ASSOCIATIONS INCORPORATION BILL 2014

Consideration in Detail

Resumed from 25 February.

Clause 5: Associations not eligible for incorporation —

Debate was adjourned after the clause had been partly considered.

Mr C.J. TALLENTIRE: I recall that we put to the parliamentary secretary a question about organisations that are entitled to use this very important indicator of "Inc"—an incorporated body. What kinds of organisations should be entitled to use that? When we look at the terms in the legislation and read its general tone and, indeed, the technical content, we realise that the government's intent and that of the drafters, and certainly it is our understanding, that this is for non-government organisations and not-for-profit organisations—that is, sometimes very small organisations run by volunteers. It is legislation designed to help those organisations fulfil their obligations and remain within the law. It has been noted, though, that organisations may claim to be not-for-profit but their whole membership is made up of organisations that are purely for profit. They are actually advocacy groups for organisations that are worried about their public image, so when there is a difficult issue to be broached in the public policy sphere, they get their peak industry body to speak on their behalf. We have just dealt with legislation to which the Association of Mining and Exploration Companies contributed in a positive, fruitful and helpful way. I had a brief conversation with the representatives from AMEC and they believe that at the moment their body is entitled to use the word "Inc" at the end of its name. I am sure that they would concede that the aims, purposes and endeavours of AMEC are to make a public policy environment to advocate on behalf of its members, who are about making profit through exploiting the state's mineral resources. Similarly, I have noticed that the Chamber of Commerce and Industry of Western Australia, which is another advocacy group representing a fairly broad membership base, is about members who want to make a profit and also puts "Inc" at the end of its name. My question to the parliamentary secretary is: is that permitted; will it be permitted in the future; and what kinds of organisations are allowed to use the word "Inc" after their names?

Mr P.T. MILES: Yes, it is permitted, because under the definitions in clause 179 on page 119, an incorporated association cannot be used for carrying on business. However, provided it a collective of people who want, in this case, to advocate on behalf of oil companies, or the Wilderness Society, it can rightly be an association. The definitions are also quite clear in clause 4, which we have already dealt with. Clause 4(a)(ix) reads —

> the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry;

That sort of organisation is very much able to use the association incorporation or, as we like to say, "Inc", at the end of its name.

Mr C.J. TALLENTIRE: I direct the parliamentary secretary to clause 5(2), "Associations not eligible for incorporation". Clause 5(2) reads, in part —

> An association secures pecuniary profit for its members if —
>
> (a) it carries on any activity for the purpose of securing pecuniary profit for its members; or

Surely that means that if an organisation is trying to secure pecuniary profit for its members, it is not eligible to describe itself as an incorporated body.

Mr P.T. MILES: I know where the member is going, and it is a very good point that he wants to put on the table. Members cannot receive a direct financial interest or get a share of the profits of an organisation like AMEC, which would lobby on behalf of its members to try to achieve an outcome, but AMEC would not necessarily be charging a fee for this, getting a benefit for the service and then distributing some sort of dividend to its members. It is only acting in a service way by promoting its members, like any organisation can, whether it be Rotary or Lions. It can promote the services that are being offered, but it cannot directly distribute its earnings to its members by way of an amount of money or some other form.

Mr C.J. TALLENTIRE: I thank the parliamentary secretary for that explanation, but I point out that at the end of clause 5(2)(a) is the word "or". We have it very clearly there. If the organisation carries on any activity for the purpose of securing pecuniary profit for its members, it surely cannot be considered as an incorporated body.

Mr P.T. MILES: That applies more to not being able to benefit an individual member, which is what I understand. I think the member also needs to read paragraphs (a) to (e) in order, because paragraph (b) reads, in part —

> …; or

> (b) it has capital that is divided into shares or stock held by its members; or

An organisation cannot receive benefits, and then distribute them to individual members. Although an organisation can be part of an association, the individuals cannot receive a benefit in cash or kind. That is quite clear in subclause (2), from which the member is reading. I know the member is picking on paragraph (a), but I think he needs to read the whole thing in total. Clause 5(3)(b) reads, in part —

> that the association is established for the protection or regulation of some trade, business, industry or calling in which the members are engaged or interested …

This is what the organisation is doing. It is actually promoting trade, business or industry within that. Again, we do not feel, from a government point of view, that organisations like this are acting beyond what we are hoping to do. They are acting under the current associations legislation, so that is no different from what we are doing with this bill. We are just moving them forward into a new stage.

Mr C.J. TALLENTIRE: I acknowledge that the parliamentary secretary has legal advisers with him, and they might help clarify that when we see in legislation the word “or”, it means that the part that precedes the word “or” stands alone. If it is the case that an organisation carries on any activity for the purpose of securing pecuniary profit for its members, it is not a matter of having to read on; if it is that “or”, it is one of the other things that follows. It stands alone. Therefore, I think it is very clear that in the drafting of this legislation, there was no intent to capture organisations that are industry peak bodies solely focused on, or partly focused on, making and maximising profit for their members, or lobbying us in this place so that their members can make more money. It is such a totally different activity from the activity of a true not-for-profit organisation. Why would we ever want to ram everyone—little not-for-profits, a friends of some bushland group—in with a group as big as the Chamber of Minerals and Energy? It would just be ridiculous. We cannot pretend that those sorts of organisations need to be underpinned by the same kind of legislation. It just would not work. That is why we have this clear direction in the bill that is before us that an organisation involved in securing pecuniary profit for its members should not be using this legislation, and should not be describing itself as an incorporated body. I find this incredibly inconsistent. The legislation says it, and the parliamentary secretary is trying to tell me that somewhere else in the bill it provides for those organisations. There are internal contradictions in the legislation if that is the case. At a broader policy level, it would be a huge mistake to create this confusion by bundling together such different types of organisation. Indeed, would it not be a bit dishonest to allow organisations that are about securing pecuniary profits for their members to describe themselves as not-for-profit organisations? Would that not be outrageously dishonest? There is a huge difference. This legislation should be first and foremost for those organisations that harness all that wonderful energy that is about volunteering, which we spoke about in our contributions during the second reading stage. This legislation is about giving volunteer groups a legal basis and legal structure; it is not about enabling industry peak bodies to try to badge themselves as not-for-profits when it suits them. That would be a complete misinterpretation of the understanding of what community groups are about, what their expectations are and what sort of legislation should be developed to cover their needs.

Mr P.T. MILES: I am quite comfortable with the terminology. As I have said previously, we have not changed the act from the current act to this bill, so I am comfortable there. The analogy that I put forward is that the RAC is in fact the same thing as the Association of Mining and Exploration Companies, as the member says, because it promotes its members’ interests to anybody who will listen, provides its members with services to travel around the state and benefits its members, but nobody receives a direct cash benefit and no shares are being given out to anybody to trade, or anything like that. I think the member for Gosnells is just expressing an opinion, and he is entitled to do that, but I am very comfortable with the wording because it replicates what is currently being done in the existing act. It is not disingenuous for any association to be able use an association to better their members in any way, shape, or form—nor should we limit it. What we are trying to do is gather members together so that they can benefit as a whole, as a group, to promote the good of what they are doing, no matter what that is—be it fly fishing, a cricket club, AMEC or the RAC. All we are doing is making sure that those organisations, whether they are small or large, operate within the parameters that are being set here, and that clearly an association cannot operate like a business. I remind the member, as he probably knows, that the RAC has businesses associated with it, but I am referring only to the membership portion, and there is no direct cash benefit to those members. I am very comfortable with what is being done here and I suggest that it is only the member’s opinion that AMEC should not be a part of this incorporation.

Mr C.J. TALLENTIRE: Over the years certain bodies—I do not pick out only AMEC; there is the Chamber of Commerce and Industry and any number of organisations—have done nothing other than lobby for the pecuniary benefit of their members. They may provide additional services, but their primary business is to gain pecuniary advantage for their members. Over the years those groups have had to find some sort of accounting standard, some legislation, to underpin their existence, and so they have latched onto the idea of becoming incorporated bodies. They have found the legislative loopholes in the current act such that they could claim to be incorporated bodies. I recall members throughout the second reading debate talking about the virtues of volunteer organisations. The entire second reading debate went to that discussion. I am sure that if I were to study it closely, that is the direction in which the parliamentary secretary's contribution was heading also. The whole pretext for the introduction of this legislation to Parliament was that it provided a legal structure for volunteer-type organisations, big and small, but not organisations that are driven hell-bent on making profit for their members. Now the parliamentary secretary is telling me that because profit-driven membership organisations have somehow crept into using this legislation, it should continue that way. That is totally unacceptable. That is exactly why this legislation should be reviewed. We should tidy it up and clarify it so that only organisations that are truly volunteer-based are covered by it. What an inconsistency to imagine that there is a legal framework that applies to volunteer bodies and at the same time to highly profit-driven bodies. It just does not make sense.

