ASSOCIATIONS INCORPORATION BILL 2014

Second Reading

Resumed from 11 September.

DR A.D. BUTI (Armadale) [11.29 am]: I would like to acknowledge at the outset that I am not the lead speaker on this bill, but I will commence debate for the opposition on the Associations Incorporation Bill 2014. As we all know, various associations in our community serve incredibly important functions and roles. Having that incorporated into certain legal protections and frameworks allows them to operate in a more efficient manner than would otherwise be the case. The bill before us seeks to comply with the uniform legislation in regards to incorporated associations.

In preparing to speak on this bill I came across a paper written in 2001 titled "Reforming Queensland's Incorporation Associations Legislation", working paper 102, by Dr Myles—how appropriate!—McGregor-Lowndes. He was at the Queensland University of Technology. It would appear that many of the things stated in this paper are reflected in the purposes and motivations that have driven the bill before us. I will quote briefly from this working paper in regards to broad policy issues. It states —

> There are a number of broad policy issues that warrant consideration in any reform of the law and administration of incorporated associations. From its inception, the Act has had as its principal objective the facilitation of nonprofit organisations by providing a suitable legal form. This still remains. However, the structure and administration of the Act must take account of the increasingly important role of nonprofit organisations identified above. The broad policy issues are the national uniformity of legislation, the reduction of administrative costs to government and the compliance costs borne by the community, differential reporting of associations by size, resolution of internal disputes and practice directions.

I think that could have formed the parliamentary secretary's second reading speech. They would appear to be many of the objectives of the bill before us. Whether they achieve that will be teased out in the second reading debate and, more particularly, during consideration in detail.

The member for Mirrabooka is the lead speaker for the opposition. I made a comment to her the other day that if I had a choice between accepting the interpretation of the member for Mirrabooka or that from a trained lawyer, I would always go with the member for Mirrabooka. Her attention to detail is incredibly acute and of a very high standard. I wish the member for Wanneroo good luck during consideration in detail, once the inquisitorial, technical skills of the member for Mirrabooka gets her head and eyes on the bill. Hopefully that will ensure that any bill that is passed by this house is what the government wants and what the opposition wants in trying to further the performances of unincorporated associations. As we know, they serve very important purposes.

I was just going through the second reading speech. It outlines the main areas that this bill seeks to deal with. I will briefly talk about that and then move on to the role that unincorporated associations play in Western Australia. This bill is basically trying to repeal the current Associations Incorporation Act 1987. This is not only an amendment bill, but a repeal bill. It seeks to do many of the things that I read out in regards to the Queensland University of Technology paper. One area is the whole issue of the compliance requirements that people involved in incorporated associations have to deal with. One of the main areas is the whole issue of accountability or financial reporting. I have had some personal experience of that with some of the incorporated associations that I have been involved with. Before I move on to that, it is actually important for an association, for many reasons, to be incorporated. One of the most important reasons is that it provides a legal identity for that incorporation that is separate from its members. If the association is not incorporated, the members, individually and collectively, are the legal identity—which of course raises issues about legal liability and financial responsibility. There is a whole body of law in regards to trying to establish trusts and gifts for unincorporated associations. It is not an easy task. Once an association becomes incorporated, it is much easier to establish a trust for the benefit of the incorporated association and also to pass on the gift to the incorporated association. There is a considerable body of law in Australia, and in the common law world, about this. The problem with an unincorporated association is that it is an aggregate of its members. As such, it does not constitute a single identity in law; therefore, seeking to transfer property to the unincorporated association can be a difficult task. In seeking to transfer property to an unincorporated association, that can be construed in three different ways. One way is that it can be considered a gift to the members of the association at the date of the gift, either as joint tenants or as tenants in common; in which case the gift will be valid. Secondly, it could be a gift by way of a trust to the present and future members, in which case the gift will fail for infringing the rule against perpetuities. I will not seek to explain the rule against perpetuities. The member for Butler may attempt to do that. I do not even think we would ask the Solicitor-General to attempt to explain the rule against perpetuities. It is an incredibly complex area; something we mere mortals would have difficulty trying to

understand. Some would consider the member for Butler not to be a mere mortal, so he may be able to explain it to us! The third way is a gift by way of a trust for the purposes of the association. If the purpose of the association is non-charitable, the gift will fail in infringing on the rule against perpetuities, and also the beneficiary principle. It makes sense on that basis alone to incorporate the association because it potentially allows a greater source of financial income by a trust being established for the incorporated association, or gifts being given to the incorporated association. If it is unincorporated, it is rather difficult.

There are some famous cases in this respect. I am sure this will interest the government because the Communist Party of Australia is involved in it—the case of Bacon v Pianta. It involved a gift given to an unincorporated association. The Communist Party was an unincorporated association, and of course it did not have a charitable purpose, which made it very difficult for a trust to be established.

On the financial aspect or on the ability to set up a trust, it is better if the association is incorporated. That is quite obvious. There are also legal liability issues. There are many advantages in being incorporated. This bill seeks to ensure that those advantages can be enjoyed. We have a system at the moment in which, in many respects, it is not a massive hurdle to be incorporated, but some of the financial reporting obligations make it difficult to function, especially if the association is made up of volunteers, which most are. One of the clauses in the bill is about the issue of financial reporting. The bill seeks to divide incorporated associations into various levels of financial complexity with various financial reporting requirements. A tier 1 association has less than $250 000 in revenue per annum, a tier 2 association has between $250 000 and $1 million in revenue per annum and a tier 3 association has over $1 million in revenue per annum. As was noted in the second reading speech, 90 per cent of associations in Western Australia have revenue of less than $250 000, so the obligations imposed on them are important for many people in Western Australia. Under the bill, a basic financial statement will be considered to be sufficient as a method of accounting. I know from personal experience that the whole issue of financial reporting or accountability can be quite onerous for an association. I was the founding chair of the Armadale Film Festival, which is an incorporated association.

Mr D.A. Templeman: It is a great festival.

Dr A.D. BUTI: Yes, it is a great festival.

Mr D.A. Templeman: There was a lot of Scandinavian interest in that festival.

