WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 18: Alternate members —

Debate was interrupted after the clause had been partly considered.

Mr R.H. COOK: Before the break we were examining this clause about alternate members. It is very pertinent in the context of clause 11, which we have already considered. Clause 11 deals with the balance of people on the board of the new entity to replace Healthway. The clause demands that at least one member of the board have knowledge of and experience in the arts, at least one member have knowledge of and experience in health, and at least one member have knowledge of and experience in sport. I was left with the impression that, under that clause, a person would be appointed to the board pursuant to those provisions. For instance, the minister will, by decree or by appointment, say, "I appoint Joe Bloggs to the board of the new entity pursuant to section 11(2)(a) of the Western Australian Health Promotion Foundation Act." In the context of clause 18, we discover that that is not in fact the case. All that is required is for the minister to cast an eye over the assembled board and say, "I think Joe Bloggs over here met a doctor once, so he is sufficiently versed in the issues of health to satisfy the requirements of section (11)(2)(b)." It is great that he is also a lawyer and has a degree in marketing, which is what the minister is really interested in, but that is okay because he met a doctor once and now the minister is satisfied that he meets all the requirements of someone who has knowledge of and experience in health.

In the context of clause 18, if an alternate member is being appointed to replace someone on the board, does that person have to be replaced with a person with the skills and background that clause 11 requires? The minister has explained that that is not, in fact, the case. The minister need only be satisfied that only one member of the board, regardless of what the minister had in mind when that person was appointed, needs to have any sort of health qualification. The situation may arise in which a particular issue, about which a sporting body has a particularly strong view, is being pursued by the board of the new entity. Then, a member of the board falls ill. That member may initially have been appointed on the basis of strong knowledge of and experience in health. An unscrupulous minister—as we have detailed at length in the second reading debate and during consideration in detail, "unscrupulous" is a good way to describe the behaviour of the government in the lead-up to this legislation—might then see this as a great opportunity for him to tip the balance in another direction. The minister might then say, "Although Joe Bloggs was on the board because he had expertise in health, this other member has some expertise in health, so that satisfies that part of the act, so I'm going to appoint another sportsperson." We can see how the minister has carefully crafted this part of the legislation so that the board is open to as much manipulation as possible. It would appear to me to be very open to abuse. Given the performance of this government, we ask whether that is the very intent of the clause. Can the minister please explain to us how the alternate member clause will apply in the context of clause 11, and how he will ensure that those appointed to the board, for example, under clause 11(2)(a), will be replaced by alternate members in the same fashion?

Clause put and passed.

Clause 19 put and passed.

Clause 20: Quorum —

Mr R.H. COOK: I intend to talk about this clause at some length, because the minister does not seem inclined to engage with us anymore in this particular debate.

The ACTING SPEAKER (Mr P. Abetz): Members, there are too many conversations taking place in the chamber. Can you please either go outside or lower your voices, thank you.

Dr K.D. Hames: I said all those things before and answered all those questions before.

Mr R.H. COOK: The minister made no such gesture to answer them at all. All we have had from the minister is obfuscation and "trust me" dialogue, and "this is in the old act". We have not actually heard any explanation of the minister's behaviour before this dreadful legislation was brought forward, and what we are getting from the minister ever since is "trust me" rhetoric, which, quite frankly, we are not inclined to do, given the minister's behaviour. I must say that that is not fair. It is not so much about this minister; it is the gentleman who would normally be sitting behind him, because we know this minister was pushed aside because of political expediency by the government. He was told, "Out of the way; out the door you go."

The ACTING SPEAKER: Member, we are dealing with clause 20.

Mr R.H. COOK: He was told, "Out the door you go, Minister for Health, because we now are going to do a job on your colleagues in Healthway, and we are going to put you on the sidelines."

The ACTING SPEAKER: Member, I am going to sit you down if you do not address the clause.

Mr R.H. COOK: The question that must be asked about clause 20 is: Are four members of the board sufficient to maintain the balance that this minister has so obliquely set flapping in the four winds for the sake of political expediency? Are four members enough to guard the balance of the board? For instance, only one person on this board, we understand, will have knowledge of health; only one member of the board will have knowledge of and experience in sport; and only one member of the board will have knowledge of and experience in sport. We can see that the stage is set for the minister to stack the board in the manner that he sees fit, ensuring, as he would, that the other four members come from other sectors of the community. I take it, by the minister's silence on clause 18, that we are on to something here. The minister would be very happy to sideline the special interests that he has already described as being unworkable and dysfunctional, and the cause of this legislation in the first place. From that point of view, four members could make a decision about the policies of this group without any of the special interest groups being there at all. From that point of view, I ask the minister why he decided on a quorum of four members, when that could lead to a situation in which no-one with knowledge of or experience in sport or health need even be in the room.