I again raise the accounting standards. If some very wealthy organisations claim that they are not for profit, what sort of accounting standards are they going to apply? I imagine that they are getting away with all kinds of things. There must be amazing inconsistencies there, and that is a really serious problem. Where is the accountability if we allow an organisation with hundreds and hundreds of millions of dollars of turnover, such as some of the organisations the parliamentary secretary is talking about, to apply the same accounting standards as those applied by small volunteer organisations, such as a small footy club? It is ridiculous to imagine that small sporting organisations should apply the same standards as an organisation that is as big as the Chamber of Minerals and Energy, with the membership base that the Chamber of Minerals and Energy has. That is absurd! There is an opportunity to clarify this, and it is here in clause 5, which states that if it is an organisation that carries on an activity for the purpose of securing pecuniary profit for its members, it should not be considered an incorporated body. It is as clear as day that that was the intent of the legislation. To try to say otherwise is to try to dishonestly circumvent things.

Ms L.L. BAKER: I would like to pursue clause 5 a little also. Clause 5(3) states —

> An association is not ineligible under subsection (1) by reason only of any one or more of the following circumstances —
>
> (a) that the association itself is empowered to make a … profit, unless that profit or some part of it is divided among or received by its member or some of them;

Is this clause about social enterprise and the like? I can see the adviser nod, so I have an answer to that question so I will keep going. If that is the case, can the parliamentary secretary give me more of an understanding of what the split might be before an organisation becomes eligible or ineligible, because it says here "some part" of its profit is divided or received by members or "some" members. We are basically dividing the profit into "some" part of the profit and then "some" number of members, but not all. I seek some clarification about how that might work if a worker co-op or something like that was set up under this bill? Would they be ineligible if they had a million-dollar profit and $500 000 of it went to the members and the rest was stashed away somewhere? My understanding of "social enterprise" is that all profit has to go back into the membership base. I want some clarity on what that is about. I understand how that relates to a social enterprise and how it relates to any other business that I have not thought of at the moment that might be captured by this clause.

Mr P.T. MILES: The member for Maylands is correct. As that subclause states, a member cannot have one cent of profit—an individual member cannot. An organisation, whilst we call them not for profit, may make some profit on a particular program or a service of education that they are running, and they can then utilise that profit to put back into other programs or services if they wish. However, members of the association cannot take one cent in profit from that association; otherwise, it would be deemed not to be an association and therefore would have to move into some other stream of tax liability, whether it be as a company or something else. From our point of view, no matter how big the organisation is, not one dollar of its profit can go to any member, but it can derive some profit from services it may wish to provide and then put that profit back into other services of the organisation to help members.

The accounting practices are quite clear—full-on proper accounting practices take place in tier 2 and tier 3. That is why we are quite happy for larger organisations, once they get over the $250 000 level, to start using proper accounting practices to run those organisations.

Ms L.L. BAKER: I understand what the parliamentary secretary is saying, and that is what I thought it meant. I had a mental block over how this clause is worded that I want him to explain to me. The clause states that it is not eligible if it makes profit, but then it states that it is unless that profit is distributed among some members.

Mr P.T. MILES: That is right, member. That is what I was saying. A member cannot receive any part of that profit no matter what. As soon as they do, the organisation will become ineligible.

Ms J.M. Freeman: But they can receive wages, which is what I think the member for Maylands is saying.

Mr P.T. MILES: That is different again. That is a salary for an employee. A member is different. I think we discussed that last time we debated the bill. Members cannot receive any profit from the organisation. I think that is where the member was going.

Ms J.M. FREEMAN: I am interested in the member for Maylands' question. Basically, these social enterprises will be eligible if they make a pecuniary profit as long as that profit goes back into the organisation. That may mean the profit goes back into running the organisation, building the organisation and paying the wages of the people who run the organisation so that that organisation grows as a social enterprise, but as soon as it takes a dividend from it—something that is not for the service of the organisation—it will be classed as ineligible under this clause.

Mr P.T. MILES: The member for Mirrabooka is 100 per cent right. Some organisations probably do this a little bit at the moment but I do not think they can effectively do it under the current act. We are changing the act so that organisations can make a profit on some parts of their organisation and they can reinvest it in the organisation to deliver better services. The member is 100 per cent right. She needs to speak to her colleagues.

Ms J.M. FREEMAN: If a social enterprise is going to make a profit in the manner that we have referred to, but the commissioner thinks that it will make a pecuniary profit, it will not fall under subclause (3)(a) and it cannot become an incorporated association because the commissioner thinks that it will act in some way to get a dividend. In the previous legislation, there was a provision for appeal, but this bill only has part 13, which deals with reviewable decisions of the commissioner. How is an organisation assessed on whether it falls within subclause (3)(a)? If it falls within subclause (3)(a), it would be laughing; it would have the association set up, it could run it as a social enterprise, it could build the organisation and it could deliver services to the community. The concern for a social enterprise is that it will be found not to fall within that eligibility criteria. Where is the capacity for that decision to be reviewed? I can see that part 13 deals with reviewable decisions, but that does not apply; only clause 6 applies.

Mr P.T. MILES: My understanding is that the member is asking about an organisation that has its application refused under subclause (3)(a). Obviously, it can appeal it through the State Administrative Tribunal process. That is new. If the commissioner refuses an organisation, it can take it to SAT, but that falls under clause 169.

Ms J.M. Freeman: I have looked at clause 169 and it is not there, because clause 169 refers to a determination made under clause 6, a refusal of a request made under clause 9(1) or a refusal to incorporate an association under clause 11(1).

Mr P.T. MILES: Clause 11 deals with the refusal of incorporation. I know we are jumping ahead.

Ms J.M. Freeman: It is good to jump, because the problem is that the bill jumps and I want to clarify this.

Mr P.T. MILES: It clearly states that the commissioner must not incorporate an association if it does certain items. Obviously, it is appealable. Item 3 in the table in clause 169 shows us where to go.

Ms J.M. FREEMAN: The parliamentary secretary did that really quickly. We are looking at clause 11, but we are not; we are looking at clause 5.

Mr P.T. Miles: Yes, we are on clause 5.

Ms J.M. FREEMAN: We are on clause 5. If a social enterprise wants to be incorporated but it is refused because it does not fall under clause 5(3)(a), that does not fit within the refusal of incorporation. Clearly, it is not listed in clause 169. Clause 11 is listed in clause 169 as a reviewable clause. If a social enterprise wants to fall within that definition —

Mr P.T. Miles: Do you mean in subclause (3)(a)?

Ms J.M. FREEMAN: Yes, in subclause (3)(a). How does that interplay with what the parliamentary secretary is saying—that is, the provision in clause 11, which is appealable under clause 169? I want the parliamentary secretary to put on record how that interplays. I cannot see how it does, and that just might be because I am not reading it clearly.

Mr P.T. Miles: What you are saying is that if an organisation does not fall within subclause (3)(a), obviously once it goes through —

Ms J.M. FREEMAN: If an organisation does not fall within subclause (3)(a), its incorporation has been refused. However, the bill does not state whether it has been refused incorporation because it is not an association under clause 5(3)(a). It does not state that the commissioner has refused incorporation to an association because it does not fit within the definition in clause 5(3)(a); it just states that it is more appropriate for the activities of the association or the incorporation as against the public interest, and these are the grounds. It does not state in clause 11, which is appealable, that the organisation does not fall within subclause (3)(a). If the organisation lodges its forms with the department but the department says that it is a social enterprise that is going to make a pecuniary profit and does not fit within that definition, how does it appeal that process, because that is not about the refusal of incorporation at that point? From my reading of the bill, the incorporation is refused because the organisation does not fit into that area. If I am making any sense at all, that would be great. I hope the parliamentary secretary can make sense of how that translates into that refusal for incorporation which then translates into an appeal. It is interesting to note that the current act contains a separate section, section 4, which in subsection (4) states —

> An association shall not be regarded …

And so on. Then subsection (6) states —

> If the commissioner refuses to approve a purpose of an association under subsection (1)(f), the applicant may apply to the State Administrative Tribunal …

The ability for a person to appeal is not a new capacity; it is something that they have under the current act. My concern is that it does not appear in this clause as it appeared in the current act, and it does not appear in clause 169. The parliamentary secretary says that it fits because it appears in clause 11, but clause 11 does not refer to it falling into the categories in clause 5(3), or not falling into the categories of clause 5(3), which is actually the issue that would be something a person would want to appeal.