Dr A.D. BUTI: There was some Scandinavian interest.

We held our first festival in, I think, 2011 and our feature film was *Red Dog*. We actually had the famous dog from *Red Dog*. What is its name?

Mr D.A. Templeman: I know it is red.

Dr A.D. BUTI: Of course it is a red dog. Anyway, that dog actually came to the festival.

Mr D.A. Templeman: The Leader of the House had the dog on his ministerial desk! He was raving about it.

Dr A.D. BUTI: There we go. The dog came out to the festival and it was a major drawcard to Armadale. About 1 000 people were there for the screening of *Red Dog*. I am sure that 90 per cent of them were there to see the red dog live.

Mr D.A. Templeman: No, they were there to see you.

Dr A.D. BUTI: Besides that fact. They can see me any day, member for Mandurah. I am out in the electorate every day, so I am not a rare sight—I hope not!

Mr D.A. Templeman: I know that a lot of people still think you are the American President!

Dr A.D. BUTI: It is funny that the member should say that. I would like to relay two stories, if the member does not mind, seeing that he interjected. The member for Mandurah has got me going now. I was on a train one day from Fremantle to Perth. I can assure members that the Fremantle–Perth transport experience is a lot different from the Perth–Armadale transport experience! Of course, my type of people are on the Perth–Armadale train; that is who I associate with more often than the Fremantle–Perth people. Anyway, I was on the train and this gentleman got on at Claremont—it might have been Cottesloe. He was probably in his late 20s or early 30s. This is relevant to this bill! He sat opposite me. For once the train was crowded. I notice that for most of the day the trains are not that crowded on the Fremantle–Perth line compared with the Armadale line, but they often have more carriages. Anyway, I will get to the point of the story. The man said, "You know, I reckon politicians stink." I said, "I beg your pardon?" He said, "I reckon they are dishonest. There are no good politicians." He asked me what I did and I mumbled a bit. He insisted and so I had to let him know. He said in front of everyone, "You know, you look like the President of America, Barack Obama." That was one experience. In the other experience I was running on Canning Mills Road. I am sure that the Acting Speaker (Mr N.W. Morton) might

know Canning Mills Road in Roleystone–Kelmscott. I was running down the steep road. The member for Gosnells actually rides up it—not once, but a number of times—as part of his training pursuits. I was running down and a bloke riding up it on his bike went past me and then about 20 seconds later came back down. He said, "Excuse me, are you the President of America?" I said, "Alas, no, but we have equal power!"

Mr D.A. Templeman: Just before he was knocked out by your secret security!

Dr A.D. BUTI: That is right. I said that we do exercise similar power.

Ms S.F. McGurk: Do you have a sense of rhythm?

Dr A.D. BUTI: Certainly!

He was born eight days before me, I think. His birthday is around 12 August or 13 August. I am the member for Armadale, a backbencher in the Western Australian Parliament and he is the President of the United States. I think the equality of power is very similar!

Ms S.F. McGurk: You were probably swapped at birth!

Dr A.D. BUTI: We might have been swapped at birth. Does the member reckon that is what happened? I was not born in Kenya, which is what the deniers in the US Republican Party tell us when they seek to assure us that the President was not born in the USA.

Anyway, getting back to this bill —

The ACTING SPEAKER: Good idea, member.

Dr A.D. BUTI: Mr Acting Speaker, you have to protect me occasionally from the member for Mandurah. He is a bad influence on me!

Due to that interruption and the detour to President Obama, could I please have an extension?

[Member's time extended.]

Dr A.D. BUTI: Getting back to the film festival, it still operates as an organisation, although I have resigned from the committee to pursue my other career as President Obama's double! One of the issues always was finding appropriate people to audit the books. We were running on a shoestring budget and it was a difficult task, so we had to try to pull in favours to have an auditor who would audit the books for free or a limited fee. I think that this new bill, in seeking to reduce the financial reporting obligations of incorporated associations with a revenue base of less than $250 000, is most welcome. Of course, we do not want to ensure that there is no financial reporting, but from my reading of the bill that would not appear to be the case. There is still the need to engage in appropriate financial reporting.

There are other parts of the bill that I think are sensible. There is an issue about the protection of privacy and what information can be released in regards to the members of the association. I personally generally do not have a problem with privacy in most cases, but a lot of people have a major issue about what information in regards to their personal privacy should be able to be disclosed to others. Under this bill, association members can provide email addresses or post office box addresses as a contact address rather than their residential address, which will be applauded by some people.

Another issue is about duties. Of course there are duties of members of incorporated associations that have been enunciated under common law, but the bill seeks to codify some of that in legislation, which is important. Then there is the issue of how disputes between members are resolved. We talk about the political nature of this chamber, but I am sure we all experience in our other lives that sometimes the politics played in other areas are much more lethal and personal than what we experience in this chamber. Sometimes in small associations there may be a certain person who considers the association to be their little baby and that may create intense personal rivalry and political byplay. Therefore, it is important that we ensure that there is an appropriate way of resolving disputes between members. I note that under the bill, if a dispute cannot be resolved, there is an avenue to go to the State Administrative Tribunal. Although I think that makes sense in many respects, if it goes to that stage, it can basically be considered that there is no way those two members will be able to stay in the same body.

If it has got to that stage, there is going to be a winner and a loser, and that is the end of the matter. Hopefully, it can be resolved through a dispute-resolution mechanism before it gets to that stage, but, as I said, with differing personalities, that may not be the case.

I want to talk a little about a couple of incorporated associations in my electorate, one of which is the Champion Lakes Boating Club Inc, which is quite a unique organisation. Those members who venture south of the Swan River and towards the hills—that is, the east metropolitan area of the city—will find a great area, and some members might indeed like to venture out that way. If one travels south along Tonkin Highway and looks to the left about 10 minutes south of Forrestfield, near the border with the electorate of Gosnells, one will see the

Champion Lakes Regatta Centre. That centre was a great achievement by the previous Labor government, spearheaded by Hon Alannah MacTiernan, who, of course, most members would recognise as a doer. It was a great achievement and that centre is now an internationally recognised rowing centre administered by VenuesWest. The centre was, as I said, instigated under the ministerial leadership of Alannah MacTiernan, but the Armadale Redevelopment Authority had responsibility for the development; I was on the board of the Armadale Redevelopment Authority at the time and I saw that area transform from a lake that was generally dry to this superb regatta centre.

