid only once, but I understood it was the other way around. Clearly, I am wrong, and I am happy to be wrong. The explanatory memorandum states —

Subject to certain exceptions, an entity will be linked to another entity that is listed where it has a 90 per cent or greater interest in the other entity. Otherwise, an entity will be linked to another entity where it has a 50 per cent or greater interest in the other entity.

The minister can see why I am confused. We are discussing whether entities are linked —

**Mr D.C. Nalder:** That is just defining what a subsidiary is.

**Mr W.J. JOHNSTON:** Okay, a subsidiary.

**Mr D.C. Nalder:** The 90 per cent and 50 per cent refers to the difference between a listed and an unlisted company. It is 90 per cent when it is a listed company and 50 per cent when it is an unlisted company.

**Mr W.J. JOHNSTON:** If an unlisted company has a 50 per cent share in another company, it is a subsidiary, but if the subsidiary is listed, then a company has to have at least a 90 per cent share because, I assume, the federal Corporations Act 2001 allows a company to move to complete control once it gets to 90 per cent.

**Mr D.C. Nalder:** That is correct, and that is where the current Duties Act is pitched.

**Mr W.J. JOHNSTON:** I am sorry, but I am not a land tax expert, although I try to understand the words presented to us by the government. If an entity has land and it sells the land but the sale has not been completed, the tax liability has not yet come into force. However, if at the same time the entity itself is sold, the sale of the entity will not be taxed because the government is waiting for the sale of the land.

**Mr D.C. NALDER:** No, that is not quite right. It is not as complicated as that. Subsidiaries move in and out of an organisation and some have been processed and some have not been processed at any given point of time. We want to make sure that we capture the correct amount of duty on that specific land and that we are not double-counting on some that are moving out that have not yet been processed because we are taking a global

position of the overall corporation when assessing its dutiable value. When assessing duty, that point in time must be taken into consideration. However, some transactions are in train or on the way through, so we are trying to deal with the ones in train so that they do not get caught up and we basically capture the tax twice. We are trying to stop capturing it twice. We are trying to be legitimate and genuine to the corporations.

**Mr W.J. Johnston:** I am not going to ask another question, but while the minister is on his feet: surely a transaction takes place at a particular moment in time; it is the duty at that moment in time.

**Mr D.C. NALDER:** The problem is the transaction might be when parties have shaken hands on the deal versus when it has been processed by the state. It is that gap—we are trying to ensure we do not unfairly capture people and force them to pay tax twice.

**Clause put and passed.**

**Clauses 26 to 28 put and passed.**

**Title put and passed.**

*Third Reading*

**MR D.C. NALDER (Alfred Cove — Minister for Finance)** [3.41 pm]: I move —

That the bill be now read a third time.

*Point of Order*

**Mr W.J. JOHNSTON:** The bill was amended; I understand that it cannot be third read.

**The DEPUTY SPEAKER:** The house passed a motion yesterday to allow bills to proceed without delay. The minister has moved that the bill be now read a third time. Is leave granted?

**Ms R. Saffioti:** No; we do not need leave.

*Debate Resumed*

**MS R. SAFFIOTI (West Swan)** [3.42 pm]: I rise to speak at the third reading stage of the Taxation Legislation Amendment Bill (No. 2) 2014. I have 30 minutes; look at that! I understand that the member for Mandurah will rise to make a significant contribution at this third reading stage.

**Mr D.A. Templeman:** It will probably be more substantial than my second reading.

**Ms R. SAFFIOTI:** Probably more substantial, if possible, than his second reading contribution, which we all recall was —

**Mr D.A. Templeman:** A 10-word speech!

**Ms R. SAFFIOTI:** — significant and one of the most comprehensive and heartfelt contributions I have heard in this place!

The Labor Party has facilitated the passage of this bill through this place this week. I understand that there is absolutely no way it will get through the upper house this year. As the member for Cannington has just told me, it is not actually on the list of priority bills in the other house. I am sorry to say that Repeal Week fails again! I refer to the Premier's statement yesterday when he talked about Repeal Week being such a significant and momentous occasion in the life of this government, so much so that pretty much as soon as he read out the significant contribution to public debate in this state, the Repeal Week ministerial statement —

**Mr W.J. Johnston:** He tweeted a photo and left!

**Ms R. SAFFIOTI:** He tweeted a photo of himself on the tarmac as he jumped into the government jet and flew off to another place. He felt that Repeal Week was such a significant event in public policy in Western Australia that he jumped on the plane a few minutes after he read out that ministerial statement during Repeal Week!

The Labor Party supports this legislation because it brings some fairness back to primary producers, primarily in my electorate of West Swan and in my good friend the member for Swan Hills' electorate. The bill brings some fairness back to primary producers who historically received an exemption. My good friend the member for Swan Hills has come back into the chamber. Member for Swan Hills, I was just talking about you!

A member interjected.

**Ms R. SAFFIOTI:** The member for Swan Hills has to get into his chair before he responds.

**The DEPUTY SPEAKER:** Order, member! Please address the house from your chair.

**Mr F.A. Alban:** I started to worry when the Speaker mistook me for you!

**Ms R. SAFFIOTI:** When the Speaker confused us, I asked: who should be more worried? Obviously, the member for Swan Hills was very worried about being referred to as the member for West Swan and I was very worried because that would have meant I had been called to order twice! Members know how I hate being called to order in this place.