Dr K.D. HAMES: The member is wrong on two counts—firstly, that we decided that the quorum should be four. A quorum is always one more than half the number of members on a board. Given that there are seven members, that automatically makes the quorum four. I get the picture that the member is trying to paint, but I ask that he let me tell him what I intend to do. First, the bill states "at least one", not "only one". As I said before, it is my intention to have two board members representing each area.

Mr R.H. Cook: We have seen your intentions at work, through the hand of the Premier.

The ACTING SPEAKER: Member, you can get up and ask another question after the minister.

Dr K.D. HAMES: I said that it is my intention to have two, and in fact it is my intention that the chair be from one of those three groups. It is critically important, because those are the areas in which funding distribution is being decided, that the presiding officer be from one of those three groups. That is my intention, and it is also my intention to have two members with a health background, two with an arts background and two from sport. Of course, we need to look at the applications that come forward before that gets finalised, but at this stage that is my intention. Remember once again that there will be no direction by government on the decisions of the board. I think the member is clearly looking for problems and potential difficulties that do not exist.

Ms J.M. FREEMAN: Could the minister clarify that four members constitute a quorum and members include an alternate member, or must it be an appointed member?

Dr K.D. HAMES: It must be four members who are appointed. One of those appointed members might become an alternate member if one is on leave. We have been on that before. There must be four members at any one time for the foundation to be able to make decisions.

Ms J.M. FREEMAN: That has not clarified the matter for me. The minister will have to explain what he means by that. Clause 11(2) states "Of the 7 members", and clause 11(1) states that the foundation consists of the presiding member and six other members appointed by the minister. Clause 11 also provides that the seven members must be involved in the fields that are mentioned in paragraphs (a), (b), (c) and (d). The bill later on allows for the appointment of alternate members, at clause 18. My question is: is the quorum made up of only the people appointed under clause 11—so, four members appointed as per clause 11—or is a quorum also made up of people appointed under clauses 11 and 18?

Dr K.D. HAMES: I ask the member to go to clause 18, which we have covered and which states at subclause (3) —

> While acting in accordance with the appointment, the alternate member must be taken to be, and to have any entitlement of, a member.

That means that an alternate member becomes a member. They are a member in the same way as all the other members; they have the same voting rights. As I said before, if someone is on leave and I need to replace them because there is trouble getting a quorum, I can appoint an alternate member. It is clear that the alternate member would become part of that quorum number. If they are present, they are counted as a member.

Mr R.H. COOK: Could the minister clarify the implication of having a member impacted by clause 31, and if they are present at a meeting but have to be excluded for the purposes of a vote, how would that impact on the quorum?

Dr K.D. HAMES: I am advised that that is covered by clause 33, "Quorum where section 31 applies".

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Holding meetings remotely —

Mr R.H. COOK: I assume this is a new clause, because it refers to the holding of meetings remotely. I seek the assurance of the minister that this also applies to normal practice.

[Interruption.]

The ACTING SPEAKER: Member for Girrawheen, may I suggest you leave your phone outside the chamber in future.

Mr R.H. COOK: I know we are on the issue of Healthway, Mr Acting Speaker, but it is customary that when mobile phones ring in the chamber, the offending member furnish the people in the room in which it went off with a bottle of wine. Given it has happened on three occasions, I take the minister's suggestion that it should be a carton!

Dr K.D. Hames: All in favour say, "Aye"!

Mr R.H. COOK: That should be a new section.

The ACTING SPEAKER: Members, let us get back to work.

Mr R.H. COOK: I have never known a mobile phone to be so recalcitrant.

The ACTING SPEAKER: The question before us is clause 23.

Mr R.H. COOK: I was seeking the minister's assurance, but I notice that it is already part of the initial work.

Dr K.D. Hames: It is already there.

Mr R.H. COOK: My apologies.

Ms J.M. FREEMAN: I have a question about clause 23, which refers to the presence of a "person" at a meeting: is that person a member? Is that what is being said there—the presence of a "member" at a meeting of the foundation need not be by attendance in person? The bill refers to "the Foundation members", and then it provides for "alternate members", but this clause refers to the presence of a "person" at a meeting. Is that just someone who is coming to give a presentation at a meeting and they do not have to do that in person, or does the bill contain a definition that a member is a person and I have missed it? Is there a definition that states that a member is a person? A member is a member of the foundation as mentioned in clause 11(1)(a) and clause 11(1)(b). I refer to clause 11(1)(a), which reads "the presiding member appointed", and paragraph (b), which reads "6 other", but nowhere is there a definition of a member as a person. What does that mean?

Dr K.D. HAMES: It is a good question. I am not sure why "person" is there, but it is for members. It means that only members can vote, so only members can be counted as the ones who vote. That member is clearly a person, and what it is stating clearly—the intent of it—is that they do not have to be there in person; so a person does not have to be there in person.

