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LEGISLATIVE ASSEMBLY LEGISLATION COMMITTEE

Public Health Bill 2014
Public Health (Consequential Provisions) Bill 2014

Tuesday, 17 November 2015

Legislative Assembly

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LEGISLATION COMMITTEE ON THE PUBLIC HEALTH BILL 2014

The Acting Speaker (Mr I.C. Blayney) in the Chair; Dr K.D. Hames (Minister for Health) in charge of the bill.

Advisers: Professor Tarun Weeramanthri, Department of Health; Ms Kelly Crossley, principal adviser; Ms Bronwyn Peters, senior solicitor; and Mr Geoff Lawn, parliamentary counsel.

The meeting commenced at 4.02 pm.

Resumed from 12 November.

Debate was adjourned after clause 154 had been agreed to.

Clause 155: Relationship to *Emergency Management Act 2005* —

The ACTING SPEAKER: We are considering the Public Health Bill 2014. The question is that clause 155 stand as printed.

Dr K.D. HAMES: I think we are just waiting for Tarun to tell us what part 11 is all about.

Mr R.H. COOK: I am really interested, Chair, if I may, to hear from the minister in general terms the purpose of part 11.

Dr K.D. HAMES: I will hand it over to Dr Weeramanthri.

Professor T.S. Weeramanthri: Thank you. This part follows on from the public health incident powers, and is a higher level of powers relating to a more serious level of incident. So the Department of Health is very used to working in the cross-government emergency management framework under the Emergency Management Act. Under the policies that guide government agencies, there are three levels of incidents. So level 1, level 2 and level 3, level 3 being the most serious incident, which can invoke a declaration of a state of emergency and whole-of-government action, as normally controlled by the police commissioner or the minister and/or the Fire and Emergency Services Commissioner and/or their minister. So we operate under that, and the overarching body is the State Emergency Management Committee. So, that is the usual emergency framework we operate under. Under that framework there were two Westplans where the Department of Health is the hazard management agency, which means we actually coordinate all of the other government departments and we are the lead agency. So those two plans currently are for infectious disease outbreaks, and that was used in the 2009 influenza pandemic; and the other Westplan where we are the hazard management agency is the Westplan–Heatwave. That has been the case for three or four years now.

So it is very clear in this part of the Public Health Bill that should there be any doubt about the powers available here compared with the Emergency Management Act powers, it is the Emergency Management Act powers that are decisive or override this bill. It is meant to complement powers available across government, and it does so by defining specific powers that relate, for example, to drugs and vaccines and to quarantine and other medical matters, which are defined in much more detail than are available under general emergency management powers. But should there be a case where there is need for a whole-of-government response, it would generally not be done under this bill. It would generally be adequately covered under an existing Westplan and under the existing emergency management powers.

Mr R.H. COOK: So, a disaster.

Dr K.D. HAMES: Yes. If I can add to that, we actually do an occasional training session. Most of the public service do it, but occasionally we have been involved in a scenario where something has happened such as a bomb having gone off in a tunnel, and so the Minister for Emergency Services takes control. We all have to be there as ministers with different responsibilities, and our senior staff as well, and that coordinates what we do. There is always going to be health components. Some might be the immediate and urgent health stuff we need to do: getting people to hospital, where to put them and the like. Another might be the potential outbreak of disease and all those other things that have to be looked at, but we do that as a subsidiary to the emergency management powers.

Professor T.S. Weeramanthri: Yes.

Dr K.D. HAMES: What is it called?

Professor T.S. Weeramanthri: State emergency powers.

Dr K.D. HAMES: Yes. That is right. But if it is just a health issue alone, such as an Ebola issue or a massive flu outbreak or a heat wave, then we use this to deal with that; we do not need the emergency management powers to do that. Professor Weeramanthri may have something else to say.

Professor T.S. Weeramanthri: No. That is fine.

Dr K.D. HAMES: It is a fairly long clause. Are there particular things in there?

Mr R.H. COOK: I will follow-up on that. There is category 1, category 2 and category 3. Category 1 might be called a public health risk, then there is a serious public health risk and then a public health emergency. Is that the way we can generalise them?