**Mr F.A. Alban:** He was right the first time when he called you!

**Ms R. SAFFIOTI:** No; I was silent so I knew it could not have been me that time, member for Swan Hills.

These changes bring some fairness back. They bring back what was a historic and fair exemption for primary producers. That is what triggered this legislation. Let us be very clear about this legislation. It was triggered in 2012 when the Commissioner of State Revenue does what all commissioners do—he scoured the land looking for any revenue that the Office of State Revenue should be picking up that it had not already picked up. It looked for any revenue that it should be collecting but was not collecting. I always found it interesting in government that for every tax officer employed, the state received millions of dollars in extra revenue. It is a very interesting issue. During each budget process, the Minister for Finance will bring forward an expenditure-plus-revenue measure. Ten extra compliance officers will generate tens of millions of dollars, sometimes hundreds of millions, in extra revenue. I always wondered why the Office of State Revenue was not triple its size because state collections would be a lot higher. That is an aside; it is not the point.

In 2012, the Commissioner of State Revenue sought and received advice on possible areas it could collect more revenue from. The office found the primary producer exemption. The legislation was interpreted. It found that the Office of State Revenue could tax primary producers a little more. That is what started this legislation. Therefore, when the Premier stood yesterday and said that as part of Repeal Week the government would bring in the Taxation Legislation Amendment Bill (No. 2) 2014 to modernise and simplify legislation, that was not the case. We all know that is not the case. The whole process started in 2012 to try to correct an interpretation given by the Commissioner of State Revenue in relation to primary production. It had nothing to do with Repeal Week. I am sad to say that I think this whole Repeal Week media-sponge strategy of, “Let us try to get all these questions, we will call it Repeal Week”, in trying to give this week a name has failed.

**Mr D.A. Templeman:** It has failed dismally.

**Ms R. SAFFIOTI:** It has failed dismally because basically trying to dust off any legislation that might exist under the banner of Repeal Week just does not work. I think the government forgot about Repeal Week; I do not think it was in the government diary! The fact that it was not printed in the government diary was probably not noticed until last week when the government suddenly realised it had committed to having Repeal Week each year. That is why the only legislation the government has brought in in Repeal Week creates more laws and regulations; the government never planned properly for Repeal Week. It is with great dismay that I note once again that the government’s spin machine, the government media team, has been running the government’s agenda. As I said, this Premier was so keen on Repeal Week—so keen on cutting red tape—that two minutes after he read that ministerial statement he got on a government jet to go over east to try to impress some overseas dignitaries. It is a pity that they are not visiting Western Australia as part of the G20 activities.

**Mr W.J. Johnston:** They are going to Tasmania.

**Ms R. SAFFIOTI:** They are going to Tasmania, and given that we have a federal Minister for Foreign Affairs from WA, one would have thought that a visit to WA from one of the significant leaders could have been secured. I remember when Chinese Premiers visited WA every year, but that is not the case now.

**Mr F.A. Alban:** He could be trying to get some of our GST back.

**Mr W.J. Johnston:** From the Chinese?

**Ms R. SAFFIOTI:** The Chinese will not give it back to him!

**Mr F.A. Alban:** From Tasmania.

**Ms R. SAFFIOTI:** He can try. I saw the member for Swan Hills campaigning for an Abbott government that has given us the lowest share of GST in the state’s history.

**Mr F.A. Alban:** I am out there a lot, member.

**Ms R. SAFFIOTI:** The member for Swan Hills was out there campaigning for the election of an Abbott government that promised not to cut our GST and now it has given us the smallest share of GST —

**The DEPUTY SPEAKER:** Order, member for West Swan! The third reading debate needs to be confined to the bill and the matters discussed in the second reading debate. You are rather straying.

**Ms R. SAFFIOTI:** Yes, I am talking about Repeal Week and I understand that this legislation was brought in because of that. I was taking an interjection from the member for Swan Hills who brought the GST argument into this debate.

**Mr F.A. Alban:** I thought it was a good one myself!

**The DEPUTY SPEAKER:** Members, I did not, so can you please return to the third reading debate.

**Ms R. SAFFIOTI:** Maybe we can have this conversation outside some time.

**The DEPUTY SPEAKER:** That would be a good idea.

**Mr F.A. Alban:** Otherwise we will both be called simultaneously!

**Ms R. SAFFIOTI:** That will confuse the Deputy Speaker, because they always get us confused, do they not, member for Swan Hills?

**Mr D.A. Templeman:** Only your mothers can tell you apart!

**Ms R. SAFFIOTI:** It is like that Arnold Schwarzenegger film *Twins*!

**Mr R.F. Johnson:** You are not really, are you?

**Ms R. SAFFIOTI:** Twins?

Several members interjected.

**The DEPUTY SPEAKER:** Order, members!

**Ms R. SAFFIOTI:** He is northern Italian and I am southern Italian; we cannot get more different than that, I can assure the member for Hillarys!