Mr P.T. MILES: Obviously, a person would put in an application under subclause 3(a) and make sure the application very much fits within subclause 3(a) of the bill. If the commissioner, after having reviewed the application and having gone through quite a few tenuous emails and the appropriate investigation process to make sure the person is a social enterprise, is not satisfied at that point, then obviously under clause 11 of the bill, she or he will be able to refuse the application for incorporation. As the commissioner will refuse the application at that point, one thing the bill will allow is to appeal her or his decision to SAT. I know that the member is saying that it does not actually say that in clause 11, but it says later on that the person can then appeal that decision.

Ms J.M. FREEMAN: Let me help the parliamentary secretary here.

Mr P.T. Miles: Oh, really!

Ms J.M. FREEMAN: If an incorporation is refused under clause 11(1)(a), which reads —

> (a) it is more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law; …

Is that the subclause, (1)(a), that is associated with saying that the application does not fit within clause 5(3)(a) to (j)? Is that the area that the parliamentary secretary says is the appellable bit? The parliamentary secretary needs to stand up and put that on record, because it needs to be really clear that if the application cannot fit within the definitions in clause 5(3)(a) to (j), then the appellable rights come under clause 11(1)(a).

Mr P.T. MILES: No, the advice is that it comes under clause 11(1), not necessarily subclause (1)(a). Any decision of the commissioner on this matter can obviously go to SAT. It does not have to be under paragraph (a). The commissioner has some wider ranging powers as well. We had this discussion last time. If someone is trying to set up one of those really horrible associations, such as the ISIS association or something like that, then she on other grounds may refuse that. The person will still have a right to take it to SAT and speak to the SAT judges there and attempt to overturn the decision and why they are making it.

Ms J.M. FREEMAN: Yes. I get that if someone tried to set up ISIS in Western Australia, they would fall under clause 11(1)(b), which states "the incorporation of the association is against the public interest". I am not asking that. I am not suggesting that the social enterprise that I am talking about is ISIS at any point in time. So, I get that she can deny it on that basis. The bit that I am interested in is that clause 5(3)(a) to (j) gives the opportunity to an association to be eligible for incorporation. Even though it says, "An association is not ineligible", it actually is a list of eligibility, and part of the eligibility is the capacity to make a pecuniary profit, which is actually quite new in this bill.

Mr P.T. Miles: That is correct.

Ms J.M. FREEMAN: It extends that definition. It pushes the boundaries of that definition.

Mr P.T. Miles: It has not really been done in a big way previously; that's all.

Ms J.M. FREEMAN: Previously it was not done in a big way—anyway I got that. That is section 4(4) of the current act, but it has the capacity for review. It seems to me that the commissioner could say, "I'm sorry, you don't fit within 3(a)" or "You don't fit within any of those as a matter of fact", such as subclause 3(b). The member for Gosnells could become the commissioner for consumer affairs and decide that the organisations he was talking about no longer fit within subclause 3(b), and the parliamentary secretary might want to appeal that decision. Appealing that decision, it seems to me, comes within saying that the person is appealing it because the commissioner is making the determination that it is more appropriate that the person's activities are ineligible, so they fall within clause 5(2), not eligible, which is clause 5(3), and so it comes within clause 11(1)(a).

Mr P.T. MILES: The member for Mirrabooka has pretty much got it spot-on.

Ms J.M. Freeman: Okay; that's good.

Mr P.T. MILES: She reads this stuff too much! I just want to put on the record that the member is right. Clause 5(3)(a) to (j) contains a host of reasons for why someone can set up an association. However, at the end of the day, if the application gets knocked back by the commissioner, that person can appeal her decision. That is what the person is doing—appealing her decision through the SAT process. Obviously then, the person has to put their point across to the SAT judges. The commissioner would have her people giving her point across for why she did not grant the application and at the end of the day it is up to SAT.

Ms J.M. Freeman: Yes, but any appeal needs grounds. You need grounds for appeal and that's what I just want to establish, but that's okay.

Mr P.T. MILES: Someone would be appealing the fact that they were knocked back on their association, for whatever reason. The commissioner may have very good grounds, but at the end of the day we want people to still have that secondary process to appeal and we think SAT is the appropriate place to take that appeal process, rather than some other method—although this SAT process is the new part of this new act.

Ms J.M. Freeman: No, it's in here.

Mr P.T. MILES: I do not think someone can appeal a decision.

Ms J.M. Freeman: You can.

Mr P.T. MILES: Only some decisions—not all of them.

Ms J.M. Freeman: You're not listening to me.

Dr A.D. BUTI: I am a bit concerned about the wide scope of clause 5(3). The parliamentary secretary will remember when we were discussing clause 4 and I asked him a couple of questions about the various purposes included there, such as religious, educational, charitable or benevolent purpose. I asked the parliamentary secretary whether they basically followed on from the common law on charitable trust or charitable objects and he stated that that was the case. Clause 5(3) seems to me to be a way that this bill is really nullifying the so-called public benefit that is defined under eligibility for incorporation in clause 4. That is because under clause 5(3) it appears that pecuniary profits, pecuniary income and other benefits are writ large for any other members. I am concerned about some of the organisations that may be able to take benefit from that. The parliamentary secretary mentioned that under clause 11, "refusal of incorporation", which we will get to, the commissioner could refuse if he or she thinks it would be more appropriate for the activities of the association to be carried on by a body corporate or that they are against the public interest. However, the commissioner has to be mindful of the legislation that they are acting under, and the various circumstances provided in clause 5(3) that allow substantial pecuniary profits to be made are numerous. What is the reasoning behind having such a wide breadth of pecuniary profits and interests that can be derived from membership of an association under this bill?

Mr P.T. MILES: The crux of the matter is that proposed subsections 3(a) to (j) are there to make the legislation as broad as we can to allow for associations of any creed or colour, and also, as the member pointed out, church groups. We are not trying to limit any association. The government is trying to make this legislation as broad as it can to ensure that people can come under this proposed act—providing that they operate within the proposed act—to get the protections that the proposed act will offer them. That is why broader terminology has been put into this act to make it available for not only selected or niche groups but for the wider community. The government took the view to broaden the scope of the legislation to make it easier for people to understand what they could do to include a whole host of groups.

I am not sure what the member said about churches.

Dr A.D. BUTI: The parliamentary secretary mentioned clause 4, which states —

(a) it is formed and carried on for one or more of the following purposes

(i) a religious, educational, charitable or benevolent purpose;

I asked whether that clause follows the common law categories of what is a charity. The parliamentary secretary stated that that was the case. It is strange that clause 5(3) seems to create an immense ability to obtain pecuniary profits from membership of the association.

Mr P.T. MILES: Not all associations have to be charitable.

Dr A.D. Buti: I understand that.

Mr P.T. MILES: I am still trying to follow the first part of the member's question. Clause 4(1) that refers to religious or educational purpose is to my understanding an example of what can be set up as an association. Most people looking to set up an association need guidance on what they can do and that is what this provision is for. It is more an example; it is not saying that an association has to be religious or anything like that.

Dr A.D. BUTI: I suppose it is a bit late to go back to clause 4, but one would read the totality of clause 4 as referring to an association that is for the benefit of the community. Turning to clause 5(3), the association could actually not be of great benefit to the community; it could give lip service to the community and actually be a front to obtain substantial pecuniary profit. I do not believe that the community purposes the minister has espoused that are prescribed in clause 4 are consistent with clause 5(3),which seems to give carte blanche ability to make substantial profits from membership of these associations that under clause 4 one would think were being set up for various community purposes.

Mr P.T. MILES: I think I have a better picture of what the member is asking. An association does not have to be charitable, it does not have to have many members—it can have just six or seven members—it does not have to be religious and it does not even have to have a community purpose. That is not what we are saying about this legislation. I think that is what the member was asking about. We are saying that the bill is for any purpose that one would wish to use an association, whether it is, as illustrated in the bill, for a church purpose, or it may just be an association of the local model aeroplane club that has no purpose at all to better the community. It is just an association that gets a group of people together to use an organisation to benefit its members.

Dr A.D. BUTI: That may be the case parliamentary secretary; however, every single purpose listed in clause 4 is for some community benefit. Why is there the need to list purposes in that clause, when paragraph (x) states, "any purpose approved by the Commissioner", and the parliamentary secretary has said that an association can be for any purpose? Why list those purposes? Why is a business purpose not included?

Clause put and passed.

Clause 6: Regulations may declare associations to be ineligible —

Ms J.M. FREEMAN: I am interested to know when we have clause 5, which outlines what makes an association ineligible for incorporation, why we need clause 6 that allows the commissioner to prescribe other things, and states —

> An association is not eligible to be incorporated under this Act if … it is an association that —
>
> (a) is prescribed for the purposes of this section; or
>
> (b) belongs to a class of associations that is so prescribed.

