

STANDING COMMITTEE ON LEGISLATION

TAXATION LEGISLATION AMENDMENT BILL 2014

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 30 OCTOBER 2014**

SESSION SEVEN

Members

Hon Robyn McSweeney (Chair)
Hon Sally Talbot (Deputy Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Lynn MacLaren

Hearing commenced at 2.52 pm**Mr MICHAEL ALLEN****Executive General Manager, Corporate Services, Engineers Australia, sworn and examined:**

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witness took the oath.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Mr Allen: Yes, I have.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr Allen: Engineers Australia does welcome the opportunity to contribute to this debate surrounding the bill. Engineers Australia is constituted under royal charter. It confirms that our purpose is to advance the science and practice of engineering for the benefit of the community. Consistent with this purpose, and with the Western Australian community in mind, Engineers Australia elected to make the submission that we made. We believe that the bill will have unintended consequences for the Western Australian community and economy. We are concerned that by making Western Australia less attractive for certain charities to operate, it can only have a negative consequence on the Western Australian community. However, Engineers Australia wants to make it clear that we are committed to having an on-the-ground presence in Western Australia. Even if what we consider to be an unfair outcome—being us having tax obligations in Western Australia—came to bear, this would not alter our commitment to the Western Australian community. Finally, we would like to reiterate that Engineers Australia, like all charities, is a not-for-profit organisation that neither provides financial benefit to its members nor would distribute a financial benefit to its members if it was wound up. Our limited resources are used solely for the pursuit of our charitable purpose and any tax obligation imposed will only serve to limit our ability to achieve that purpose.

The CHAIR: Thank you. I guess if you could just broaden out what is the role of Engineers Australia and who you represent.

Mr Allen: We see ourselves as the national forum for the advancement of engineering and the professional development of our members.

The CHAIR: Is Engineers Australia or any related body a fourth-limb charity currently exempt from the state taxes under the three state taxing acts the bill proposes to amend?

Mr Allen: Sorry; I had not quite finished what I was going to say then.

The CHAIR: My apologies.

Mr Allen: That is okay.

With over 100 000 members embracing all the disciplines of the engineering team—unlike a lot of engineering associations around the world which just do mono-disciplinary, we are a multidisciplinary association—we are a very diverse professional body. It is important to restate, as I have already said, that we exist solely to deliver on our charitable purpose, which is to advance the science and practice of engineering on behalf of the community. Our purpose does not include the representation of or the promotion of the interests of our members. This is very important; I will come to it a little bit more.

To respond directly to your question who we represent—that is a key part of the question—we represent the Western Australian community in matters where our engineering expertise enables us to make a valuable contribution to community outcomes. Engineers Australia undertakes a range of advocacy work, specifically in the engineering domain. Our flagship product, which you may have heard of, is our “Infrastructure Report Card” that is released every five years. They provide a detailed analysis of the state’s and the country’s infrastructure and provide policy recommendations to ensure government and taxpayer value is maximised from engineering-intensive infrastructure delivery projects. This project, the “Infrastructure Report Card”, is independent and is entirely funded by Engineers Australia to ensure its impartiality and public confidence in our outcomes. We regularly lodge submissions to parliamentary and departmental inquiries across all states and territories in Australia with the intention of providing government with advice and guidance on matters and issues in the engineering domain. For example, our 2012 publication of the report “Government as an informed buyer”, launched in WA by Senator Chris Back, provided advice and guidance on how governments could better harness the collective expertise of the engineering profession to achieve procurement outcomes and budget savings.

Again, all our advocacy activities are funded internally to ensure that our impartiality is maintained and that the community has the utmost faith that we are serving their interests without any hidden agendas or unseemly bias. Of the 33 submissions we have prepared this year, none covers matters that are exclusive to our membership and all are guided by our royal charter mission of serving the profession through service to the community. Our motivations are simple. We will do our best to inform the community of the role of engineering and to work to ensure that Engineers Australia is the trusted voice of engineering in this country. Just to push the point a bit further—I need to emphasise this—sometimes in advocating for the community, it can be to the detriment of our members. By way of an example—there are a number that I could quote, but this is probably one of the ones that is most topical these days—Engineers Australia remains an advocate for skilled migration, including in the engineering context. This advocacy is arguably not in the best interests of a lot of our members, given it creates additional engineering supply in the community and therefore can affect the livelihood of our members. The current economic climate right now for consulting engineering is the worst it has been in 20 years. Engineers Australia believes, though, that skilled migration is of benefit to the Australian community as long-term engineerings of Australia will not be met without it.