Rowing clubs in Perth have generally been centred around the Swan or Canning Rivers, and those clubs at the time thought, "This is beautiful; now we've got this fantastic international regatta centre and we want to establish our club there." Hon Alannah MacTiernan, as the then member for Armadale, said, "Well, you can do that, and you can pay for that, but what I'm going to drive is a local boating club." It has to be said—I say this kindly, because I know many people in the rowing fraternity—that that was scoffed at a little by the established rowing clubs. They said, "What, you're going to have a rowing club in the City of Armadale?" It just did not sit very well with people who were more used to the western suburbs or the banks of the Swan or Canning Rivers. However, Alannah was adamant that that would be the case and, in her usual style, said to me, "Make sure it's established." The Armadale Redevelopment Authority spent a considerable time working up a constitution, and luckily we had the resources of the government to do it; of course, most organisations do not have the resources that we had. We established an incorporated association that is quite unique because it has a rowing arm, a kayaking arm, a dragon boat arm and radio sailing. It did not have radio sailing when it was first established, but that is now another sporting area that is part of the boating club. The boating club is now an incorporated association that has four different water pursuits, all with their own individual management committees that come under the one association, and they are governed by the current legislation and soon by the legislation before us, the Associations Incorporation Bill 2014, which will replace the current legislation.

In the seven minutes I have remaining, I am going to advertise another association that I am involved with that is currently in the process of incorporation; I do not think this legislation will get through the other place before the end of the year. We went through the prospective constitution of this association the other day and it is going to be called Dignity Western Australia. It has a very interesting purpose, which is to celebrate the dignity and abilities of all through a shared journey, while supporting ongoing community inclusion. Basically, the idea behind Dignity Western Australia is to advocate for the inclusion in the general community of people with disabilities. I should at this point mention the initial committee, which consists of me, Prue Hawkins, Yvonne Timson, Katrina Montuat, James Martin, Jackie Jarvis and Tim Hammond; I think we will also be looking for two or three other people to join. When the committee is incorporated, members on all sides of politics will be invited to become members, but the idea is to have a parade around March 2016, not unlike the Pride Parade, which has been a major force in trying to get the community to be supportive and inclusive of issues in the gay and lesbian community. The idea behind this body and the march is to celebrate people who have disabilities and to look at their abilities and the potential they can offer rather than the barriers. It will be for the whole community to come together; that is the idea behind Dignity Western Australia. We had a meeting on Tuesday and we were going through our constitution, which is basically a pro forma constitution. I do not think that this legislation will change it that much, but it is the issues around financial reporting and resolving disputes between members that cannot be resolved internally that are very important. That is my plug for Dignity Western Australia, and I urge all members to join up. There will be a fee of $25 for unemployed people, $50 for other individuals and $100 for organisations. It is not a political forum, but a forum that will seek to advance the issue of disability rights and engagement with the community.

I did not realise that I have only three minutes left, so I will not go on about other committees in my electorate. I am sure we have all had experience of being involved with incorporated associations, so we all know that we need to do anything we can to make the functioning and legal requirements more streamlined and less onerous, while ensuring that the duties and accounting procedures that management committees need to comply with are sufficiently strong to ensure proper financial behaviour. Without incorporated associations, many of the things that occur in our communities would not occur. We rely on not-for-profit organisations to do many of the things that governments or church or religious groups did many years ago. They still do those things, but not to the extent that they used to.

It will be interesting to see how other members contribute to the bill before us. I will be very interested to hear from the member for Mirrabooka during consideration in detail. The member for Wanneroo will have to be on his guard and have his and his advisers' mental faculties working at 100 per cent to ensure that he answers the numerous questions that I am sure will come from the member for Mirrabooka. I may be a sidekick in that exercise, along with other members on this side of the house.

MS J.M. FREEMAN (Mirrabooka) [12 noon]: I thank the member for Armadale. I am the lead speaker on the Associations Incorporation Bill 2014 and I am looking forward to amply contributing to the debate. The member

for Armadale was very kind in his comments; I am not sure whether I will quite live up to that expectation, but I am sure he will assist me in consideration in detail.

The Associations Incorporation Bill 2014 enables the incorporation of not-for-profit organisations. It is quite interesting that we call them associations because, effectively, they are not-for-profits, to be truthful. This bill allows for the non-commercial activity of organisations in Western Australia. I am relying on the third edition of A.S. Sievers' *Associations and Clubs Law in Australia and New Zealand* to put on record the following —

> Once a certificate of incorporation has been issued, the members of the unincorporated association become members of the incorporated association and the association becomes a body corporate which has perpetual succession and a common seal. An incorporated association has the power to acquire, hold and dispose of real and personal property and is capable of suing and being sued in its own name.
>
> …
>
> ***Limited liability***
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> In normal circumstances the members of an incorporated association will have limited liability so that if the association becomes insolvent they will not be liable to contribute towards paying the debts of the association or the costs of its winding up.

But we know associations as groups of people in our community. Those might be the technical aspects of how associations are described, but we know them as groups of people, the make-up of which may change, who come together. They hold a joint commitment to delivering to the community, and they base that on their mission and purpose. They are our cultural communities, our sporting groups, our community garden groups, our residents' associations and our P&Cs; they are also the community legal services or the housing advocacy associations that we utilise to assist our constituents. Associations are not-for-profit organisations where members can participate in the governance of their organisation through annual general meetings, appointments to management committees and just general work in those associations. We rely on management committee members to carry out their duties honestly and with reasonable care.

An oft-heard lament in our communities is the lack of volunteers to take up the cudgel of running the local club, sporting or community organisation that benefits so many by providing activities such as sport to our children or activities for our seniors. It concerns me that this bill's complexity and inclusion of duties such as business judgement for members of the committee, reflective of the Corporations (Western Australia) Act, will not enhance the capacity of our local associations such as sporting clubs to attract members to the committee.