Ms J.M. Freeman: It states that down below—not being attended in person. You have got that they not be in attendance in person.

Dr K.D. HAMES: I am advised by the solicitor present that that refers to the members.

Ms J.M. Freeman: It doesn't refer to the members; it refers to a person.

Dr K.D. HAMES: No; this clause is about holding meetings remotely. This is all about the health foundation. If the member is talking about the foundation and the foundation having meetings, it is stating that they do not have to be in the same place; they can get together on the phone. There cannot be a meeting that is by definition a meeting of members—sure, other people can be brought in, but that has nothing to do with it. It is stating that they do not have to be there altogether in a room; it can be done remotely. That is what it states, and it relates to proceedings at meetings—meetings clearly of the foundation. So if the foundation people are meeting—who have to be members to be at the meeting—they do not have to be there in person.

Ms J.M. FREEMAN: Although I get that the minister thinks that is what it means, I would question that that is what it means. It does not state that the presence of a member at a meeting of the foundation need not be in attendance in person; it states "the presence of a person". There is no definition of a person in the legislation. It is my understanding that the title of the proposed act cannot be taken as an interpretation of the clause. Maybe the member for Armadale can assist me here, but I understand that when a piece of legislation is interpreted, the title is not part of the interpretation, so holding meetings remotely will not make the interpretation; it is the substantive clause that makes the interpretation. That is my understanding. The member for Armadale has given my bush lawyer capacity the thumbs up again.

Dr A.D. Buti: You're far better than a bush lawyer—far better!

Ms J.M. FREEMAN: Will that be amended in the upper house so that it is clear that it is the presence of a member—that member may be an alternate member—at the meeting and that can be done remotely? Secondly, can the minister tell me whether that means that that person attending remotely can make up the quorum, and does that mean that that quorum could be totally made up of one person sitting in a room and three people being connected remotely by telephone or other means of instantaneous communication, such as Skype, or anything like that? I have had others tell me that I am wrong before.

Dr K.D. HAMES: The lawyer present has advised me that they do not share the member's view. Although it might read better with "member", "a person" means the member; there is no-one else to whom it is referring. In the bill, parliamentary counsel chose to use that wording. We do not have them here to ask why that wording was used as opposed to referring to "member", but that is whom it refers to.

Clause put and passed.

Clause 24: Voting —

Ms J.M. FREEMAN: I have another drafting question. If that is the case and a member means a person at a meeting of the foundation, why does it not state "each person present has a deliberate vote unless section 31 prevents the member from voting"?

Dr K.D. HAMES: It is the same as the previous answer.

Clause put and passed.

Clause 25: Resolution without meeting —

Mr R.H. COOK: I am interested why we have changed this particular clause. For the benefit of members present, the current section states —

> A decision in writing has effect as if it had been passed at a meeting of the Foundation if it is —
>
> (a) signed by at least 8 members; or
>
> (b) assented to by at least 8 members by letter, facsimile transmission, electronic mail or other written means.

We have three lines replacing that stating —

> A resolution in writing signed or otherwise assented to in writing by each member has the same effect as if it had been passed at a meeting of the Foundation.

Obviously, this significantly changes the style and numbers associated with it. It seems to suggest that it requires a different number of members to participate in the resolution. Can the minister advise why the change? I also notice that it states "assented to in writing by each member"; therefore, does it have to be signed by every member or a simple majority of members?

Dr K.D. HAMES: I am told it is by each member, not by a majority. The explanation from parliamentary counsel to the change in that clause is that parliamentary counsel has updated the drafting style of this provision. The words "letter, facsimile transmission, electronic mail or other written means" have been deleted and replaced with a reference that captures all these forms of communication, and possibly new forms in the future. There is no material change to the operation of this provision.

Mr R.H. COOK: I thank the minister for that explanation. Can the minister confirm for us that it would be all right for members to lodge a vote by either a Facebook post or text message?

Dr K.D. HAMES: It has to be something that is recordable for putting in documentation. If members text, we would want something to ensure that it was the member sending it, not someone else sending a text on their behalf. It would need to contain, in some form, the member's signature in a way that could be confirmed by the office that that was, in fact, the member's vote. Whichever way members want to send votes, it could be possibly new forms in the future. Who knows that we will not do thumb prints in the future, scanned and attached to a document—I do not know what they will be, and I do not particularly care to be honest. The reality is that if a member is confirmed as voting—supporting something—so long as it is done in a way that ensures that the person involved is the member who provides confirmation in a recordable and provable fashion, that is the critical essence of the vote.

Mr R.H. COOK: Going back to my earlier question, why do we now require every member to participate in a resolution without meeting, whereas before it required simply eight members?