I want to be assured that none of those prescriptions can in any way contravene clauses 4 or 5(3), so there cannot be a situation in which there is a contradiction in how the legislation operates. If the member for Gosnells were to become the commissioner and decide that despite the fact that the parliamentary secretary put on the record that it was his belief that an association or service organisation set up to assist mining industries make profits, which should not be an association, fits within the definition of clause 3(b), could he as commissioner change his view and prescribe that that organisation could no longer be an association? It concerns me that there is this prior prescription. As the member for Armadale pointed out, there are all the provisions about an association being eligible for incorporation in clause 4, all the provisions that make an association ineligible for incorporation and then a list of other provisions that make an association not ineligible. Why is it necessary to prescribe that? Why did the government think the commissioner had to be given that role when there are such broad definitions? Will the legislation in any way contradict itself? Is it a prescribed purpose in this section or is it to belong to a class of associations that are so prescribed? I think the government has added a complexity that is not required given the quite broad definitions in the previous clauses. What made the government believe that it had to give itself additional powers in this bill that can only really be laid in front of the Parliament?

Mr P.T. MILES: Clause 6 is, I guess, a safeguard and is futureproofing; I think the member was sort of saying that. We have to remember though that no matter what we put in the act, a law cannot be gazetted to try to remove something in the act. Everything we put in the act is protected and safe.

Ms J.M. Freeman: It is not a Henry VIII clause?

Mr P.T. MILES: No. This is for the future. I cannot even come up with a reason for it, because I think all the other clauses cover it; I really do.

Ms J.M. Freeman: That is exactly right; that is exactly what I am saying, parliamentary secretary.

Mr P.T. MILES: It is just a safeguard clause to allow the government of the day to possibly put in the *Government Gazette* that a certain class of organisation cannot operate, but then again it is still all in the current act. It is really just a backup to the backups. It is a standard PCO. When I originally read it, I thought: what use would it be? The current act sets out very clearly what can be done. Nobody can really come up with a use for it, but the agency requires it just in case in the future—in 10 years or so—there may be a need to put some sort of prescribed provision in place to actually cancel out or stop an association from happening.

Clause put and passed.

Clause 7: Application to Commissioner —

Ms J.M. FREEMAN: Clause 7 states that "an application must be lodged". The first question is: are there currently fees to lodge with the commissioner; and, if there are not fees, is there any intention of introducing fees? The second question is: is the approved form simply the rules or will there be an approved form that people have to fill out—form 1, name, "this is what I have done", and "I have fixed this"? I want to check whether that approved form is the approved form as in the rules or does the agency have a form that has to be filled out.

Mr P.T. MILES: This one is in place; it is for an approved form. There is an electronic version, member, on the website and that sort of thing. There will be a form to be able to apply for incorporation. That is what it is. It is just a form.

Ms J.M. Freeman: Are there currently fees to lodge?

Mr P.T. MILES: Yes. I should say they are part of the budget, but they are not. Can we come back to that one? Does the member need to know that figure right now?

Ms J.M. Freeman: No, that is fine; I just wanted to know whether there are currently fees to lodge.

Mr P.T. MILES: There is a fee to lodge.

Ms J.M. Freeman: It would have to comply with the government —

Mr P.T. MILES: Yes.

Clause put and passed.

Clause 8: Commissioner may require public notice of application for incorporation —

Ms J.M. FREEMAN: Under clause 8(2)(a), does "written request" include an email?

Mr P.T. MILES: Yes.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Incorporation of association —

Ms J.M. FREEMAN: Clause 10(3)(a) reads —

> the time for making an application for review under section 170 has expired without such an application being made; or

Proposed section 170 does not give a time limit, so I am just assuming that the State Administrative Tribunal expiry times for an application are being used. Proposed section 170 reads —

> An affected person may apply to the State Administrative Tribunal for a review of a reviewable decision.

It is a one-liner, and I am assuming that is the expiry time set by the SAT.

Mr P.T. MILES: Yes, the member is right on that. The SAT expiry time frame will be used.

Clause put and passed.

Clause 11: Refusal of incorporation —

Mr P. ABETZ: Parliamentary secretary, clause 11(1)(b) reads —

> the incorporation of the association is against the public interest.

Obviously an association for training people in terrorist activities would be against the public interest, but to make it a little more subtle: is this an opportunity for the commissioner to actually impinge upon the freedom of association on the grounds of ideas? For example, if somebody wanted to set up an association to foster the teaching in schools that the earth is flat, we would all think that was a crazy idea, but would that be contrary to the public interest? For example, if a society is formed to fight for the traditional understanding of, say, marriage, even though same-sex marriage was passed by the federal Parliament, where does that come in? Who decides what is in the public interest?

[Quorum formed.]

The ACTING SPEAKER (Mr N.W. Morton): Members, can we just keep the conversation down? I am trying to listen to the parliamentary secretary.

Mr P.T. MILES: Clause 11(1)(b) is quite clear. It states —

> the incorporation of the association is against the public interest.

Public interest and sentiment of public interest change, but at the end of the day, if the commissioner refuses an application for whatever reason, the proponents can appeal the decision to the State Administrative Tribunal. I will not nominate what can and cannot be an association. As long as it is in the public interest and there is nothing detrimental, such as we mentioned earlier, there will be no reason under the legislation to refuse. At least, people can appeal under SAT to seek to get their association up and running for whatever reason. We must remember also that the legislation makes it very broad for people to set up associations for that protection, so something would have to be right out there before the commissioner did not allow it to be incorporated.

Ms J.M. FREEMAN: Thank you for your answer, parliamentary secretary. Can the advisers tell us whether there is any common law around what is against the public interest and whether they are guided by common law? Although the parliamentary secretary gave us the vibe, it is probably better if the community can be guided on whether there are some concrete common law principles of what is against the public interest, what those common law principles are and how they are established.

Mr P.T. MILES: It comes back, member for Mirrabooka, to the public interest test. As we know, the community changes its views on all sorts of matters, but I would say that the public interest test is always quite a moving feast. Something that may not have been approved of five years ago may very well be approved today and some of the circumstances will change in the next 10 years. I think the wording "public interest" will always suit the needs of the community of the day.

Mr C.J. TALLENTIRE: This clause is titled "Refusal of incorporation". I can imagine there are many situations in which, initially, an organisation might be well suited to the provisions of the Associations Incorporation Act, but there will be times when an organisation changes its purposes and modifies its behaviour in some way. I am looking for a provision here that is not about the refusal of incorporation when someone applies but for areas when the commissioner or others could instigate the withdrawal of the right of an organisation to describe itself as an incorporated body. Can the parliamentary secretary point me to where that capacity for withdrawal exists?

Mr P.T. MILES: Member for Gosnells, under clause 95, if a group outgrows its association's needs, the commissioner may direct it to do something else.

Clause put and passed.

Clause 12: Restrictions as to names of associations —

Ms J.M. FREEMAN: Clause 12(c) reads in part —

> identical to the name by which an association in existence is, or is taken to be, …

"Or is taken to be" is a new concept; it is not in the act. What is its intent, where does it come from, what are its parameters and how can people be guided by that? For example, when UnionsWA tried to become UnionsWA and have its name incorporated, there was quite a difficulty because it was associated with something, but I cannot remember what it was. Although UnionsWA was clearly its name, there was not another name in existence but there was some sort of debate about whether it could be confused with another name. I think such a broad capacity as "or is taken to be" strikes me as likely to increase red tape for organisations.

Mr P.T. MILES: The advice I have on "or is taken to be" relates to an association that was incorporated at some time but it may not have been holding its annual general meetings—it has not necessarily gone defunct—and may not have been operating correctly. An organisation might be using a name but it has been sitting in someone's back room for a number of years not doing anything but is still incorporated. That is why it is "or taken to be".

Clause put and passed.

Clause 13: Effect of incorporation —

Mr C.J. TALLENTIRE: Clause 13(1)(c) reads —

> except as provided in subsection (2), all rights and liabilities exercisable against members or members of the management committee of the association in their capacity as such immediately before the incorporation of the association become rights and liabilities of and exercisable against the incorporated association; …

Does that mean that a small community group has decided to become incorporated? It has a management committee already constituted because it is well organised and that committee is driving the push towards becoming an incorporated body. Does that mean that a member on that management committee has some debts and the debts can be carried over to the incorporated association?

Mr P.T. MILES: I am assuming the member is asking about someone who has been operating without the incorporation and has set themselves up and wants to transition into an incorporated group.

Mr C.J. Tallentire: The body has decided to transition.

Mr P.T. MILES: Okay. Is the member suggesting that one of those members has incurred some debt to get to that point?

Mr C.J. TALLENTIRE: I may be misreading the clause but it looks to me as though a management committee might be pushing through with this transition of not being incorporated to being incorporated and it turns out that one of the management committee members has some fairly significant debts. I am looking for something that would protect the newly incorporated body from suffering the consequences of those debts. From this clause, it looks as though the newly incorporated body will inherit the debts of a management committee member.