The Associations Incorporation Act has been in force in Western Australia since 1895; it was one of the first acts, along with the legislation enacted in South Australia. Tasmania, the ACT and Northern Territory followed in the 1960s, and Queensland, Victoria and New South Wales in the 1980s. Until the 1990s many organisations operated as unincorporated associations, but they have increasingly sought incorporation as a source of protection from liability. One of drivers of that is a story that the member for Gosnells will appreciate—the decision of the Supreme Court in City of Gosnells v Roberts. In that case an unincorporated polocrosse club conducted its activities on City of Gosnells land, and during the off-season the horses agisted on that land. One night a horse escaped through a poorly kept fence, and Roberts and his pillion passenger collided with it on an unlit road. They sued the owner of the horse, Gosnells council and individual past and current office-bearers of the club. The initial judge's 1994 decision was to find against the office-bearers of the club—members can imagine that would have cause great consternation; that was overturned only because it was off-season. Had it been on-season, they may have been in difficulties. That case soon became a salutary example of why incorporation is needed to protect office-bearers from personal actions.

Before the Associations Incorporation Bill 2014, on meeting the not-for-profit eligibility criteria—which include purposes such as educational, charitable, benevolent, artistic, cultural, sport, amusement, political or improving the community and complying with a list of matters to be included in their rules—an association could be formed and operate with little intervention from the commissioner. It could be said that the commissioner was simply an administrator of the associations that were incorporated under the act. It appears that under this bill the fundamental role of the commissioner has changed, such that the primary role is now that of a regulator of the associations. I put to the parliamentary secretary that the commissioner's role has fundamentally changed under this bill, moving from an administrator to a regulator. Further, I put that the provisions of the bill have a prescriptive intent versus the previous guidance principles. That is evident in the expanded provision around rules.

There were 56 894 not-for-profit organisations in Australia registered with the Australian Taxation Office in June 2013. According to edition 5256.0 of the "Australian National Accounts: Non-Profit Institutions Satellite Account, 2012–13", they generated more than $170 billion a year in income and employed more than one million people. Sixty per cent of not-for-profits are currently incorporated associations, 12 per cent are

unincorporated associations, and 14 per cent are companies limited by guarantee. The 2014 Australian Institute of Company Directors' "NFP Governance and Performance Study" that we all had put on our desks recently detailed these figures. It collated survey comments that illustrated a move from incorporated associations to companies limited by guarantee under the Corporations Act, as the federal law was more settled. This report states that many more of our organisations are going to the federal jurisdiction as companies limited by guarantee.

In volume 29 of the *Australian Journal of Corporate Law 2014*, Kim D. Weinert aptly described incorporated associations as "the collective action of individuals, which is largely voluntary and motivated by altruistic goals". Such altruistic goals encompass integrity, being free of self-interest and impropriety, and a reliance on public trust and confidence. Currently, the management of committees of association have significant freedom and autonomy on how best to manage their associations. Without a doubt, the committee members and participants of these organisations want to comply with reasonable frameworks that enable them to operate efficiently and effectively, as is certainly outlined in the Australian Institute of Company Directors' 2014 report. However, the questions must be asked: Will this legislation before us enhance or constrain that, particularly in small micro-organisations? Will it give members the assurance they need that their involvement and liability is protected by the act and its provisions or will it make it so technical and laden with responsibilities that it actually increases the burden and discourages grassroots participation? How will this bill ensure that membership, which is at the core of these organisations, is not restricted by management or staff for the purposes of control, and is capable of growing without undue internal conflict? I understand that not all clients or users can be members, but certainly what we want in incorporated associations is what is at the core—members. This legislation cannot go through without proper support, education and resourcing. Without that, organisations will be confused by what is a greater legislative and regulatory burden.

Associations encompass many organisations in our community, from sporting clubs to community groups. I would like to mention one in my area, and particularly note the passing of a great contributor to that association. The Nollamara Westminster Action Group recently saw the passing of Cynthia Maton, who was a founding member of the original Eastdene Circle Action Group. Eastdene Circle was largely a Department of Housing area, and the department's allocation of difficult residents resulted in social problems that needed addressing. Cynthia was a woman who just got things done; a quiet achiever, without a bad word for anyone. I respected Cynthia greatly for her dedication to her community and making it as good a place to live as she could. Her capacity to act on her convictions, not simply complain, and to work for a solution made her a one-in-a-million human being. I was grateful to have Cynthia as part of the community I represented. She gave me enthusiastic encouragement to strive for the best for our area. She is greatly missed. May she rest in peace.

Cynthia Maton certainly was the human face of associations that have the capacity to govern themselves and that just want to get on with the job. They do not want to be burdened with having to meet procedures and processes; they just want to get on with the job of improving their area. The Nollamara Westminster Action Group fundraises for, supports and participates in many events in the area, including Harmony Day. However, like many organisations, it has difficulty finding new blood to take over. The Balga Action Group, for example, faced a litany of procedural requirements to meet incorporation and discontinued recently.

I turn now to the specifics of the bill. I thank the officer who briefed us. As we all know, this bill has been some years in the making and there is general stakeholder fatigue. The 2006 green bill states that its genesis was in 1996 when the Minister for Fair Trading approved a review of the Associations Incorporation Act 1987. The green bill was a result of responses to the consultation paper. It is interesting to note that the green bill morphed into another review, which was held via the commission's website. The review does not appear to have taken written submissions as far as I can ascertain; certainly, it is no longer available and cannot be searched. That seems a bit odd, despite the major changes between the green bill and the bill before the house. One of the major changes between the two bills that people should be aware of is that the green bill argued that it would improve the incorporations process by removing specific eligibility criteria for the purpose or objects of an association so as to broaden the range of not-for-profit associations that may become incorporated. The bill before the house, on the other hand, increases eligibility criteria and recommends modernised specific eligibility criteria and the removal of the restrictions on the associated trading so long as the not-for-profit character is maintained. The question is: why the change from removing the eligibility criteria in the green bill to maintaining, building and increasing it in this bill?