Dr K.D. HAMES: It takes into account that there are now fewer members of the board.

Mr R.H. COOK: Does that mean it is considered an unsafe way of making decisions? Surely if we have the decision of the majority, that is sufficient for the purposes of decision-making. In a modern decision-making

environment, would that not also reflect the mood and sentiments of members, whether they are assembled in person or virtually?

Dr K.D. HAMES: That is a good question. The answer is that a majority vote needs to be ensured. If it is a majority vote, the majority wins; if someone is opposed, they still have to have the opportunity to vote. Of the seven members, there might be four for and three against. It cannot just be assumed that because there are four members required for a vote, it is reasonable not to give three members an opportunity to vote. It is different if there is a vote but some members cannot be there and have a leave of absence. When members are not physically present together at a meeting to agree to a resolution, because they can put in an excuse or whatever for not being there, it is absolutely critical that all members on that committee have an opportunity to vote, whether for or against.

Mr R.H. COOK: I appreciate that minister, but if six of the eight members all voted one particular way, it would not make any difference how the other two voted.

Dr K.D. Hames: It doesn't matter; "each member" is what the clause states.

Mr R.H. COOK: I know. That is why I am seeking the minister's explanation about why that is the case.

Dr K.D. HAMES: If they are having a resolution without all members present, it is patently unfair for a majority of members to make a decision and resolution without opposing members at least having an opportunity to have their say and try to convince the rest of the members to change their vote. That is just the reasonable and right thing to do. I strongly support this resolution. It seems to me that if it was not the case, the member for Kwinana would have an even stronger argument. If I said that it was okay if there were four positive votes, he would say that members could choose not to go to a meeting, have a resolution about some critically important thing without a meeting, four people could sign off on it and leave the other three completely in the dark. That would be terrible; that would be what the member for Kwinana would suggest if I was doing that.

Mr R.H. COOK: That is a good point. Conversely, the minister is saying that, if a resolution is required that they do not agree with in the context of a resolution without a meeting, any member of the committee can hold the rest of the board to ransom by simply not voting. Is that not true?

Dr K.D. HAMES: My impression, without waiting for an answer, is that the member for Kwinana may be right, but the way to resolve that is that a particular decision cannot be resolved. The committee would be obliged to come together in a forum in which that member would either have to be present and vote or choose not to come, in which case it would not matter. I assume that there cannot be a resolution without a meeting if someone—one person—refuses to send in a yes or a no.

Clause put and passed.

Clause 26: Minutes to be kept —

Mr C.J. TALLENTIRE: I have a standard question. I would like to know the details around the transparency of the minutes and how accessible they will be to the public.

Dr K.D. HAMES: There is nothing in the legislation that determines that. Presumably the foundation determines it, but there is nothing that stops the minutes being made public. I understand from Dr Weeramanthri, who was on the Healthway board, that its normal practice was to make them public. I see no reason to change that and there will certainly be no direction from the government not to make them public.

Mr C.J. TALLENTIRE: Made public in what sort of delay following the meeting?

Dr K.D. HAMES: It is the same process as for any normal meeting. The minutes go around all the members and they have to be approved at the next meeting to make sure all members agree with them, and they can be made public after that time.

Clause put and passed.

Clause 27: Committees —

Mr C.J. TALLENTIRE: Under clause 27 there is the power for the foundation to form committees. It is a very important clause and I know that previously there was a committee known as the Brand Advisory Committee. That was a very important committee because it enabled us to see how effective the work of Healthway was when it was partnering with other organisations, and I have already mentioned tremendous programs such as the LiveLighter campaign and others. I understand we were able to bring an analysis of the marketing value of those sorts of campaigns through something like the brand committee. Does the minister have any capacity to direct the foundation on what committees might be formed; and, if so, does he see that as a way for the minister of the day to express a vision for the scope of works of the foundation?

Some of the most innovative programs will require the supervision of a committee in their own right, so I am very keen to hear about the minister's capacity to be involved in the determination of committees that will be created. I do not see specified in clause 27 that the minister can direct that a particular committee should be formed, but I note that it has been a very important feature of Healthway in the past that the various committees that came underneath the board were able to really demonstrate the vision of the organisation. Is there any scope for the minister or his successor to direct which committees would be formed? If he does not think there is anything in clause 27 that enables the minister to direct, how else does he see that vision a minister might have being fulfilled?

Dr K.D. HAMES: Once again, although these provisions used to be encompassed in two individual sections, they are now together and this is the same as was in the previous legislation. The foundation makes that decision and since it has been doing such great work since 1989, I presume it will continue to do so. Clause 39(1) under "Accountability", which we will get to later, states —

> The Minister may give written directions to the Foundation with respect to the performance of its functions …

That is one of the functions, so if I am strongly of the view that the foundation should be doing more work around research in something that is a public document, I am able to tell the foundation in writing—so in effect do what the member just said to make sure those things happen. I think the research work that the foundation has funded for a long time is absolutely critical to the functioning of Healthway.