Mr P.T. MILES: If any cost is incurred to get to the point of incorporation, obviously the new incorporation will take on that liability, but if an individual has incurred a deal of debt prior to that, that debt will always stay with the individual; it would not get transferred into the association. I cannot see how that could be done. The group might ask the association after it has been formed to pick up the costs associated with setting up the association, but an individual's personal debts to that point are the responsibility of the individual.

Mr C.J. TALLENTIRE: What the parliamentary secretary is saying makes perfect sense but, reading clause 13(1)(c), I am not sure that that is what we are saying. Let us imagine a situation in which a football club has decided to become incorporated. Clause 13(1)(c) reads, in part —

> … all rights and liabilities exercisable against members or members of the management committee of the association in their capacity as such immediately before the incorporation of the association become rights and liabilities of and exercisable against the incorporated association; …

One of the members of the management committee of the football club has big debts that he or she cannot repay. She holds those debts immediately before the incorporation, and then the incorporation goes through. They then become the rights and liabilities exercisable against the incorporated association. I do not see that the language protects the newly incorporated body from the potential for someone to pursue the organisation for the debts of an individual member. Where is the protection in this language?

Mr P.T. MILES: My understanding of it is that an association takes on the liability for any costs that an individual may have incurred immediately prior to setting up the association. Somebody can sue the association to gain those costs. I am assuming that that is what the member is referring to. If someone is running a soccer club, and then after six months wants to set up as a proper incorporated body, and all the associated nets and equipment have been purchased along the way, all those costs would then need to come out of the association. If the association cannot pay those costs, the association would have to be sued for those costs, because it has been set up. I think the member is asking about the time line immediately before. Is that right?

Mr C.J. TALLENTIRE: No, it is this issue of all rights and liabilities exercisable against members or members of the management committee. It is all-encompassing. All the rights and liabilities exercisable against members, whether or not they were debts incurred purchasing nets for the goals at the soccer club, are exercisable against the association. Reading this, they could be debts incurred by an individual member just through poor management of their personal finances. That is what I am wondering. Logically, one would think that that could not be the case, but reading this, I think there is nothing to restrict that debt eventually being the responsibility of the newly incorporated body.

Mr P.T. MILES: If the member reads down a bit further, he will see the words "in their capacity as such". If the members are all on a committee prior to the incorporation incurring that cost or that debt, and then it becomes an incorporated body, the incorporated body takes on that debt. They have already made those decisions, as the member rightly said previously in his question, they have already set up a management committee, and they are already operating as such. They are travelling along getting themselves in order bit by bit, and then they go to the incorporation. They have incurred that debt during that process while they are all in that committee stage, then obviously they are acting in their capacities, so their liabilities would be met by the association. Obviously, the association would provide that protection.

Clause put and passed.

Clauses 14 and 15 put and passed.

Clause 16: When contract affected by deficiency in association's legal capacity —

Dr A.D. BUTI: This clause deals with the capacity to enter into a contract, even though there may be some deficiency in the association's legal capacity. I have a couple of points here. Clause 16(1) provides that a contract entered into whereby the incorporated association has a deficiency in legal capacity will not be void because of that, unless the other party had knowledge of that. I understand that, but what about vice versa? If there is some deficiency in the legal capacity of the other party to the contract, not the incorporated association, and the incorporated association did not have actual knowledge of that deficiency, would that contract still be on foot?

Mr P.T. MILES: The advice is that—we can probably get this for the member—we are going to be dealing only with the association. Is the member referring to somebody external to the association?

Dr A.D. Buti: I am talking about the other party.

Mr P.T. MILES: Obviously, that would be a matter for the courts or some other process to determine on that one.

Dr A.D. BUTI: Clause 16(3) reads —

> This section does not prejudice an action by a member of an incorporated association to restrain the association from entering into a transaction that is beyond the powers of the association.

I assume that is before the contract is entered into, not post facto.

Mr P.T. Miles: Yes.

Dr A.D. BUTI: This seems a strange place to have this provision. This clause deals with the deficiency in the legal capacity, providing that that deficiency will not prevent the contract being entered into, and then subclause (3) refers to the ability to restrict someone from entering into a contract. It does not seem logical to have that in the same clause. I understand the effect; it just seems odd.

Clause put and passed.

Clause 17: Requirements of section 4 continue after incorporation —

Ms J.M. FREEMAN: One would think that this is a no-brainer, that section 4 continues. I am interested in the way that this is drafted. After incorporation, if an organisation continues to carry out its function, has more than six members, and does not have a pecuniary profit purpose, this starts applying straightaway after the legislation is passed. This then goes to the grounds under clause 144 on which the commissioner may act. If an organisation does not comply with clause 17, is that instant grounds for an organisation to lose its incorporation? Does it require the commissioner to make a ruling, or does it just mean that, because an organisation has not complied, it can no longer be considered an incorporated association and have the protection of this legislation in terms of its liabilities? Clause 144(b) reads —

> has contravened or is contravening section 17; or

I assume that the commissioner has to make the association aware of the grounds, or does clause 17, by virtue of how it is written, establish that because an organisation is not complying with any of the requirements of section 4, is no longer an incorporated association, and no longer has protection?

Mr P.T. MILES: Clause 17 is clear. As we all know, an association must obviously keep doing certain things within its organisation. That is just being laid out in this clause. If the commissioner receives a complaint from a member that a club is not doing that, under clause 144, after an investigation the commissioner could, if reasonable cause is found, cancel the incorporation.

Ms J.M. FREEMAN: I understand that; it has to be cancelled. Clause 17 does not mean that by virtue of not doing those things an association is no longer an incorporated association and therefore no longer has protection under the act. Does that mean that a body loses its incorporation status and the protection of the act only when the commissioner takes action under clause 144?

Mr P.T. MILES: That is correct. The commissioner can cancel the incorporation and the body will lose its protection under the act. The member for Mirrabooka is spot-on; that will happen if an incorporated association does not do certain things, which are not that onerous, that it is being asked to do.

Ms J.M. Freeman: The commissioner can cancel it, but if you do not do them, it doesn't cancel it out?

The ACTING SPEAKER (Mr I.M. Britza): Member for Mirrabooka, you should be on your feet.

Mr P.T. Miles: The commissioner has to make the decision to cancel.

Ms J.M. FREEMAN: For a body to lose the protection of the act?

Mr P.T. Miles: Yes.

Mr C.J. TALLENTIRE: I am curious to know how the commissioner will know about organisations that do not meet the requirements. Have allocations been made for additional resources for the commission to investigate organisations and to sift out vexatious complaints from genuine complaints? What additional capacity will the commissioner be given to fulfil the functions under clause 17?

Mr P.T. MILES: In this case, it will always be as a result of a complaint from a member of the association, or perhaps somebody from outside who does not believe that the association is doing what it is supposed to do under the legislation, and then the commissioner would act. A complaint could come in and the agency would investigate, as it does now in the normal course of its duties, by asking for minutes and what have you, and then taking that further. If for some reason something has not happened, clearly the commissioner has the right to investigate that further and, if need be, cancel the incorporation.

Mr C.J. TALLENTIRE: What additional resources will be given to the commissioner to investigate when it is deemed necessary, because at the moment there is very little in the way of investigation when a complaint is made? The parliamentary secretary is making a commitment in law that there will be some capacity to investigate, but he is not telling me where the additional resources will come from.

Mr P.T. MILES: As it is now, the Consumer Protection Division is resourced. It has a very good investigative team. All complaints for whatever reason are taken seriously, and it will initially investigate. An investigation may not favour a person who thinks that an incorporated association is not operating properly, but that is not to say that the agency is not properly resourced. It still looks at the complaint. It requires no additional resources. The fact is that the agency is already doing this work. There is no extension of work; it is just carrying on with what it is currently doing.

Mr C.J. TALLENTIRE: Can the parliamentary secretary tell me how many complaints about associations of incorporations the commissioner has received in the past 12 months, or the last financial year, and how many of those were responded to?

Mr P.T. MILES: I would have to take that on notice and provide further information for the member. We do not have the information on that here.

Mr C.J. TALLENTIRE: The parliamentary secretary told me that the commissioner investigates all complaints, so how does he know that the commissioner has investigated all complaints if he cannot tell me how many complaints there have been?

Mr P.T. MILES: It is because the current act requires the commissioner to investigate complaints.

Mr C.J. Tallentire: It doesn't mean he does it.

Mr P.T. MILES: The agency looks at and investigates complaints. Just because I do not have the stats on how many complaints have happened under the present Associations Incorporation Act does not mean that the agency is not doing a great job in this space. It looks at these things, and can I say that even in my own electorate I know that multiple complaints come from particular groups that get themselves in all sorts of bother, but when the actual complaint is investigated, there is no complaint. It often happens that someone has misread the constitution or the by-laws. Additional funding is not needed to operate this legislation because it repeals and replaces the current act.