Professor T.S. Weeramanthri: A couple of definitions are used here. In this bill, there is the distinction between a material public health risk and a serious public risk. Clearly, we would be contemplating use of this power only for a serious public health risk. In addition to that, there is a different framework under the Emergency Management Act, which has levels 1, 2 and 3, and essentially it is an escalating level of complexity. A level 1 incident can be managed, usually by a single agency; it is not prolonged and it is not complex. As it goes up then to level 2 and level 3, it gets to medium-level complexity and high-level complexity where we need multiple agencies involved, and there may be multiple hazards involved. We need a high level of coordination and we may need to declare a formal state of emergency. So there is no immediate defined correlation between them. They are different frameworks essentially, but we are saying that we would be considering use of this part of the act only if it was a level 2 or a level 3 emergency in the usual framework under the Emergency Management Act.

Mr R.H. COOK: At the risk of sounding facetious, when June Oscar, for instance, came forward and said, “Look, we’ve got a public health crisis in Fitzroy Crossing, a breakout of domestic violence, rampant alcoholism and a breakdown of public order associated with all those things”, could that be described as a public health emergency?

Professor T.S. Weeramanthri: It is up to the minister to invoke this part of the bill. I think it would be highly unlikely to describe that set of circumstances that the member has just outlined as a public health emergency to be dealt with under this bill and these emergency powers. In fact, we would be hard-pressed to deal with that under any set of emergency powers. There is a difference between when we need to invoke an emergency versus, if you like, a protracted, complex, difficult set of social issues—and we have many of those.

Mr R.H. COOK: Yes, indeed. I was just wondering out loud more than anything else about whether there would be capacity to use the proposed public health act, as we envisage it, in those sorts of complex scenarios that ultimately have a public health dimension or description.

Professor T.S. Weeramanthri: I think it is highly unlikely to be using a public health act for things that have an incidental public health dimension. If they had a primary public health dimension, I think that is a different matter.

Ms J.M. FREEMAN: Are we on clause 155?

Dr K.D. HAMES: Yes. We just did what we normally do.

Ms J.M. FREEMAN: If the powers are around a public health emergency for vehicles or premises, can they be used just for a limited area? It could be just the whole of south of Perth and not the north of Perth that had the public health emergency because there was a flood in the whole of south of Perth—those sort of things.

Mr R.H. COOK: A mosquito outbreak in Dawesville, for instance.

Ms J.M. FREEMAN: Yes, that is right. There we go; a mosquito outbreak.

Mr R.H. COOK: We have eradicated all the mosquitoes!

Ms J.M. FREEMAN: Which clause are we looking at?

The ACTING SPEAKER: We are on page 129.

Dr K.D. HAMES: Ms Crossley, can you tell us which clause it is.

Ms J.K. Crossley: Clause 158(3) states —

A public health state of emergency declaration —

(a) must include —

...

(iii) details as to whether the declaration applies to the whole of the State or to one or more specified areas of the State;

Dr K.D. HAMES: Presumably that means we could do just south of Perth.

Ms J.K. Crossley: Yes.

Ms J.M. FREEMAN: The term “one or more specified areas of the state” therefore is basically stating whichever areas the minister determines to be the areas. There is no definition of the areas by latitudes or anything like that. It is a broad interpretation of areas, is it?

Dr K.D. HAMES: That is correct, yes.

Clause put and passed.

Clause 156: Public health emergency management plans —

Dr K.D. HAMES: What we have done in the past is deal with the rest of that part, unless people have a specific issue.

Mr R.H. COOK: There is a mention of “emergency management plan to be tested” on page 130, which is part of clause 156. Is that what the minister was talking about before in terms of going through that disaster scenario planning and role-play, for want of a better description?

Dr K.D. HAMES: Dr Weeramanthri is involved in those more than I am, so he might want to answer that one.

Mr R.H. COOK: Is that what that is referring to?

Professor T.S. Weeramanthri: That is correct. It refers specifically to the public health emergency management plan as prepared under this bill, so it is slightly different. In the transition period, if this bill is passed, I am required to prepare a public health emergency management plan. That plan, once prepared, if you look at clause 156(6), it states as part of the input of that, the State Emergency Management Committee must ensure that I am provided with copies of the state emergency management policies. Our initial intention would be to, if you like, take what we already do in terms of those two Westplans around outbreaks and heatwaves and include that in a new public health emergency management plan for this bill. Once that is done, we will need to test that emergency management plan. That emergency management plan could include other things should we see fit, but we would start with what we currently do and we would include it in this plan. The components of that plan could then be tested. What we do now is we say either we need to scenario-test it—and sometimes we do desktop exercises—or we have real-life scenario testing where we have actors and we go through a full trial, if you like, of the plan in real-time. We did something like that this morning, in fact, for a few hours for water-based emergencies—contamination of drinking water. Or we would say, “If you’ve activated the plan recently, that acts as the test.” We activate Westplan–Heatwave most summers, so we do not need to then test the plan because it has been tested in real life. As you say, it is the same set of tools to test the plans, as we currently have.