Mr R.H. COOK: When the board establishes a committee, the committee members do not need to be board members, is that right? Can the committee members can be members at large?

Dr K.D. HAMES: Yes.

Mr R.H. COOK: What does the minister regard as the definition of "country" in respect to there being sufficient country representatives? Would the minister or the member for Mandurah be able to be on a Healthway subcommittee as country members?

Dr K.D. HAMES: We could, because as the member for Mandurah and I both know, we are in the Peel region outside the metropolitan area.

Ms J.M. Freeman: Mirrabooka is like another country as well.

Dr K.D. HAMES: I would not go quite that far!

I do not know whether there is a definition of "country", but I presume it means outside the metropolitan area boundaries, that is as far as we know.

Ms L.L. BAKER: Mr Acting Speaker —

Dr K.D. Hames: You're not country, no!

Ms L.L. BAKER: No, I am not!

What was the logic of only including country members if they are relevant to arts, sports and racing and not to any of the other interests of grants such as health, community, research or youth? Does the minister not like country health, community or sport?

Several members interjected.

The ACTING SPEAKER: Members, the minister has the call.

Dr K.D. HAMES: I repeat that this was in the previous legislation that the Labor government put in. I do not know what it thought of country people at the time. It is because those are three areas that by legislation Healthway has to spend proportions of its money. Sorry, I have misunderstood. When funding is being considered for those three things, there must be sufficient country representation on those things. I do not know why that would not be the case for everything funded; I think the member makes a good point.

Ms L.L. Baker: Just because we did it, does not make it right!

Dr K.D. HAMES: But it is what it is!

Ms L.L. BAKER: I do not want to be pedantic about this, but it just seems a little weird because the other categories are not unimportant—they are youth, health, the general community and research. I would have thought that country representatives should maybe reflect the diverse aspect of the Healthway concerns or something. There should be something that works more effectively, minister. I shall stand here and think about the concept for a while longer while the minister considers an option.

Mr R.H. Cook: You want me to jump up?

Ms L.L. BAKER: No, I am happy to wait here while the minister considers an option.

Ms J.M. Freeman: Do you think, member for Maylands, that when they are considering funding for Maylands that they should have someone from the community of Maylands on that subcommittee?

Ms L.L. BAKER: Not necessarily. I do not think that. I would be quite happy, depending on the standing of the person who was on that subcommittee.

Ms J.M. Freeman: I thought I would just ask.

Ms L.L. BAKER: I am not immediately distrusting of everyone, but I think if it is a country issue, it should really just cover all the funding.

Several members interjected.

The ACTING SPEAKER: Members, I think the minister is almost ready to give an answer.

Dr K.D. HAMES: I will move an amendment, but I will stand and give my intention first. My intention is to delete all words after "committee members" so that the foundation must ensure there are sufficient country representatives appointed as committee members, because, remember, the committee is formed in relation to its functions—the functions of the foundation—for all those things, whatever it is making a decision on. Then we get to the argument of what constitutes the word "sufficient". I will leave the definition of "sufficient" up to the board to make a decision on. I move —

Page 13, lines 11 and 12 — To delete all words after "committee members".

Amendment put and passed.

Mr R.H. COOK: What does the minister regard as "sufficient"? The only reason I ask —

Dr K.D. Hames: That is a bit unfair.

Mr R.H. COOK: That is not unfair. Hear me out, while democracy is breaking out everywhere!

I notice that there is nothing in clause 11 that states that the minister should appoint members to the board, giving due consideration to people who have a country perspective or come from the country. The minister could already legally constitute the board with no country people on it, but then he could not actually constitute a committee under that board because the minister may not have country members on it. Even though the board is legally constructed under the legislation, it could not actually form a committee. That is a potential pitfall for a minister who is not on their game. I wonder whether the minister thinks it is necessary to remedy that particular problem.

Dr K.D. HAMES: The problem with the original legislation of course was that it did not state what "sufficient" was for that either. Even though it specified that it had to be arts, sports and racing, I do not know who added that in 1989 but it was, as the member for Maylands pointed out, a bit of a nonsense because there is a range of areas that could have a subcommittee to look at better representing funding. I do not think it needs to be up to government to determine what "sufficient country representatives" means because it would depend totally on what the foundation was looking at. It might be something that deals with a visual arts program in Fremantle—"sufficient country members" in that example could be zero—whereas a visual arts program in Kalgoorlie might want a large proportion of country members. We will have a group of sensible people on the foundation who can make that decision. The alternative is to get rid of that clause altogether so it does not refer to there being any country members, but I prefer to keep it there because it reminds members that they have to think about those things. If they are dealing with issues that particularly affect the country, they have to think about whether or not there are sufficient country members represented on that board. Even though it leaves it a little in the air, I prefer this to any alternative.