Clause put and passed.

Clauses 18 and 19 put and passed.

Clause 20: Issue of replacement certificate —

Ms J.M. FREEMAN: What happens if there is a dispute over the certificate at an annual general meeting when an organisation takes over another organisation? Can that organisation get a replacement certificate, or does it have to be lost or destroyed? What happens when one body does not hand over the certificate to the other? Can a new certificate be reissued and the old one decommissioned, as it were, or does the old certificate have to be lost or destroyed?

Mr P.T. MILES: We obviously do not want any more than the appropriate level of certificates out there. That is why it is clear here that the association must satisfy the commissioner that the certificate has been lost or destroyed. The commissioner will not issue a replacement on the grounds that a previous person on the committee has it at home on their wall and does not want to give it up. The association will have to prove to the commissioner that the person has either lost the certificate or it has been destroyed.

Ms J.M. Freeman: How does an organisation get the certificate from a previous management committee member who won't pass it over?

Mr P.T. MILES: There are clauses within the legislation so the commissioner can demand somebody hand over that certificate. It is the same if somebody is holding onto the secretarial or treasury books; there is a defined point in this bill in which it must be handed over. If it is not, the commissioner can make orders to that effect.

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Commissioner may exempt from requirement of section 22 —

Ms J.M. FREEMAN: Clause 23 provides for an exemption that can be attained under clause 22. Clause 22 goes to the rules of an incorporated association, but the exemption in clause 23(1) is a clause from schedule 1. Can the commissioner exempt people from the rules of an incorporated association or can they only be excluded from the provisions of schedule 1? I understand that schedule 1 is an outline of what needs to be in the rules, but I want to know, for example, whether this provides that a body does not have to have a rule on how it will apply quorums or the procedures of meetings of the committee, or does a body not have to have those things in its rules? I am confused about what is the intent of the clause.

Mr P.T. MILES: No. Under this clause and item 1, only the provisions under schedule 1 can be exempt, and no other part. Again, providing that the organisation can satisfy the commissioner in writing, as is stated, it can ask for those provisions to be exempt.

Ms J.M. FREEMAN: Clause 23(5) states —

(c) that the application of the provision to the association would cause undue hardship to its members; and

(d) as to any other prescribed matter.

The parliamentary secretary heard my contribution to the second reading debate when I said that this seems like a lot of red tape for very small organisations. Will this enable those micro-associations not to be hamstrung by some of the requirements of the rules in the legislation? Will the commissioner be given the capacity to establish something that is less onerous than the provisions of this legislation for those small organisations that want to operate—the small community organisation or the community garden—but can operate on only a membership of five, not a membership of six? I want to know whether that clause can be looked at in that particular way.

Mr P.T. MILES: As previously stated, if an organisation can put a good case to the commissioner under clause 23(5)(c) for why it wants that exemption, the commissioner will more than likely grant that exemption. As the member says, there is no need to be too onerous on the smaller clubs in our community. Therefore, if it means exempting certain requests that they make, they will have to do so.

Clause put and passed.

Clause 24: Restriction on distribution of surplus property —

Mr C.J. TALLENTIRE: I seek advice from the parliamentary secretary. We have all seen constitutions that have wind-up clauses that state that at the point of wind-up, the organisation's assets will be disbursed to a similar or like-minded organisation. I wonder whether this is a new thing. Previously, it was possible for assets to be disbursed to a company limited by guarantee, as expressed in subclause (1)(b), or a company holding a licence that continues in force under the Corporations Act. Has that been the situation to date or has that been added to this bill?

Mr P.T. MILES: The assets of an organisation can go only to a not-for-profit organisation; they cannot be distributed to a person or an individual. That is what this clause is for. They cannot be distributed to members. Does that clarify the point that the member was asking about?

Mr C.J. Tallentire: No. I am asking: can they now be distributed to a company?

Mr P.T. MILES: If it is a company that is limited by guarantee, they can be.

Mr C.J. Tallentire: Is that new?

Mr P.T. MILES: The advice is no, not at all.

Mr C.J. TALLENTIRE: Is paragraph (c) new? It states that it can be a company holding a licence that continues in force under the Corporations Act.

Mr P.T. MILES: Just to clarify it a bit further, the act states that the assets can be distributed to not-for-profit organisations.

Mr C.J. Tallentire: Similar organisations?

Mr P.T. MILES: Yes, similar organisations. This clause provides that organisations can distribute surplus property to these items that are listed because they are not-for-profits and they are limited in what they can do. It still comes down to the fact that an organisation cannot put any property or assets out to individual members.

Mr C.J. TALLENTIRE: It does not state that it is restricted to distributing the surplus property to a not-for-profit organisation; it states that it can go to a company holding a licence under the Corporations Act. I can well imagine circumstances in which an incorporated body gets a significant grant from Lotterywest and the minister hands over a cheque for $100 000 or maybe $300 000 and then the incorporated body winds up. Then, before we know it, those assets that were given on the basis that it was a charitable organisation end up with a commercial organisation. It seems like an easy pathway—an unfortunate one—that could well arise.

Mr P.T. MILES: The advice I have is that limited companies are not commercial operations. They are still organisations that are —

Mr C.J. Tallentire: Read paragraph (c), though, please, parliamentary secretary.

Mr P.T. MILES: They still are not-for-profits. I do not know what the member wants to see there. Even under the Corporations Act, they cannot distribute their assets to their members.

Mr C.J. TALLENTIRE: We are talking about a company holding a licence under the Corporations Act. I do not know the Corporations Act, but I imagine that it refers to bodies that are profit-making, commercial enterprises.

Mr P.T. MILES: Limited means limited by guarantee.

Mr C.J. Tallentire: That is in paragraph (b); I am talking about paragraph (c).

Mr P.T. MILES: Yes, but the member is saying “all companies”. This is not a proprietary company; this is a limited company. There are many types of companies that can be registered. We are saying that it still has to be limited for the use, and these ones cannot distribute to their members. It is exactly the same; it is just that it may have transitioned to a limited company.

Mr P. ABETZ: Clause 24 deals with the distribution of surplus property. In terms of the kinds of organisations that the property will be given to, let us take the scenario of a small, independent Pentecostal church that is an incorporated body. It winds up because it no longer has enough members and it wants to give its assets to the denominational body. Often the denominational bodies are not incorporated associations. Will this provision preclude the assets from going to that denominational body, which normally would pass it on to another congregation that is perhaps incorporated? Often there is a mechanism, but that seems to be precluded under this provision.

Mr P.T. MILES: Yes, they can; in this case, the commissioner can give that approval. Clause 25 states that the commissioner may approve a variation of the provision implied by that clause. Again, if an organisation wants to do that, it would ask the commissioner. Any organisation, no matter how big or small it is, still has to go the department when it is winding up and tell the department what it is doing with those funds or whatever to be ticked off, even under the current act. I know organisations that have folded, so it will be no different in the new act from the act we have today that people can do that. However, again, the commissioner can also assist in that.

Mr P. ABETZ: There is no limitation that it has to be within the state of Western Australia, is there? It can be interstate as well.

Mr P.T. MILES: No, there would not be any limitation; obviously, as long as it stays in the country. My understanding is no, but again, as I said previously, the organisation would be automatically in that wind-up process and be approaching the commissioner anyway. The commissioner would probably ask about what assets the organisation has and where the assets are going, and the organisation would have to identify them within that, I guess, final acquittal process. The organisation would have to know where those assets are going because under no circumstances can they go to a member.

Clause put and passed.

Clauses 25 to 34 put and passed.

Clause 35: Rules to be available to members —

Mr C.J. TALLENTIRE: Is it the case that somebody has to be a member to gain access to the rules?

Mr P.T. Miles: No.

Mr C.J. TALLENTIRE: There would be situations when someone might be contemplating becoming a member and might want to know what the rules are. The provision here states that the rules are available to members. That is all well and good but what about someone contemplating becoming a member; can they have access to the rules?

Mr P.T. MILES: Anybody can. The bottom line is that someone can go to the agency now and receive a copy of the rules of a particular association. If people pay a fee, they can get those rules. However, this provision in the bill is more about the members' rights to access those rules as well.

Mr C.J. TALLENTIRE: It seems a pointless clause then. If the parliamentary secretary is telling me that anyone can get the rules, why is there a clause in the bill that the rules are available to members?

Mr P.T. MILES: The reason is that anybody outside the association can get the rules. They can go to the department's website and purchase those rules. However, a member of the association has to be given those rules free of charge; there is no fee for that. This provision is to make sure that every member knows the rules of the incorporation.

Mr C.J. TALLENTIRE: Could the parliamentary secretary tell me a little more about how the website works? Can I go to the website and click on the name of the organisation that I am interested in and then see its rules and then is there some point at which I pay a fee? Is that how it works?