The question which flowed was: is Engineers or any related body a fourth-limb charity currently exempt from state taxes under the three state taxing acts the bill proposes to amend? Sorry; I am kind of jumping ahead. I apologise if I am doing the wrong thing.

[3.00 pm]

The CHAIR: No; that is fine.

Mr Allen: Engineers Australia is exempt from payroll tax in WA. When notified of our exemption from payroll tax, we were not notified of the actual head of charity we were being exempted under.

It is possible, and perhaps even likely, that the exemption has been provided under the fourth limb or because we have been recognised as existing for the advancement of education. We are quite involved in the education sector through the accreditation of university courses, but also advocate very strongly for stem-based education and also work hard with government to try to increase funding of university training in the engineering space.

Hon DONNA FARAGHER: Can I just ask how long have you been receiving that exemption for? Do you know? You might need to take that on notice.

Mr Allen: No; I can answer that question. We were granted exemption in the last 12 months or so.

Hon DONNA FARAGHER: So prior to that, you had some tax obligation.

Mr Allen: That is correct.

Hon SALLY TALBOT: You say that the notification did not specify which limb you had been classified as.

Mr Allen: That is correct.

Hon SALLY TALBOT: Did you ask?

Mr Allen: We did not actually. We accepted the fact that we were exempt. We obviously had made the argument that we came under the fourth limb, but we also made an argument that we were —

Hon SALLY TALBOT: So your application was as a fourth-limb charity?

Mr Allen: No, not specifically. We had argued, I guess, that we were involved in the education sector—we were advancing education—but also our charitable purposes were very clear and would fall under the fourth limb. We were not advised by the Treasury—I think the Treasury is the right body—of the basis on which the exemption was granted.

Hon DONNA FARAGHER: I am sorry; I just want to get some clarity here, because obviously part of the reason why this legislation is now before us is in respect to some decisions regarding the CCI. I am not trying to draw you into the CCI, but you have talked about how you do work in terms of submissions, advocacy and the like. A number of professional associations would do that in any course of event. You have mentioned briefly about some work with the universities, but I am keen to know that charitable aspect a little bit more. Can you provide a little bit more detail on that, because obviously that is very much what we are looking at here? I am presuming that that is very much on the basis as to why you have got an exemption now. There must have been that argument put and they have accepted it.

Mr Allen: One of the strong arguments put in the process—probably the strongest argument and probably the argument that I am most keen to leave with the committee today—would be that Engineers Australia is not a body having as one of its objects the promotion of the interests of its members. It is not a member-focused organisation. There are professional associations that are member focused and deliver primarily services to members and exist for their members. Engineers Australia is not one of those; Engineers Australia actually exists for the community and for the benefit of the community. When I talk about that you can see, when you look at all the activities that we undertake, only a small number would overall relate to delivering benefits directly back to our membership. Overwhelmingly, we are in the public space. There are benefits that accrue to membership just by virtually being involved by engaging in our activities, supporting our educating in schools programs. We run a program called EngQuest. It is the largest school program in the country, where we have engineers, or volunteers from Engineers Australia, who go to schools to help schools implement this EngQuest program. It is all about elevating STEM-based activities within the curriculum. I do not know whether I have addressed that question.

Hon DONNA FARAGHER: I suppose I am asking for a couple of examples outside of preparing submissions and report cards that actually have a wider —

Mr Allen: A wider application or sort of a community focus?

Hon DONNA FARAGHER: In terms of education that covers the aspects that we are dealing with. Education you have mentioned.

Mr Allen: Yes. We have a number of things to do. We call it Australian Engineering Week—you may be aware that that happens once a year; I think it is in August. That is a big community education engagement program trying to show the community how important engineering is, how important it is to invest in it, why you can trust it, and we try to engage the community in engineering. I am running through the various things that we do. We do a lot of what we call public education seminars, whether it is specifically about engineering or more about, say, business-related things such as employment law or whatever. They are open to the public, and often they are charged exactly the same rate as a member or a non-member would pay. I wonder if I am kind of starting to give you a bit more of a flavour of Engineers Australia.

Hon DONNA FARAGHER: That is helpful. Thank you very much.

Hon LYNN MacLAREN: I just want also to find out more about your organisation. What percentage of engineers would belong?

Mr Allen: Of professional working engineers at the moment?

Hon LYNN MacLAREN: Yes.