Mr R.H. COOK: This is a worrying aspect of it. The minister would be aware that the current foundation has 11 persons on it.

Dr K.D. Hames: How many of those are country?

Mr R.H. COOK: That is the question I am coming to. Of the 11, one would expect there was a higher possibility there would be more than one country member, or one person who has a perspective of the country. This obviously reduces the number of people on the board fairly dramatically, to seven.

Dr K.D. Hames: It is four fewer.

Mr R.H. COOK: It is not outrageous to have one member on the board from the country and therefore that one member has to be on every single subcommittee of the board because they are the only member who can provide a perspective; is that correct?

Dr K.D. HAMES: These are not necessarily board members, so they can appoint other people to the committee. That country member does not have to be on any of those. Whether or not it is someone from the country, I do not think there was someone from the country on the previous board, and in my view that is a good thing to do. There was someone from the Western Australian Local Government Association. That person presumably represented country as well as metropolitan local government, but was still not necessarily from the country. No, that person does not have to be on all the committees.

Clause, as amended, put and passed.

Clause 28 put and passed.

Clause 29: Term used: member —

Mr R.H. COOK: I want to clarify this point. We are now using the word "member" interchangeably as a member of the board and a member of a board committee, although the two are not necessarily the same. I am very keen to understand this definition. I assume that division 4 relates to any member, be it of the board or a committee. It seems to be suggested under division 4 that the term "member" refers only to members of a board committee; is that correct?

Dr K.D. HAMES: No. This means all board members and all committee members. It is stating that a "member" includes a committee member. This clause is about disclosure of interests of members. That is why it states —

> **Term used: member**
>
> In this Division other than section 33 —
>
> ***member*** includes a committee member.

That is not just the board, but the committee as well. If a committee is appointed, as in division 3, and a person on that committee has an interest in a matter, then all of these things, apart from section 33, apply to the member and the committee member.

Mr R.H. COOK: Is that definition of "member" simply for the purposes of division 4?

Dr K.D. HAMES: It is not a definition; it refers to who this clause refers to. Who does "disclosure of interests" refer to? It refers to members, and members include committee members. Everybody is then affected by this clause.

Ms J.M. FREEMAN: I am interested in disclosure of interests. Obviously disclosing an interest at —

Dr K.D. Hames: Can I point out that we get to issues of disclosure of interest in the next clause. Clause 29 just has the definition of "member". We get to issues of disclosure of interest in clause 30.

Ms J.M. FREEMAN: Okay. I will wait until we get to the next clause.

Clause put and passed.

Clause 30: Disclosure of material personal interest —

Mr R.H. COOK: This is obviously a very important clause. The board of Healthway, apart from the potentially defamatory comments from the Premier in relation to the public reputations of the board members, was also subject to what can only be described as vicious and unfortunate attacks by the Australian Taxpayers' Alliance. I would be very interested to see from where the Australian Taxpayers' Alliance gets its funds. I suspect it is probably the same sorts of places that the Liberal Party gets its funding from—but not the Labor Party. Be that as it may, one of the very grave accusations made about the members of the board was their conflicts of interest. I was particularly focused on this clause and wanted to make sure that it does what we want it to do, which is to make sure that the decisions of the board are beyond reproach in relation to these matters. One way we might have done this, I guess, would have been to see the update on the wording and language in this clause. I was wondering whether the minister would comment on that, as there seems to be some slight difference. Could the minister provide us with an explanation of the wording in this clause, and I will follow-up with another question?

Dr K.D. HAMES: I understand that the language is fundamentally the same. The only difference is that parliamentary counsel has tidied up the drafting of this provision by including a reference to a committee as well as the foundation. I think that is the only difference. I am perfectly happy with the wording. Despite the information put out by that organisation—I forget its name—I have no evidence whatever of any inappropriate behaviour by any of the members of the former committee in their declarations of interest. To the best of my knowledge, all declarations of interest were made appropriately.

Mr R.H. COOK: I agree. I thoroughly concur with the minister's remarks. Was any consideration given to the level of penalty, which is currently a fine of $10 000?

Dr K.D. HAMES: No. It seems that the penalty is in line with penalties relating to such an issue.