Further, the bill will replace the act. Certainly there are new provisions and the bill is much bigger than the act, but many of the clauses are replicas of sections in the act; indeed, the bill does not radically depart from the act. Given that this legislation has so much common law attached to it, it seems strange and somewhat concerning that there is a new bill, because new bills come with new interpretations. If the government is just replicating many of the provisions in the bill, I would have thought that it would have done that with the green bill. It added provisions for dispute resolutions, duties and exclusions of members and committee members, access to records,

financial reporting by stratas and an increased capacity for the commissioner and the State Administrative Tribunal to resolve conflicts. I believe that this bill has changed the process involving the commissioner and the role of the commissioner. Why do we need new legislation when there is so much common law around it? Is it because the former was difficult or because there was a particular need, or is it simply that this is easier for people to understand? I do not think that that is the case because the bill in itself will create complexities for incorporations associations.

When one compares the size of the green bill with this bill, one has to ask how it will simplify the situation for incorporations associations. The bill has gone from 50 pages, 48 clauses and one schedule to 154 pages, 211 clauses and four schedules. Given that it is about the operation of organisations, what are the legal implications of completely rewriting the act with respect to the interpretation of common law? It is not as though this bill adopts federal model legislation, because there are still major differences between the Western Australian bill and the legislation in other states. For example, I refer to the Victorian Associations Incorporation Reform Act 2012. As revealed by Kim Weinert, whom I quoted before, in the article "Legal duties as a part of the governance framework for incorporated associations: A comparative analysis" there is a lack of consistency across Australian jurisdictions. That leads me to ask—the parliamentary secretary and I have had this discussion across the floor—what is the current status of federal negotiations around harmonised law? If we do not address this, people will come through in the corporations act under unlimited guarantee.

In April 2011, federal Treasury released a final report on the national not-for-profit regulator, which found significant stakeholder support for the goals of harmonisation and simplification of reporting requirements, as well as a proportionality of regulation with potential efficiency gains that result from a centralised regulation process. Subsequent to the report, the Australian Charities and Not-for-profits Commission was established and the Australian Research Council study that I talked about earlier reported that directors supported the retainment of the Australian Charities and Not-for-profits Commission despite the federal government's intention to abolish it. I ask the parliamentary secretary: How does the Australian Charities and Not-for-profits Commission interplay with the Western Australian commission? Is it now the primary regulator or will the commission become the primary regulator? What discussions are going on between the two bodies to ensure that our not-for-profits and incorporated associations are best and well served and that there is no duplication? Given that duplication seems to occur when the not-for-profits do not have a charitable status, and given that the "Curtin Charities 2013 Report" indicated that religious activities made up 25 per cent of charities and that 13 per cent operate in more than one state, duplication is counterproductive to the goals of the organisation and the bill.

Associations under the bill have at the core of their operation a not-for-profit objective that is outlined in clause 4, which provides for clubs, societies and other groups to be formed for any lawful means that does not result in association members making any profit from its activities. This bill will allow associations to trade and for them to derive income, which will then be used to support the objectives of the organisation. I am quite concerned about that. It is not as though there was not previously an implied capacity to raise money for the purposes of the organisation. When one looks at the second reading speech, there is a question about the organisations trading for operational income. The bill also includes provisions for payment to committee members in good faith. This concept is not defined in the bill and has a wide application that needs to be further investigated at the consideration in detail stage. Not-for-profit organisations have two common entity choices: either to be administrated under state and territory laws as incorporated association or regulated by the Australian Securities and Investments Commission as a company limited by guarantee. It appears that most not-for-profits operate as incorporated associations and become an Australian registered body so that they can operate in multiple states or they choose to establish separate associations in each state or territory in which they wish to operate. This seems very cumbersome and fraught with potential risk and duplication. Further, as identified in the Australian Institute of Company Directors' report, about 30 per cent of not-for-profits receive their income from the federal government and 23 per cent receive their income from state governments. How does the new bill minimise the duplication and financial reporting burden when most charitable organisations will be greater than the $250 000 mark and receive government funding? I am concerned with this bill's complexity to operate under the model rules and that it has a number of complex provisions. Many groups incorporate to gain funding from the Lotteries Commission of Western Australia, government agencies or other funding sources. The model rules, which are, effectively, the organisation's constitution, seem overly burdensome. For example, the model rules for membership require written application and nomination and could be contrary to a community idea of their organisation when they adopt membership.

During his second reading response, I would appreciate it if the parliamentary secretary would clarify what the situation is with the model rules and the process for consultation. Will organisations that have rules that are compliant with the 1987 act be able to maintain their current rules or will the model rules simply apply? My understanding—I would be happy to be told differently—is that they do not mirror the rules but that they comply with the 1987 act, but the act is quite complex. If they are found not to comply with the act, the model

rules will apply. An information document for Jackson McDonald shows that all associations, unless the commissioner grants an exemption—even those associations that are exempt from complying with the requirements of the current act—will be required to ensure that their rules are compliant with the new act and contain those matters to be addressed as set out in clause 22 and schedule 1 of the bill.

Organisations that may have been operating perfectly well under previous acts and in accordance with their constitution and their rules, which is one and the same, will now be forced to adopt another set of rules if they do not comply. What additional support will the government offer the large number of small incorporated associations that do not have resources, skills and knowledge in this area? Victoria has Justice Connect, formerly known as PILCH, the Public Interest Law Clearing House. Justice Connect is a not-for-profit organisation that provides a specialist legal service for Victorian not-for-profit community organisations. It provides low-cost training, free legal advice, law reform and advocacy on systemic issues around the regulation of the not-for-profit sector. As we all know, Senator Brandis, the federal minister, is now changing contractual agreements for funding so that many organisations funded under the federal government cannot do any systemic advocacy. It would be interesting to know whether that will impact on this organisation. It is necessary to have an organisation such as Justice Connect that has the capacity to look at systemic issues. The organisation's website shows a number of issues that it has been able to take a lead on, particularly when asked to by the Victorian government.