Mr Allen: Around about 30 per cent I reckon.

Hon LYNN MacLAREN: That is a good take-up.

Mr Allen: The data is not that clear from the census data. We cannot really nail it, but we believe we have about 30 per cent of the professional engineering workforce as membership of Engineers Australia.

Hon LYNN MacLAREN: Do you have charitable tax-exempt status in other states?

Mr Allen: Yes, we are payroll tax exempt in all states and jurisdictions around the country. We are also an income tax charity under the Australian Taxation Office.

Hon LYNN MacLAREN: Thank you.

Hon SALLY TALBOT: You talked about the fact that only a very small portion of your activity is directed at promoting the interests of your members. What exactly do you do to promote their interests?

Mr Allen: That is a really good question. One of the challenges I have, as the financial controller of the business, is developing a business model that works, because we deliver benefits to the community of which often the benefits to the members—I guess the benefit of being part of it accrues as a secondary benefit or secondary outcome. Our members do enjoy being kept up to date with information. We provide information to our members, whether it is by networking kind of events or whether it is by preparation of articles, the *Engineers Australia* magazine, which is seen as a key sort of source of technical knowledge. As part of Engineers Australia we have these things called technical societies, which exist almost as separate entities—they are not; most of them are actually part of Engineers Australia. However, they have a real sense that they are completely distinct. They are usually very discipline focused. That is a networking place for engineers in a particular industry or discipline, or not even engineers. Quite often it can be scientists or other people engaged in that particular industry. There is no requirement to be an engineer to participate in those technical society groups. That is another way that we engage with the broader community through those technical societies.

Hon SALLY TALBOT: Do your members pay a subscription?

Mr Allen: Yes, they do.

Hon SALLY TALBOT: How much do they pay?

Mr Allen: Their membership due is about \$500 a year.

Hon SALLY TALBOT: Do they claim a tax exemption on that subscription?

Mr Allen: I would assume they would claim a tax deduction for it. I cannot speak for them, but, yes, a lot of them would be doing that. It is part of them being professional engineers that they are engaged with their profession.

Hon SALLY TALBOT: That would not be claimed as a charity donation?

Mr Allen: No; we do not have DGR status, so we cannot issue tax deductible receipts for donations.

Hon LYNN MacLAREN: One of the things that you do issue is standards bulletins to advise people in the profession about standardised methodologies, measurements and that kind of thing.

Mr Allen: Yes; we provide guidance notes and those kinds of things. We are in the process of evolving those more formally. Yes, we do provide some advice in that space, and it is used quite widely. It is not a big part of what we do, though. It is just one of those things that in terms of our resources are not massively engaged in producing, but I do often hear that they are being used quite widely.

Hon LYNN MacLAREN: Yes, I have seen them around. Did you mention accreditation of—what—certificates?

Mr Allen: We accredit university degrees as part of maintaining arrangements. Engineers Australia is a signatory to a number of international accords. One of the features of accrediting a university course is that by accrediting it, it is up to the right standard, covering the right materials. We can then say, “Yes, that’s an accredited course and, by the way, it meets all the requirements of those international accords”, which, hopefully, translates to international mobility. That means if you want to go to Dallas, London or wherever, you can do so much more easily. We have that accreditation for those international accord works, but also for becoming a member of Engineers Australia. It also plays into the national registrations or state-based registrations that do exist.

The CHAIR: You strongly object to the bill as this could see fourth-limb charities lose exemption from state taxes. In your view, would the effect of the bill be to deny any current taxation exemption applying to Engineers Australia?

Mr Allen: What question is that?

The CHAIR: That is question 3, dot point 1.

Mr Allen: If Engineers Australia would, as we believe, remain entitled to its exemption from payroll tax, then the impact on Engineers Australia would be zero. We are concerned, though, that the wording of the bill in terms of defining a professional association has a problem with it. The problem is that a professional association is defined not only by its objects, but by its activities. What we are concerned about is that through a bureaucratic process—some of our activities do provide a benefit to our members; overwhelmingly we are delivering services to communities but, like anything, some of what we do looks and feels a bit more like a benefit to a member—we could be interpreted as being an organisation that is tainted by those activities and we would lose that sense of our overall charitable purpose. In other words, if the small part of businesses are representative of the whole, we would be challenged by a bureaucrat as to whether or not we were complying with being a professional association under the terms of this bill. This is where we are concerned. What we would like to see is the activities dimension removed because the activity is where we believe we could get unstuck, even though we are confident that when you look at our activities carefully, you will find that we do meet the charitable purposes test whatever way you

look at it. But, from a cursory look, you may well get the impression that that is not the case, and that puts us in a position where we have to do a lot of work to persuade and convince otherwise.