Mr C.J. TALLENTIRE: I am also interested in the penalty issue, noting that in the future the foundation might be tempted to appoint to the board someone such as the corporate director of Coca–Cola Amatil. Clearly, given the salaries of such people, a $10 000 fine would not be very consequential at all. I wonder why the minister did not do a little more work around a level of penalty that would be more appropriate and dissuasive. That is one question. Another question is about the language in the phrase "material personal interest". I think other legislation uses the term "pecuniary interest". It is a more precise term than "material personal interest". A very good person could be appointed to the Healthway foundation who might be a big campaigner against junk food. I suppose somebody could say that that person would have a material personal interest in ensuring that grants be given to other organisations campaigning against junk food because their advocacy position would be bolstered by strengthening organisations in that area. Some people might argue that that would be a form of material personal interest. I believe the word "pecuniary" would make it much more specific to an actual cash transfer that enriched someone's bank account and increased their bank balance because of the nature of a conflict that occurred.

Dr K.D. HAMES: I totally disagree with the member. The phrase "pecuniary interest" would significantly narrow the scope to determine a conflict of interest. The interest may be pecuniary but if, as the member suggested, the foundation were to appoint someone from the board of Coca–Cola Amatil, that person might be on a board salary but have no personal pecuniary interest in the operations of the foundation. The company might have but not that person, so he could quite easily get out of that definition. "Material personal interest" covers a far broader scope than "pecuniary interest". It refers to ethics and to relationships. If there is a significant relationship between that person's special interests and the decisions, it is important that it be declared. The foundation might say that there is an interest in common. As the member knows, it is the standard procedure under which all committees operate. I think a penalty of $10 000 is adequate, given that it is in line with other fines in similar areas. Opposition members are great conspiracy theorists, but $10 000 is a significant sum of money.

Mr C.J. TALLENTIRE: I do see it slightly differently from the minister. I believe the pecuniary interest point would work for the Coca–Cola Amatil–type example, whereby somebody clearly is earning a big salary and would have a conflict because of their connection with that company; whereas the minister himself has said that he wants to keep this clause as broad as possible. The minister is now suggesting that, because of the breadth of the definition around "material personal interest", a campaigner against junk food could be required to make disclosures. Every time there is a grant application to support a campaign against junk food, a member of a community group campaigning against McDonald's or Hungry Jack's would have to make a disclosure, as they could be said to have a material personal interest in the advancement of that campaign group.

Ms J.M. FREEMAN: Mr Acting Speaker —

Mr C.J. Tallentire: I am asking what you are going to do about it.

The ACTING SPEAKER: The member for Mirrabooka has the call.

Mr C.J. Tallentire: You didn't see the detail of it.

The ACTING SPEAKER: Member for Gosnells, you can speak again after the member for Mirrabooka.

Ms J.M. FREEMAN: I am interested in what the member for Gosnells is saying if he wants to continue his line of questioning.

The ACTING SPEAKER: He has already sat down.

Ms J.M. FREEMAN: I have stood up and spoken.

Mr C.J. TALLENTIRE: I do object to the minister making a habit of not answering my questions at this consideration in detail stage.

Dr K.D. Hames: I object to you not listening to my answers and asking the same question!

The ACTING SPEAKER: Through the Chair, please.

Mr C.J. TALLENTIRE: The minister put a point to me that he felt there was validity in having this broad definition, and I responded to him that the broad definition could be dangerous. Yes, I mentioned again the example of the no-junk-food campaigner who could be charged with having a material personal interest because the advancement of their campaign might be seen as an advancement of their personal career, albeit an unpaid career, and they might be in the position of switching to a more professionalised career; indeed, the grants issued might help that person establish a permanent position somewhere. Clearly, there is a danger if this term is broadened. That is the point of my question. Has the minister considered the interpretations of this term "material personal interest" that might be made?

Dr K.D. HAMES: I point out that members who disclose an interest are not necessarily prevented from participating in debate or in fact from voting. If a person is a member of an organisation campaigning against McDonald's and there is a decision about funding for McDonald's, they should certainly declare an interest. It does not mean that they cannot participate in the debate; it does not mean that they should not vote; but the other members on that committee have a right to know whether that person's role is as a campaigner. Similarly, someone in favour of drinking beer who is part of an alternative organisation that goes around bleating for the rights of people to consume excessive quantities of beer should also have to declare that interest. The foundation makes the decision on the consequences of doing that, but I think it is important to know when someone has a material personal interest in a matter. As I have said before, this is not a new clause made up for this committee; this is a commonly used clause for other committees.