Mr R.H. COOK: That makes commonsense; it seems to be something that we would do to make sure that the tools that we had at your disposal were correct. But why is that in the bill? I am not quite sure why we need to legislate for that, that is all.

Dr K.D. HAMES: To say that it should be tested?

Mr R.H. COOK: Yes.

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: There are provisions —

Dr K.D. HAMES: Why is it there? Why does it need to say that in the bill? I presume it has been in past copies of the bill?

Ms B. Peters: These provisions are based on the Emergency Management Act. I will just double-check, but I suspect that an equivalent provision appears in the Emergency Management Act. Mr Lawn may be able to assist further.

Mr G. Lawn: In clause 157 there is a provision that if a public authority is given a role under a public health emergency plan, the Chief Health Officer may direct that public authority, amongst other things, to assist the CHO—that is in subclause (1)(d)—in the testing of the public emergency management plan. So, there is power there to say, “Let’s do a test and can you help out?”

Mr R.H. COOK: And you have to help out.

Mr G. Lawn: You do.

Dr K.D. HAMES: And it really makes sense. You sit around doing those things and suddenly you come across things that people have not thought of or people do not know they needed to do. We used to do it in the Army Reserve as a regular thing because it would really sharpen you up.

Mr D.J. KELLY: The emergency plans, are they public documents?

Professor T.S. Weeramanthri: So the current – all of the current Westplans are public documents and this health emergency management plan would also be a public document.

Mr D.J. KELLY: Following on from that, given that some people might have an interest in thwarting a public health plan, if their intent was to actually cause a public health issue, I am just wondering whether there are any circumstances or any scenarios where it is actually not a good idea to have the public health plan as a public document. For example, if someone poisoned Mundaring Weir or something, presumably that is a scenario you would consider a public drinking water emergency. I am just wondering whether it is actually wise to have that response to plan public.

Dr K.D. HAMES: I will ask Professor Weeramanthri to answer in full, but the reality is that public health plans are mostly commonsense that we could anticipate ourselves.

Mr D.J. KELLY: Yes.

Dr K.D. HAMES: It states who would be in charge, who would do what, what the health department would have to do, what the fire department would have to do. Dr Weeramanthri will answer more fully.

Professor T.S. Weeramanthri: What the minister says is correct. But your question is very valid. We, for example, do not publish the stockpile of antidotes we have both at a national and state level, because that would be obviously sensitive information that could be used for purposes other than what we intend. So we are cognisant of how we write the plan so as to not put specific information in there that is sensitive, in other ways.

Clause put and passed.

Clauses 157 to 167 put and passed.

Clause 168: Terms used —

Dr K.D. HAMES: I move —

Page 137, line 25 — To delete “advocate” and substitute —
representative

We have been through that same thing about three times so far, so I have moved the amendment that stands in my name on the notice paper.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 169: Operation of this Division —

Mr D.J. KELLY: Perhaps the minister can point it out to me. This is the clause which outlines what powers the minister has in an emergency. It has a lot of old-fashioned powers such as entering premises and using vehicles and all that sort of stuff. I am just wondering whether there is anything about access to modern technology. I suppose I am thinking of people who are not doing the right thing. Is there power to access computers or close websites? Are those sorts of things contained in this clause.

Dr K.D. HAMES: Is there a clause that the member can refer to specifically or have we passed that already?

Ms B. Peters: It is clause 181.

Dr K.D. HAMES: First, we have to deal with our amendment at clause 174.

Clause put and passed.

Clauses 170 to 173 put and passed.

Clause 174: Powers in relation to drugs and vaccines —

Dr K.D. HAMES: I move —

Page 141, after line 8 — To insert —

(6) This section overrides the *Poisons Act 1964*, the *Medicines and Poisons Act 2014* and the *Misuse of Drugs Act 1981*.

I would like to hand to Ms Peters to explain why we need to do this.