If an organisation does not comply with these rules, they will apply to it regardless. We previously did not have penalties for noncompliance, and it is concerning that the Associations Incorporation Bill 2014 not only introduces new penalties but also substantially increases existing penalties. The penalty for not disclosing a material personal interest will increase from $500 to $10 000. The bill introduces a fine of $10 000 for not performing the duties of an officer with care and diligence. The rules will now have to be available to members, and the penalty for breaking that law will be a $2 750 fine. We previously did not have that provision in the act at all; it was only in the schedule, and the organisation could determine how those rules would be made available.

The explanatory memorandum states that the bill provides a framework. When one thinks about a framework, one thinks of an almost skeletal supporting structure of a building. This bill is anything but skeletal. This bill will replace the act, and it is large. The main changes require associations to have dispute resolution, and many other aspects are considered. I will go through some of those changes and make comments on them.

The bill requires associations to have a dispute resolution process to enable unresolved disputes to be heard by the State Administrative Tribunal. It is not clear in the legislation what that will cost. Indeed, the clause states that there will be costs, but it obviously operates on the basis of what SAT charges. I fully support having a dispute resolution process. For example, at a local school we had a dispute with the parents and citizens association in which the complainant was right; the P&C's constitution did not comply with the act. The parent was right in their concern, but they could pursue their concern only through the Supreme Court. Because they had access to lawyers, that is exactly what they did; they constantly served legal documents and legal advice on the P&C about how it was operating under its constitution. The P&C could not change its constitution because the constitution was a Western Australian Council of State School Organisations constitution, which has to go through the Minister for Education. This parent was right; the P&C's constitution did not comply with the act—probably pretty much no P&Cs' constitution complied—but he made life pretty terrible for many people in the organisation. I have spoken about this in the house before. There is a silver lining to every cloud; a lot of parents joined the P&C because this parent was making life difficult for the president and a number of office-bearers. The constitution breached the Associations Incorporation Act because it did not include the requirement for the P&C to give notice as per schedule 1, clause 8, which reads —

> The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.

In effect, this provision means that the community has to be notified before the general meeting about a motion to buy netballs for the netball team, for example; the matter cannot simply be discussed and decided on the night. This bill does not change that. An executive will not be able to make decisions other than on matters about which they have previously notified through a notice of motion. The overwhelming majority of P&C members were happy with the operation of the P&C and its meetings process. A P&C member raised that with the Department of Commerce and the dispute escalated to the point at which the parent requested that the Department of Commerce wind up the P&C on the basis of the breach. It caused havoc and consternation, and the government provided little assistance to the P&C to respond to the legal action being waged against it, and particularly the president. She was left to bear her own costs to respond to the legal action being taken by this parent because the P&C is an association separate from the school.

Mr R.H. Cook: Didn't WACSSO help them out?

Ms J.M. FREEMAN: It helped a bit, but WACSSO was limited in its capacity to get legal advice because legal advice costs a lot of money. The Northern Suburbs Community Legal Centre helped it out a couple of times and I received free legal advice from a law firm I have associations with. Meanwhile, the P&C was confronted with a particularly onerous issue. Given that example, I support a proper dispute resolution process. I want the parliamentary secretary to assure me, so that I can assure the P&C, that that particular case—of which the department would be aware—would come under the dispute resolution process, given that the error was in the constitution required by the rules adopted by WACSSO and the minister and imposed upon the P&C. I want to know whether a dispute resolution process can fix that.

Further, the requirement for procedural justice in amalgamations was demonstrated recently through concerns raised by a member of Better Hearing Australia WA with the Department of Commerce and me. I am pretty sure that this person has also raised this issue with the parliamentary secretary. This person is not my constituent—they are a constituent of the member for Nedlands—and they were concerned about amalgamations. The changes to procedural justice in amalgamations are welcomed, but I just want to put this matter on the record. Again the Department of Commerce would be well and truly aware of this issue. It has the details; I have letters. I want to know whether the new amalgamation provisions will address these concerns.

This Better Hearing Australia WA member was distressed about the amalgamation process with Telethon Speech and Hearing. She maintains that it was done without the consent of members and that members were not notified at the special general meeting in 2002 that wound up Better Hearing Australia WA and transferred its assets, which were quite considerable, to Telethon Speech and Hearing. The member felt that the WA branch of the organisation, which had been in operation since 1946, was left without significant assets—I think a building that it owned, probably somewhere in central Perth—due to the dispute. Now Better Hearing Australia continues to operate in a reduced capacity under the federal organisation's umbrella—the organisation no longer has a separate state branch—without the benefit of the assets, as they have consequently transferred to Telethon Speech and Hearing. I do not want to get into the dispute because I was not there. Although the member of that association, the woman who came to see me, credited the officers at the Department of Commerce as endeavouring to find a resolution, the difficulty was that Better Hearing Australia was hamstrung because the process had progressed to a certain point and the legislation did not give the department recourse to investigate. Therefore, the only avenue for Better Hearing Australia WA members, if they wanted to pursue it, was costly litigation in the Supreme Court.

The letter from the department outlines that this member of the association raised a number of potential issues, including: the legal capacity of the commissioner to remove documents from the association's public record, the possibility that the person lodging the document with the commissioner did so knowing that the document contained false or misleading information, and the option of civil action being taken by any party that had suffered loss as the result of the alleged incorrect process undertaken by the association.

The commissioner wrote back to this particular person and said that the commissioner has no statutory function to remove documents from the public record of the association unless ordered to do so by a court. That means that the person would need to take legal action. The commissioner went on to say that this is because the commissioner's role in the context of accepting documents for lodging under the act is an administrative one. My question to the parliamentary secretary is: under the new provisions for amalgamation, will the commissioner's role remain an administrative one, or will it become a role that has a greater regulatory aspect to it?

The inclusion of the provision that the commissioner may require public notice of an application for amalgamation is welcome. I ask the parliamentary secretary to outline whether any consideration was given to making that compulsory. When associations are formed and organisations are brought together through an amalgamation, I believe that, because it is so contentious, a compulsory public notice would be more appropriate.