Mr P.T. MILES: The member would go to the department's website and do a search for the particular organisation he is interested in joining to see what the rules are. Once he had searched the website, it would obviously give him a list—there may be a couple with similar names—and he would then purchase those rules using his Visa card.

Mr C.J. TALLENTIRE: Given that these rules are lodged electronically and, as far as I can tell, almost no clerical effort would be required, why would any fee be involved in accessing those rules?

Mr P.T. MILES: Is the member for Gosnells asking whether the department should be providing anybody and everybody free access to the database of rules?

Mr C.J. Tallentire: It doesn't sound like there is a restriction on the access. A fee is being charged and I am not sure why a fee is being charged.

Mr P.T. MILES: There is quite a bit of work involved. The actual investment by the agency to provide the database costs quite few thousands, if not hundreds of thousands, of dollars. It requires people to maintain that database to make sure it is relatively up to date for when people want it. Those sorts of things, as with anything in business and government, have an implied cost; therefore, the agency in this particular instance will charge for that cost to be recouped.

Mr C.J. TALLENTIRE: What is the standard fee for access to the rules?

Mr P.T. MILES: It would cost $31 at the current rate to purchase the rules online.

Ms J.M. FREEMAN: Can the parliamentary secretary take us to where in the bill it states that the rules are publicly available?

Mr P.T. MILES: It is in clause 162(1)(b). I will clarify that. Clause 162(1)(b) states —

> … inspect any document lodged with the Commissioner for the purposes of this Act, not being a document that has been destroyed or otherwise disposed of; …

Clause put and passed.

Clauses 36 to 38 put and passed.

Clause 39: Persons who are not to be members of management committee —

Mr C.J. TALLENTIRE: This clause outlines the sorts of people who might not be eligible. I am curious about how this will be policed. I am imagining circumstances when an election is on with a number of people competing for office-bearer and committee positions, and suddenly someone says, "Oh that person's got an indictable offence conviction against them." How would the suitability of the person be determined? Could we actually face cases when a whole election process is delayed because someone has suddenly decided to make claims about someone's inability to be on the management committee? How would we deal with that and what kind of resourcing is there to deal with it?

Mr P.T. MILES: Clause 39 makes it very clear that someone who is a bankrupt or who has been convicted of an indictable offence is ineligible. It is basically up to the person nominating for a position on a board or in any role to disclose whether they are a bankrupt or have been convicted of an offence involving fraud or dishonesty within the periods listed in the clause. There is a penalty of up to $10 000 if the person is prosecuted. It would work on the basis that clearly we will not have policemen in every organisation and association. However, if one of these people stood for and gained a role on the committee, a secretarial or treasurer role or whatever it might be, and then another person knew of their dishonesty or that they had breached the new act, a complaint would be made to the Consumer Protection Division of the Department of Commerce. That division would then investigate the matter and on investigation that person would be prosecuted for breaching the act and it would have to go to the relevant court for prosecution. The association would then have to, quite rightly, go through the process of filling that position on the board. As I said previously, the agency is already resourced in that area of looking after clubs and associations, and therefore does not require any new funding because it already has funding to manage the current act.

Clause put and passed.

Clauses 40 and 41 put and passed.

Clause 42: Disclosure of material personal interest —

Mr C.J. TALLENTIRE: This clause highlights why the government is making a grave error in allowing on the management committee of an organisation people whose pecuniary interest is the driving force behind their membership of that organisation. Let us look at this clearly. The parliamentary secretary has said that groups such as industry peak bodies are allowed under this legislation. Those people will, of course, be the people on the management committee. We can well imagine that the Chamber of Minerals and Energy of Western Australia will have on the management committee representatives from its member companies, and it will be engaged in discussions about what the policy priorities would be for the Chamber of Minerals and Energy. Clause 42(1) states —

> A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee.

In the situation that I have just described, that disclosure will need to be made every time there is a meeting of the management committee. Let us say the Chamber of Commerce and Industry of Western Australia is contemplating trading hours, and representatives from Woolworths and Coles are on the management committee. Obviously their companies stand to profit from that policy discussion about the position of the Chamber of Commerce and Industry on trading hours. Will they be expected to disclose that self-interest? What will be the situation? Does the parliamentary secretary expect that there will be a public register of those disclosures? Will he just trust that those people—who may all have a conflict of interest—will make a disclosure? How on earth is this going to work?

Mr P.T. MILES: It is the same as the situation under the Local Government Act, member. Individuals have at some point in their lives to take responsibility for the decisions that they make. The penalty, if found guilty, is a fine of $10 000, which is quite a substantial amount. If a person on a board of a club or something similar stands to make a personal gain from a decision, such as a monetary payment, he has to declare that interest to the other members and leave the room, and the decision to proceed or not to proceed would be made in that member's absence. That is the appropriate action, just as it is in most other organisations that I am aware of. If a person has a direct personal interest, they are not to be part of the decision-making process. If they are in the room and they have made that decision, obviously another member can report that incident to the Consumer Protection Division and it can look at the minutes of the meeting and take advice from other members who were at the meeting as to whether the person was or was not present at the meeting, and if it finds that a case can be made against that person, it will prosecute that person in the appropriate court.

Mr C.J. TALLENTIRE: Imagine again a meeting of the Chamber of Commerce and Industry at which it is reasonable to say that every one of the management committee members has some degree of personal interest. They would be there to represent an organisation that has an interest, but their personal interest is the same as the interests of the organisation that they are representing, because there will be all sorts of reward schemes and other things are linked to the profits made by the company. We could have a circumstance in which all the members of the management committee had to declare that they had a conflict of interest, and there would then not be anyone at the meeting to discuss the issue. It is farcical. What would happen if all the members of the management committee had to leave the room? How could it work?

Mr P.T. MILES: Clause 42(3) states —

> Subsections (1) and (2) do not apply in respect of a material personal interest —
>
> …
>
> (b) that the member has in common with all, or a substantial proportion of, the members of the association.

If every person within the association will get a benefit—that is, if the association as a whole will get a benefit—that would not be deemed to be a personal interest, because that person is not the only person in that committee room who will get some sort of personal gain. If everyone will get the same personal gain, obviously it is not a personal interest in the matter.

Clause put and passed.

Clause 43: Voting on contract in which management committee member has a material personal interest —

Dr A.D. BUTI: The parliamentary secretary alluded to this in his answer to the member for Gosnells. This clause provides that if a person has a material personal interest in a matter being considered at a meeting, they must exclude themselves from the meeting—that is the normal practice in local government and so forth, as the parliamentary secretary has said—and the penalty for not doing so is a fine of up to $10 000. How can the parliamentary secretary reconcile that with the fact that the Treasurer, who has a personal interest in a number of matters on which he had had to make a decision, stayed in cabinet when those matters were discussed? How can the parliamentary secretary expect the public —

The ACTING SPEAKER (Mr I.M. Britza): This is not relevant to the clause, so bring it back to the clause, member.

Dr A.D. BUTI: It is relevant to the question that I am asking. How can we expect the public to agree to something that members of cabinet are not required to comply with? There is a fine of $10 000 if a member of a management committee does not comply with clause 43, which provides that a member has to exclude themselves from a meeting in which they have a material personal interest. That is the standard procedure in local government and in boards of management. I understand that. How can the parliamentary secretary reconcile that with his own government's practice, whereby members of cabinet are able to sit in meetings in which they have a personal interest? The Treasurer today quite clearly articulated the fact that he had shares, in situations in which he personally made a decision by releasing a media statement; and, if he did not release a media statement —

The ACTING SPEAKER: Member, you cannot ask questions —

Dr A.D. BUTI: He was in cabinet —

The ACTING SPEAKER: Member, do not speak over the Chair. You cannot ask questions about cabinet. Keep your questions relevant. There are no cabinet issues here.

Dr A.D. BUTI: I am asking the parliamentary secretary to reconcile this piece of legislation with the practice of this government. If we are here to support this legislation, we should have some knowledge of how the government is reconciling the practice that it is engaging in with what it expects the rest of the community to engage in. How has the parliamentary secretary managed to put this clause in this legislation, and how is he seeking the support of Parliament, when he is not actually practising it in government?

Clause put and passed.

Clauses 44 to 52 put and passed.

Clause 53: Register to be maintained —

Mr D.J. KELLY: Clause 53 requires that a register of members is kept. Subclause (2) states —

> The register of members must include each member's name and —

(a) residential address; or

(b) postal address; or

(c) email address; or

(d) information, by means of which contact can be made with the member, that is prescribed for the purposes of this paragraph.