Ms B. Peters: This amendment addresses a technical issue. Clause 174 of the bill authorises an emergency officer to take control of or make use of any vaccine or drug for emergency management purposes, and it should be made clear that clause 174 applies despite any requirement in the Medicines and Poisons Act and the Misuse of Drugs Act.

Amendment put and passed.

Dr K.D. HAMES: Which one is it—clause 181?

Mr D.J. KELLY: Clause 181 says “Other emergency powers”. I could not see anything in that clause.

Ms B. Peters: There is a provision. I cannot find it at the moment, but it basically requires a person to sort of cooperate so that we can use some kind of technology to get the information that is required. But I will keep searching for the provision.

Clause, as amended, put and passed.

Dr K.D. HAMES: I have an amendment, new clause 187A, which is before the clause that the member referred to. Why do we not just wait? The answer is still there but there is a clause in the bill that states that modern technology can be taken into consideration.

[4.30 pm]

Mr D.J. KELLY: It would just be nice to know where it is. Is there also a general catch-all clause if there is something we have not thought of but is obviously necessary to prevent a public health emergency? Is there that sort of a catch-all clause as well? It is one of the problems when everything has to be listed. I know there has to be some boundaries.

Dr K.D. HAMES: Yes, and we have tried not to do that in general terms; it has been fairly broadly worded. We had some criticisms of the wording being too broad and not specific enough. That has been done for a reason.

Mr D.J. KELLY: We can open a container or other thing in an emergency area.

Ms B. Peters: Yes, it is in clause 181(1)(q).

Clauses 175 to 180 put and passed.

Clause 181: Other emergency powers —

Dr K.D. HAMES: I turn to Ms Peters to provide the previous answer.

Ms B. Peters: Clause 181(1)(q) is in answer to your first question. That is the power for the emergency officer to direct people to assist the emergency officer in the exercise of their powers, and it is an offence not to comply with that direction. In answer to your second question, no, there is not a broad catch-all power because, of course, in exercising powers, you are interfering with people’s rights and liberties, so we need to be quite specific about the powers that are able to be exercised.

Mr D.J. KELLY: My reading of 181(1)(q) is that an emergency officer can direct a person to give the emergency officer reasonable assistance to exercise the emergency officer’s powers. I would have read that as they have to assist people to do everything else that is listed here, as opposed to assist them to do something that is not listed here.

Ms B. Peters: That is correct, yes.

Mr D.J. KELLY: Is there anything which gives you the power to close a website or access a computer or do those sorts of things, which you might do in the era of modern technology?

Ms B. Peters: Under the provisions in clause 181, various powers can be exercised in respect of records. “Records” is defined in clause 233.

Dr K.D. HAMES: I will read out clause 233(1) for the record —

record —

- (a) means any record of information, irrespective of how the information is recorded or stored or able to be recovered; and
- (b) includes —
 - (i) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
 - (ii) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

That is pretty well a catch-all.

Mr D.J. KELLY: That defines “record”, but where is record listed as a power?

Ms B. Peters: For instance, there is a power in clause 181(1)(b) to search any premises. And when you search premises, there is a power to seize, and you can seize records.

Mr R.H. COOK: Or anything found in or on the premises.

Dr K.D. HAMES: So that includes records.

Mr D.J. KELLY: I am just wondering whether that power to search a premise and retrieve a record would if there was a website in the social domain that was disseminating information that was wrong and leading to a public health issue, give the ability to —

Ms B. Peters: Shut it down.

Mr D.J. KELLY: — hack into a system and close it down, for example?

Dr K.D. HAMES: The reality is that in clause 181(1)(b), “anything” really should be two words, should it not, because “thing” has a definition in law? It could be any “thing”. Then the bill refers to a record as a thing. Clause 233 deals with the record component of “thing” and that will cover websites or any other method of storing, recording and disseminating information in the future. For the record, that is what we think it means.

Mr D.J. KELLY: Sure. One of the criticisms of the old act is that it was written in 1904, and one of the purposes of this bill is to update the legislation. I am just asking: would it have been wise to include something that explicitly refers to that modern technology, rather than rely on interpreting stuff that was clearly written when computers and stuff really did not really exist? I will leave it at that question. The government might want to consider that.