**Mr R.F. Johnson** interjected.

**Ms R. SAFFIOTI:** Yes.

As I said, we support the legislation. It will make things fairer for primary producers in my electorate that undertake secondary processing. They will also be reimbursed under the legislation, which I am sure they will be very, very happy about. The Deputy Premier is back.

**Dr K.D. Hames:** And?

**Ms R. SAFFIOTI:** I am just noting it.

**Mr W.J. Johnston:** Our lives are now complete!

**Ms R. SAFFIOTI:** My life is happier, Deputy Premier!

**Dr K.D. Hames:** I forgot I organised a really important meeting just when I needed to be here! I stuffed it up.

**Ms R. SAFFIOTI:** Does he not hate being Deputy Premier?

**Dr K.D. Hames** interjected.

**The DEPUTY SPEAKER:** Order, members! I think the Christmas cheer is starting to get into everybody. Please, we are doing a third reading debate, member for West Swan.

**Ms R. SAFFIOTI:** I do not mind about four o'clock; I am not running the place, I do not really care.

I am just going through to summarise.

**Mr D.C. Nalder:** We can wrap it if you want.

**Ms R. SAFFIOTI:** Yes, I am just going to —

**Mr W.J. Johnston:** I have to speak!

**Ms R. SAFFIOTI:** The member for Cannington wants to speak too.

I was just highlighting some of the key points about the legislation that we found out through the debate. As I said, we found out that nine producers will be very happy to be reimbursed a total of \$440 000 from over the last two years. We also found out something interesting about the mining tenement issue; that is, basically, hundreds of million dollars are at risk in relation to some of the challenges being put forward in trying to separate information from the lands it is intrinsically linked to. The one-third income test is being removed, which, as I said before, is supported by many of the grapegrowers in my electorate.

There is a key issue that is still of interest and concern, which is something to not only recognise in this debate, but also look at in debates next year, particularly when we look at the future of the Swan Valley Planning Act. It

is a pity that the Minister for Planning is not here, because he has coined the phrase “pop-up farm” and he wants to see them happen throughout the Swan Valley. This Minister for Planning has gone crazy. He has pop-up bars happening and now he is going on to pop-up farms!

**Ms M.M. Quirk:** It will be pop-up RBTs next!

**Ms R. SAFFIOTI:** Yes.

There is the whole concept of trying to improve commercial activity when undertaking small-scale agricultural production that may eventuate in a longer term commercial business; however, in the medium term, how can it be proved that the venture is not just a hobby farm but something that will be worthy of a land tax exemption? That will be interesting to watch, particularly in the Swan Valley where there are a number of vacant lots and there is a keenness to ensure that those lots are not allowed to basically waste away. We are trying to encourage smaller scale production of a variety of types of agriculture, but how that is to be done in a way that demonstrates commercial activity, instead of it just being a hobby farm, will be very interesting.

As I said, they are the key points. I have already spoken about the one-third income test. I looked at some of the issues with transitional periods. Another key change, of course, was in relation to duties and the definition of “subsidiary organisations” and ensuring that the government is not double dipping.

The other key point I was trying to refer to was the changes to retirement villages that were instigated as a result of the State Administrative Tribunal decision of November 2003. We will see how that unfolds. As I said, it appears that only one organisation has been affected, which is in the member for Swan Hills’ electorate. There is a retrospective element of bringing partial exemptions back to 2013. They will be allowed so that organisations cannot challenge for full exemptions in the future.

As I said, it is a very interesting bit of legislation. It has nothing to do with Repeal Week, but if that is the joke, we will go along with it, which we have to do because we are in opposition so we do not get to choose the legislation before us. This is an interesting bit of legislation that was instigated after the commission started requiring land tax to be paid by grapegrowers turning the grapes into wine in the Swan Valley. That is how the whole thing was instigated. It has absolutely nothing to do with Repeal Week. As I said, I can see government members meeting a couple of weeks ago and saying, “My goodness, aren’t we meant to have Repeal Week each year?” Yes, I think the government did commit to that and so it dusted off a bit of legislation, got some dorothy dixers planned, and that was the extent of Repeal Week. I have pretty much finished my third reading contribution. The member for Cannington loves this. The member for Mandurah is standing.

**Mr W.J. Johnston:** No, bugger him!

**Ms R. SAFFIOTI:** Who am I throwing to? It is like live TV. The member for Cannington is about to make his contribution.

**MR W.J. JOHNSTON (Cannington)** [3.59 pm]: I think this is the second time that the member for West Swan has done this to me.

I want to make some remarks about the Taxation Legislation Amendment Bill (No. 2) 2014. Consideration in detail was an interesting process. We got some answers from the minister. I thank the minister for being interested in answering questions. I contrast that with the previous time we dealt with the minister when, for whatever reason, he was not prepared to answer questions. It is obviously a lot easier when the minister answers questions. There was no aggro or unpleasantness at all because he was treating seriously the questions we were asking, which were all asked in good faith. The member for Gosnells dealt with an issue of quite some substance. The minister did not agree with his assessment.

Debate adjourned, pursuant to standing orders.