These organisations are potentially multimillion-dollar operations, some of which may have multimillion-dollar contracts involving millions of dollars of public money. It is important that these organisations are transparent. I am a little concerned that there can be an organisation receiving millions of dollars of taxpayers' money and an interested person who wants to know what this organisation is could presumably find out who the members of the organisation are. If a person went to look at the register of members for the association, all they would find would be names and possibly some email addresses. We all know that email addresses are not at all reliable for identifying people. The register might even have identification information under paragraph (d), which is a source of information for identification that is of a lesser standard than an email address. I understand there might be confidentiality issues. The trouble with this legislation is that it covers the local bowling club and organisations that may have been awarded million-dollar government contracts. At that end of the scale, companies have a degree of transparency with reporting to shareholders and the like; in this legislation all there is in a register of members is something that is potentially as worthless as an email address or even something worse. Can the parliamentary secretary reassure me? The way I read this clause there could be a membership register of names and old email addresses, and that is all there would be to identify the people who run the organisation.

Mr P.T. MILES: Clause 53(2), which itemises what people can and need to register as means of contact, is purely for member-to-member relationships. It is about members being able to receive correspondence from the association. For example, if it were the local gun club, members may not necessarily want everyone in the wider community to know that they are in a particular gun club. This clause gives people privacy in their choice of identification and what other members do with their identification. This provision is not about hiding members' identities, because a person can join an association and maybe email the members on the register with their thoughts about things. This clause is purely to protect members from getting spam and junk mail. It is so that members can communicate with each other; it is not for any purpose other than that.

Mr D.J. KELLY: Is it purely for member-to-member contact?

Mr P.T. Miles: Yes.

Mr D.J. KELLY: Most organisations have elections for officer bearers. Where does the legislation provide a roll of members, other than this register, who would be eligible to vote at an annual general meeting or in an election? Obviously, if a person has voting rights at an AGM or in an election, they would want to be sure that the person with those voting rights is not just a bogus name and an email address.

Mr P.T. MILES: Clause 55 allows a person to request a copy of the register if they so wish to lobby to become a president or a treasurer or whatever. As a member, a person can get access to that register. Clauses 50 and 55 make that quite clear.

Mr D.J. KELLY: If a person gets hold of that register of members and the only things on it are names and email addresses, how can that person be confident that the names listed are real people? I hate to think that an organisation might have bogus memberships of people who do not really exist or might have been created. If the register lists only names and email addresses, what provisions ensure that the people listed are genuine people?

Mr P.T. MILES: Yes, member, I have probably been associated with similar organisations where one might find that the membership includes half of Pinnaroo. Under the proposed act, it is up to the committee to ensure that the register is up to date with the current email address or post office box or residential address of its membership. It must do that to comply with the legislation. The association needs to be fully apprised of contact details in case it needs to email or distribute correspondence to members. If the association is not able to keep a register of its members, it is contravening the act and it can be dealt with under the appropriate clause.

Mr D.J. KELLY: I am still concerned. There are two issues. Firstly, if a person is a member of an organisation, what rights do they have to ensure that, when they participate in things such as annual general meetings and elections, the voting is appropriate and aboveboard? The parliamentary secretary said that a person can get a copy of the register and the board has a responsibility to maintain the register correctly. Given what we all know happens in some organisations at times, I am not sure that internally that is very rigorous. Even if the parliamentary secretary is happy that there are enough protections in the legislation, what about organisations that tender and win government contracts and potentially receive millions of dollars of taxpayers' money? If I was a member of the public who wanted to find out about the organisation that had won the government tender to provide the meals on wheels service in my suburb, how would I as an interested person find out who the members of that organisation are?

Mr P. Abetz interjected.

Mr D.J. KELLY: I am hearing from the member for Southern River that a person cannot do that. In an environment in which this bill regulates not only the local bowling club engaged in its own activities, but also organisations that tender for and often receive millions of dollars of taxpayers' money, there seems to be far less transparency for those organisations than there would be if they were private companies tendering for work. If associations want to provide a service for their own members for their own enjoyment, that is fine but in an environment in which these not-for-profit organisations potentially actively pursue and receive millions of dollars of taxpayers' money, the degree of transparency and scrutiny appropriate to them is different from that for the local tennis club. I suppose, as a taxpayer, this register of members is one example in this legislation of a flaw in this bill and one of them is the register for members. It does not give me comfort that much protection at all is given to members of the public to be sure that large-scale organisations churning through millions of dollars—much of it taxpayers' money—are acting transparently and above board. What in the legislation can the member point to that will give a taxpayer like me some comfort?

Mr P.T. MILES: I understand what the member is asking, but if he wants access to the membership list, the only way to do it under this legislation is to become a member himself and require the committee to give him access to the register. As an outsider, he cannot expect to get access to documents within an organisation. He is entitled to know who the president, secretary and treasurer are because they make up the executive. Organisations have rules in their constitutions to allow information to be provided only by email or something like that but in some cases it is about protecting members' privacy. To get what the member is asking for, which is a lot more than access to members, he needs to become a member. For an organisation to be accountable for public money—to deliver meals on wheels, I think he suggested—the organisation that would provide the group with the funding to do that work would clearly have a certain set of conditions, key performance indicators or whatever, to request that from an organisation. If it is a meals on wheels situation, I would say that an organisation such as the local authority would request information on who is delivering meals, to make sure they have the appropriate level of police clearance and so forth to protect the clients, but that would be within the structure of the organisation. If the member wants to know who they are, he would need to join the organisation very happily and be part of the organisation in his friendly manner and talk to the members himself.

Mr D.J. KELLY: If I wished to become a member of the association that was delivering meals on wheels in my area, where in the legislation does it give me a right to become a member? Becoming a member of a particular association is sometimes not as straightforward as the parliamentary secretary may think. In my previous experience, trying to find out how to get a membership form and fill it out and get accepted as a member of a not-for-profit, aged-care provider was often opaque, to say the least. Given the example the parliamentary secretary just gave, does anything in the legislation provide that if someone wants to become a member of an association, they are entitled to? Is it possible for the association to say, "Thank you very much we do not want you to be a member of the meals on wheels association"?

Mr P.T. MILES: No; the member can ask to join any association and the association can always reserve its right to accept him as a member. It may have the relevant criteria in its rules or whatever. It is up to the association to accept the member with open arms or reject him and he goes on his merry way. It is up to their rules and their policy. If an association welcomes the member with open arms to help deliver meals on wheels, under clause 56 of the bill, he may request a copy of the register.

Clause put and passed.

Clauses 54 to 63 put and passed.

Clause 64: Tier 1, tier 2 and tier 3 associations —

Mr P. ABETZ: Subsection (4) of this clause reads —

> Revenue is to be calculated for the purposes of this section in accordance with the accounting standards in force at the relevant time (even if the standards do not otherwise apply to the financial year of the incorporated association concerned).

An accountant who does a lot of work for charitable organisations in Perth has alerted me to the fact that that is a meaningless term and we need to define what accounting standards we are talking about. Could the parliamentary secretary explain them? The bill does not define accounting standards and, therefore, it appears that in front of the word "accounting", there should be the word "applicable". The accountant furnished me with a special purpose financial statement. The Australian Charities and Not-for-profits Commission has applicable standards for different things. In this legislation there is no definition. Can the parliamentary secretary clarify that?

Mr P.T. MILES: It is clarified in clause 62 "terms used", which reads —

> ***accounting standards*** means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations; …

It has to be done by the normal accounting standards of the board.

Mr P. ABETZ: It begs the question: what is the applicable one? There are different tiers for the different levels, so there are different standards for each tier.

Mr P.T. MILES: I guess the answer is that the tier the organisation is part of will determine which level of accounting practice will need to be adhered to. A huge multinational organisation will have to have a very rigorous accounting practice by the standards used in the taxation law. One would need to do that. That is what we are saying there. If an organisation is unsure of which sort of accounting practice it should be using, it can contact an accountant. It would need to take some advice from its accountants to get the relevant means. It is only those that apply to the different tiers, whether they be tier 1, 2 or 3 that would need to be used. Again, the Australian Accounting Standards Board can be asked what the standards are for the relevant tier factor.

Clause put and passed.

Clauses 65 to 232 put and passed.

Schedule 1: Matters to be provided for in rules of an incorporated association —

Mr P.T. MILES: I move —

> Page 143, lines 11 to 13 — To delete the lines.

Amendment put and passed.

Schedule, as amended, put and passed.

Schedules 2 to 4 put and passed.

Title put and passed.

Reconsideration in Detail — Motion

On motion by **Mr P.T. Miles (Parliamentary Secretary)**, resolved —

> That the bill be reconsidered in detail for the further consideration of clause 3.

Reconsideration in Detail

Clause 3: Terms used —

Mr P.T. MILES: I move —

> Page 3, lines 10 and 11 — To delete "either in person or by proxy or postal vote".

Amendment put and passed.

Clause, as amended, put and passed.

House adjourned at 10.26 pm