The bill provides also for disputes to be brought to the State Administrative Tribunal. That is a welcome addition to the legislation, because it will ensure that not only the dispute resolution is affordable, but also, I assume, there is an evidentiary aspect to it and SAT can look at the merits of the matter. I am interested to know from the parliamentary secretary what the costs will be for dispute resolution at SAT and whether that will come under the general provisions relating to legal costs and application costs, and whether SAT will have the capacity to look at the merits of the matter beyond just the legal specifics.

Another very good provision in the bill is that the commissioner will be able to apply to SAT for the appointment of a statutory manager to administer the affairs of an association in which there is serious dysfunction. The parliamentary secretary may or may not be aware—certainly the Minister for Local Government is aware—that I have raised in this house the issue of the Mirrabooka Multicultural Child Care Centre. The committee of the incorporated association that was operating that childcare centre

became dysfunctional, and suddenly the staff were told that for the next couple of weeks there would not be enough money to continue to pay them. Imagine what it would have been like for the staff at that centre, who were looking after children. Everything seemed to be going okay, and suddenly there was no money for the next couple of weeks to pay their wages, and also there was no money for any redundancy payments that they may have accrued. The parents at this centre, who had had nothing to do with the dysfunction of this organisation, which had been run into the ground and suddenly did not have the funds to even support its staff, then had to form a committee, and the chair of that committee—a parent who had never before sat on a committee—had to front up at the Fair Work Commission to talk about the winding up of this organisation so that the union that was representing the workers could apply to the commonwealth for redundancy payments. It is, therefore, absolutely welcome that the commissioner will now be able to apply to SAT for the appointment of a statutory manager.

It also absolutely welcome that this bill provides a simple process for the winding up of associations. I have spoken in this house before about the Balga Action Group process. That was a longwinded and machinated process. It was extraordinarily hilarious for the members who were winding up this body, because they would go in there and say, "Right; now we have been told by the department that we have to do this and this and this", and people would just follow that process and come together for meetings to do that. So this is a good thing, and we welcome it, because the process needs to be simple. A simple process is the best process for these small organisations.

One of the core things that have been said about this bill is that it realigns the Western Australian incorporated associations legislation with the legislation in other jurisdictions. Although that is interesting, it is not true. Can the parliamentary secretary advise me whether this bill is more in keeping with the New South Wales 2009 legislation and subsequent amendments, or the recent Victorian 2012 legislation and subsequent amendments? There is an interesting table in *Associations and Clubs Law in Australia and New Zealand*. That table goes on for four or five pages, and they are all in roman numerals, so I will not call them out, but I am happy to give it to the parliamentary secretary. That table shows that there are massive gaps not only between the provisions in different states, but also different states have different definitions and different ways of doing things. One of the holes that we are fixing in Western Australia is the tiered audit rules. We have had a hole there, and Tasmania has a hole. Yes, we are doing things that are consistent with legislation in other states, but there is no realignment between this legislation and the legislation in other states. The greatest criticism of what we have been doing in this process since 1990, or whenever, and then in the 2006 green bill, is that we have missed the boat. The commonwealth has gone through a whole lot of Productivity Commission reports and other processes to look at not-for-profit organisations and charitable institutions in Australia. This state should have taken the opportunity to harmonise and make sure that our legislation was consistent with the legislation in other states. We have done that with the consumer affairs legislation. It is the same department. I would have thought that, ding, a light bulb would have gone off and they would have said, "We have done this with consumer affairs, so we can do this with the Associations Incorporation Bill." But, no, that is not what has happened with this bill.

One example of how this legislation is different from the legislation in other states is the provision to increase the duties of committee members. In the New South Wales legislation, that is found in sections 31 to 33; in Queensland, in sections 65 to 70, and 122 to 124; in South Australia, in sections 31 to 32; in Tasmania, it is not in any section; in Victoria, it is in section 29A to 29D, in Western Australia, it is in clauses 21 and 22, but we know that all that states is that committee members should not vote when they are compromised; in the Australian Capital Territory, it is in sections 65 to 111; in the Northern Territory, it is in sections 31 to 33, and in 105; and in New Zealand, it does not exist at all. The parliamentary secretary has said that this bill is about realignment. It is not. All it does is provide some consistency in that we will have provisions similar to those in other states. If the object of the bill is to make it easier for incorporated associations to operate in this state and across borders, more work needs to be done on the national level when a national agenda is being pursued.

The PilchConnect report in Victoria asserts that not-for-profit associations must deal with at least 20 types of legal structures and 11 regulators. In addition, if they have charitable status, eight different approvals are required to conduct national fundraising. I ask the parliamentary secretary: is this also the case in Western Australia? Do we know what legal structures and regulators govern our incorporated associations? We have had enough time to work that out. We have had a few years. We should have been able to work that out. We have completed the national rail safety legislation and the national consumer affairs legislation, in accordance with the Council of Australian Governments' National Partnership Agreement to Deliver a Seamless National Economy. Does the government not think the associations deserve that as well? How is it that incorporated associations—our not-for-profit organisations doing things for our community—are not afforded the same seamlessness? The Associations Incorporation Bill introduces a system of three-tiered minimum financial reporting and accountability based on revenue per annum. The first tier is less than $250 000, the second is $250 000 to $1 million and the third is more than $1 million. It is consistent with the Corporations (Western Australia) Act for limited —

Mr R.H. Cook: Companies.

Ms J.M. FREEMAN: Yes, limited companies. No; not limited companies, but I will get to that.

It is consistent with the provisions in the Corporations (Western Australia) Act for not-for-profit organisations.

The bill encourages self-reporting rather than requiring organisations to lodge financial statements. I assume this is based on the view that tier 1 organisations have less risk, but as pointed out in the Australian Institute of Companies directors' report, income is only a proxy measure of organisation size and risk, and not-for-profits operating in a high-risk area will need governance practices that are commensurate with the nature of the activity. It uses the example of the emergency services brigade incorporated association working in a volunteer group. That group could have an income of less than $10 000, yet must have a governance system that ensures training, supervision and management and insurance coverage to meet the risk, thus requiring high financial due diligence. It seems to me that the government has said that in the financial risk space, it will look at the risk base, but it will not look at the risk base in any other areas, just these financial tiers and not at how organisations operate across the board.