The CHAIR: Can you name the types and names of fourth-limb charities that you consider will be excluded from tax exemption under the bill because of the meaning of “professional association” in the bill?

Mr Allen: I do not really know the other organisations.

Hon SALLY TALBOT: We have a number of questions, as you have probably seen, probing the extent to which you might be an advocate for other professional associations. Is that something that you are prepared to venture an opinion on?

Mr Allen: Not particular associations. I would be prepared to say that the tests that are already enshrined in the way the law is structured probably work for professional associations. In other words, if the association is established to service the interests of members, that pretty much rules it out from being a charity. However, if it is established to primarily service the community, like Engineers Australia is—a strong public good emphasis—that would most likely bring it under that charitable head. I think that works.

Hon SALLY TALBOT: Perhaps the problem for you is that the proposed inclusion of (c), which you can see up on the screen there, does not talk about major purposes or primary purposes. It says “having as one of its objects or activities”.

Mr Allen: That is right. So you could taint or contaminate a whole organisation just by having a small part of what you do. I suspect there will be a lot of organisations, if you use that kind of test much more broadly than just professional associations, that would fail.

Hon SALLY TALBOT: I think that is useful, Madam Chair, just clarify that, because we have a couple of questions to other groups.

The CHAIR: What would be the financial operational impact of the bill, if enacted, on your organisation?

Mr Allen: Because we have only been granted the exception recently, we were paying about \$50 000 a year in payroll tax.

[3.15 pm]

The CHAIR: Are you able to comment on the financial and operational impact the bill will have or may have on other professional bodies?

Mr Allen: No.

The CHAIR: Sorry, I thought you did.

The bill proposes to amend three state taxation acts—the Duties Act, Land Tax Assessment Act and Pay-roll Tax Assessment Act. Does the amendment to any of these acts in particular impact on your organisation?

Mr Allen: The one that has an immediate impact would be the payroll tax. Engineers Australia owns its own property in West Perth and, certainly, at some point we will probably look at selling and moving, and that would incur some additional costs if we had to pay some of those duties and taxes that are attached to those major land transactions. But at the moment, it is the operating cost—the payroll tax—that would hit us immediately.

Hon DONNA FARAGHER: How many staff do you have here in WA?

Mr Allen: Probably about a dozen to 15. If that is incorrect, I will send back a revision. That is an estimate.

The CHAIR: You describe the definition of a “professional association” in the bill as a most narrow and misleading definition that grossly misstates your and other professional associations’

role. What terms in particular do you object to on the basis that it excludes fourth-limb charities, and could you propose an alternative definition?

Mr Allen: It was pretty strong language we put in our submission and I think that we described it as narrow and misleading because it assumes that all professional associations exist predominantly to provide benefits to their members. This is not so. Engineers Australia cannot be characterised in that way, and that is one of the reasons we have been able to get payroll tax exemption around the country. We have income tax exempt charity status because we do focus on the broader community. I think that would be the answer I would give.

The CHAIR: You may be aware that the government has tabled a supplementary notice paper that proposes to amend the bill to provide that a public benevolent institution and a body, the main purpose of which is a public benevolent purpose, is not a relevant body. Will this amendment in any way address the issues you have described?

Mr Allen: No, it does not. It is not really relevant.

The CHAIR: How did I know that would be the answer?

Do you want to comment on the proposed two-stage beneficial body determination that may reinstate tax exemption if the minister, with the Treasurer's concurrence, is of the opinion that it is in the public interest to do so?

Mr Allen: Yes. The fact that Engineers Australia may be required to go to the High Court or surrender its appeal rights is unfair and unreasonable. It is unfair and unreasonable that a charity would need to either incur the costs of a High Court appeal before applying to the minister in lieu of surrendering the rights that every taxpayer in Western Australia is presently entitled to. We are also concerned—this is a comment I make not as an expert in law or process—that it seems to have no grounding in what I understand legal precedents to have. It would be unusual to see minister overturn a decision of the High Court. I do not really see how that would happen. Tax exemptions at the whim of the minister of the day, as my notes here say, would not be an ideal outcome.

The CHAIR: On behalf the committee I would like to thank you for appearing before us today, noting the long distance that you have travelled.

Hearing concluded 3.18 pm