Ms J.M. FREEMAN: I would like to draw the minister's attention to two things. The Associations Incorporation Bill 2014 is currently before the Legislative Council. Given that the body that will be established under this legislation is a body corporate, I refer to clause 42 of the Associations Incorporation Bill, which makes reference, under the heading "Disclosure of material personal interest" to disclosure of the "nature and extent of the interest". That may take into account the concerns of the member for Gosnells because "nature" may be what one is talking about—the broadness of it—but the "extent" may become more important if it is pecuniary. The nature of one's interest might be, "This has been a topic that I have studied for many years, and therefore I need to disclose that I have an interest in this particular issue", but the extent may be, "Look, this has been a broad aspect of my study and I have a patent over an organisation that runs this type of health product." In that situation, one might be thinking about funding and say, "That may therefore have a benefit to me, because I will be able to sell what I've been studying and put a patent on it to this sports body that we're now funding." Given that this legislation is before the house and seems to pertain to the same interest, why is that not to the same extent? That is my first question; I am happy to sit down, or I can ask my second question, which is on the same piece of legislation at clause 43. It is quite clear that if someone discloses a material and personal interest that they do not vote on that particular issue. I just need to clarify whether the minister said to the member for Gosnells that such a person, even though they disclose that they have a material and personal interest, will still be —

Dr K.D. Hames interjected.

Ms J.M. FREEMAN: Is it down below? I can see the minister's adviser is showing it to him. They cannot vote; okay. Let us just go back to my original question, which is about the extent of the interest.

Dr K.D. HAMES: The member has made some points that actually support my argument. I have been on lots of committees and declared interests in things and have also been there when others have declared interests as well, and in my experience what tends to happen is that the committee assesses the declaration. If someone is doing roadworks in Kwinana and they say, "Well, I live in Kwinana so I'm declaring an interest", the committee will look at that. Remember that pecuniaries are included in this; it does not exclude them.

Mr C.J. Tallentire: It doesn't say "pecuniary".

Dr K.D. HAMES: That is what a material personal interest is.

If the member for Kwinana stands to have a significant improvement to the value of his property by the decision made, we could expect him to not participate or vote. In fact, that is what happens in cabinet; people leave the room, but not if it is something that has absolutely no effect on their property and it is an interest in common. That is something in local government; we often have someone declare an interest. It is an interest that everyone has, for some reason or other, called an interest in common.

Ms J.M. Freeman: I know what declaring a personal interest is. I am telling the minister that there is a piece of legislation that has been brought to the house by the Attorney General, the leading lawmaker in this state, and when they look at this particular section, the leading lawmaker in this state has made it to include "nature and extent". So why have you not done that as the health minister, given that the leading lawmaker in this state has done that?

Dr K.D. HAMES: The leading lawmaker in this state has seen this legislation. The department of the leading lawmaker in this state has seen this legislation. Why? Because it goes before cabinet. Every cabinet minister gets exposure to what is in there.

Several members interjected.

The ACTING SPEAKER (Mr P. Abetz): Members, the minister has the floor. You can get up and ask further questions.

Dr K.D. HAMES: Not only that, but when it gets to the other place, that same person will have oversight of this and I shall pass on to him the member's comments. If he feels that this clause does not cover the things it should

cover, he will be free to suggest that an amendment be made. All the advice I have is that this is a pretty standard clause and that it does the job it is designed to do.

Ms J.M. FREEMAN: A board member of a body corporate cannot be sued individually; the organisation is sued in its own right. However, there are other duties of those officers. I have looked through here, and I am happy to be shown where the other duties are outlined, but again, the Associations Incorporation Bill has included those duties. The duty to disclose is a primary duty and we all know that it is a primary duty. If someone has a material interest they should disclose the nature and, I believe, the extent of it. Other duties are also often implied, but they have been actually included in the Associations Incorporation Bill. I refer to the duty of care and diligence, the duty of good faith and proper purpose, and the duty of the use of position. The duty of care and diligence is where an officer ensures that they act in a manner that is appropriate and exercises their duties diligently and in accordance with the goals of the association, or the body corporate in this case. The duty of good faith and proper purpose means that, again, someone acts in the best interests of the foundation and for a proper purpose.

The duty of the use of position is very important. Healthway is going to be choosing people who have an individual interest in these areas; they will no longer come from associations. They cannot improperly use their position to gain advantage for themselves as members or cause detriment to the foundation. They cannot use information to gain advantage and, again, we have talked about that previously. These are all implied duties. They have been done through common law over many years and they are actually codified in the Associations Incorporation Bill. Under the previous legislation they were implied, but the decision of the highest lawmaker in Western Australia, under this government, was to codify those in the Associations Incorporation Bill. My questions are: why did the minister not codify those; and, if he did not, are they implied?

Dr K.D. HAMES: The advice I have from our solicitor is that they are implied.

Clause put and passed.

Clause 31: Voting by interested member —

Mr R.H. COOK: I am interested in this clause because this is where the board brings to life the way it manages conflict-of-interest issues. I also refer to a previous clause, clause 25, under which we discussed decision-making without meeting. Can I confirm with the minister that this means that the new board will not be able to make a decision or a resolution without meeting while one member has a material personal interest?

Debate adjourned, on motion by **Dr K.D. Hames (Minister for Health)**.