When we talk about the categories, we are talking about revenue per annum. My question to the parliamentary secretary is: what does that entail; is it income or expenditure? I googled it and it tells me that for not-for-profit organisations, annual revenue may be referred to as "gross receipts". This revenue includes donations from individuals and corporations, support from government agencies, income from activities related to the organisation's mission and income from fundraising activities, membership dues and financial investments such as shares in companies. That seems to be a bit odd, really, so I would like to hear a definition of what "revenue per annum" entails. We have all been to annual general meetings; it is AGM season. I have been to five AGMs in the past couple of weeks, so I have seen the annual reports and looked at which tier applies to them. In my survey of five, 60 per cent were tier 3; 20 per cent, tier 2; and 20 per cent tier 1. This goes against the idea that 90 per cent of organisations operate on less than $250 000 a year. We are saying that 90 per cent of the organisations this bill will apply to will fit into the tier 1 category. The problem I have with that is that the provisions in the bill seem to cater to the 10 per cent of organisations operating in tiers 2 and 3, financially, by placing on the 90 per cent governance restrictions that actually apply to tiers 2 and 3. I hope that makes sense. The government is saying to a tier 1 organisation that it is such a small organisation it does not have to comply with onerous financial responsibilities, but it must comply with onerous governance responsibilities. I think that is interesting.

From my research, I understand that there is no single public searchable registration of Victorian not-for-profit associations. I am interested in how the Commissioner for Consumer Protection can be certain that 90 per cent of organisations fit within tier 1. There is no register in Victoria. I am not assuming; I tried to look for one and I could not find one in Western Australia. On the basis that the government is telling me 90 per cent of organisations in Western Australia are tier 1, can the parliamentary secretary give me a list of the WA incorporated associations in WA? Is it listed on a website; and can it show me that that figure of 90 per cent is correct?

Mr P.T. Miles: There are privacy issues.

Ms J.M. FREEMAN: They are incorporated.

Pages 5 and 6 of the PILCH report suggests that 120 to 150 not-for-profit organisations in Victoria are incorporated under the Associations Incorporation Act. A big lump is still unincorporated. VicSport suggests there are about 80 000 unincorporated clubs with two million participants working as volunteers. Parliamentary secretary, what are the figures in WA? He must be able to get that from the Western Australian Department of Sport and Recreation. How many unincorporated clubs are operating in WA? If, indeed 90 per cent of WA associations operate on less than $250 000—I have already asked this question—why do they have to meet such arduous regulatory requirements outside the specific financial requirements.

In the 2010 submission to the Victorian government, PILCH summed up my concern that the legislative framework is not focused on the many small micro-incorporated associations and on assisting the unincorporated associations to gain that vital legal protection. Many small organisations rush towards incorporation for public liability and volunteer insurance purposes. In addition to gaining grant funding, they find themselves caught up in a regulatory maze of compliance while they pose low regulatory risk.

I have here a note that reads, "Maybe it's just that the multitude of tier 1 associations are not having AGMs or I am not being invited to them", because of my survey of five. I think it is the former; they are not having AGMs, not the latter, because I am sure I would be invited!

Mr R.H. Cook: They wouldn't dare have an AGM without you!

Ms J.M. FREEMAN: Yes; that is right.

Although the three-tier financial reporting system is welcome, this should be mirrored in a more simple registration and rules regime for tier 1 organisations to reflect how they operate. Does the parliamentary secretary think clause 23 will give the commission the capacity to make provisions for micro associations? Will undue hardship include overly prescriptive provisions that cannot be met by small organisations? Additionally, with increasing reliance by the state government on not-for-profit sector associations to deliver government services through privatisation, as does the Disability Services Commission, how will the government ensure that it links the process of reconciling grant funds with a three-tier financial reporting system, or will there be different reporting mechanisms? For accounts to be reconciled, they need to be audited, but if an organisation is a tier 2 organisation, it does not need to be audited for the purposes of incorporation. The same must apply to lotteries grants. Has the commissioner assured themself that the reporting standards will satisfy the Lotteries Commission of Western Australia and government agencies, or will this mean more red tape: here is what makes me exist and here is what I have to do to pay for me to exist.

On the protection of personal privacy, the bill means that members' residential postal addresses need not be recorded in a register of members. I have to say that I have seen this in action when Ishar Multicultural Women's Health Centre introduced provisions to its constitution to comply with that provision. It was impossible to explain what was happening. People thought that Ishar was trying to give them their information, not protect their information. English was not the women's second language; lots of people were translating what was being said. They had had three meetings leading up to the many constitutional changes. Ishar just had to say, "Trust us; we will not release your information", even though the constitution states that they have to give the centre authority to do it if we are going to give it to someone else. I cannot remember the actual wording; it is convoluted. In fact, the wording of a lot of this is convoluted.

The member for Armadale paid me a great compliment, but I am really a micro manager because I look at detail. The difficulty with this bill is that many of the clauses are difficult to understand and quite convoluted. This bill does not contain simple language; it does not contain any of the principles of simple language. I am not apportioning blame to the parliamentary secretary, because the genesis of the wording is in the green bill. By the way, I think the green bill has passed us by. We did not address this in 2006, 2007, 2008, 2009, 2010, 2011 or 2012. Meanwhile, Victoria, New South Wales, Tasmania and the commonwealths were all addressing it. All these things passed us by. We did not ask whether this was still contemporary. It seemed like it was contemporary. I want to know how the protection of personal privacy will prevent nuisance campaigners from undermining the organisation. I think that is the intent, but I want to know how.

I refer to the codification of duties and responsibilities owed by committee members. The current act has no codification of common law, although a committee member is required to disclose a pecuniary interest and participate in the consideration, but not vote. The green bill did not have codification of these responsibilities either—the common law duties of care; of diligence to act; to act in good faith, in the best interests of the association and for a proper purpose; to not misuse position or information; and to prevent insolvent trading. A breach of duties requires an intent element that is unlikely to be satisfied if a person has acted in good faith. A business judgement rule and reliance defences are also available. The Jackson McDonald brief outlines that the bill introduces and imposes these laws broadly.

Debate interrupted, pursuant to standing orders.

[Continued on page 8555.]