Dr K.D. HAMES: For the *Hansard* record, for anyone reading it, my view is that that is a very good point. That is why this is a bit vague; it leaves it open by referring to “anything” and includes any sort of recording or whatever it may be. That means that we can do those things without being specific and having to name this and any other thing. We take the point and that is my interpretation of what it means. Is Ms Peters agreeing with that? Is she nodding or does she have something else to say?

Ms B. Peters: Yes. On the question about whether there is power to hack into a website, no, there are not powers to do that. However, there are comprehensive powers to do everything we can pretty much think of, and these are based on the Emergency Management Act as well.

Ms J.M. FREEMAN: Can I just ask for clarification? The member for Bassendean is saying that if a website promotes something that could, if people took it up, become a public health issue, such as having unprotected sex, it would not be a public health issue until people actually get HIV–AIDS as such. Who would come in at that point? Who would be involved in that sort of prevention aspect of the website that does that? Would that be a policing issue or a safety issue? Once it is done, information about a public health issue could be retrieved, but the minister is basically saying that there is a delineation and the department cannot go in to look when the website is just promoting something that could lead to a public health issue, because it may not lead to a public health issue.

Dr K.D. HAMES: Dr Weeramanthri.

Professor T.S. Weeramanthri: Firstly, it would need to be a material public health risk. Secondly, the minister would need to invoke this part of the legislation. I think it is important to distinguish between the powers available here, which are designed to manage a public health risk. They are not meant to duplicate other emergency management powers; they are meant to complement them. They are certainly not meant to duplicate police powers in terms of evidence or investigation powers. It is written here to mitigate or abate a public health risk.

In relation to the question about, say, a website promoting unhealthy behaviours or unsafe behaviours or whatever, we have come across that in our recent experience, and there are remedies available in various other ways that can mitigate that risk. For example, there might be consumer law that provides that this is misleading. There might be medicines and poisons law that provides that a benefit or a drug effect cannot be claimed for something unless it can be proved. There are various other ways that an issue of misinformation to the public can be addressed that would not be covered under this part of the legislation.

Mr D.J. KELLY: Professor Weeramanthri may have just answered it, but the other thing that comes to mind is someone who wanted to interfere with software or information systems in a hospital or a virus attack on something. Will this legislation provide the power to deal with that or would powers elsewhere need to be relied on?

Dr K.D. HAMES: Professor Weeramanthri.

Professor T.S. Weeramanthri: I think the answer is that we would require reliance on powers elsewhere. That is primarily a criminal act and the police would wish to address it primarily as a criminal act. There are many criminal and other acts that have implications on the health and wellbeing of people, but we do not address them through health legislation; we address them through primary policing and the law.

Clause put and passed.

Clauses 182 to 187 put and passed.

New clause 187A —**Dr K.D. HAMES:** I move —

Page 154, after line 20 — to insert —

187A. Chief Health Officer may authorise persons to administer, manufacture, supply or prescribe poisons

(1) In this section —

poison —

- (a) until the commencement of the *Medicines and Poisons Act 2014* section 3, has the meaning given in the *Poisons Act 1964* section 5(1); and
 - (b) after the commencement of the *Medicines and Poisons Act 2014* section 3, has the meaning given in that section.
- (2) For the purposes of emergency management during a public health state of emergency —
- (a) the Chief Health Officer may authorise a person, or class of persons, to administer, manufacture, supply or prescribe a poison; and
 - (b) a person authorised under paragraph (a) may administer, manufacture, supply or prescribe a poison.
- (3) The Chief Health Officer may give directions in relation to the exercise of a power under subsection (2)(b).
- (4) When exercising a power under subsection (2)(b), a person must comply with —
- (a) the terms and conditions of the authorisation (if any); and
 - (b) any directions of the Chief Health Officer given under subsection (3).
- (5) This section overrides the *Poisons Act 1964*, the *Medicines and Poisons Act 2014* and the *Misuse of Drugs Act 1981*.

This is fairly complex and members might need to look at pages 16 and 17 in the notice paper as I move to insert new clauses 187A and 187B, which are quite long. I will get Ms Peters to explain.

Ms B. Peters: I will address the new clauses together.**Dr K.D. HAMES:** You can talk about it together.

Ms B. Peters: The emergency provisions in the bill are modelled on parts 5 and 6 of the Emergency Management Act. Parliament has recently approved the insertion of a new section 76A into the Emergency Management Act and, as such, it is appropriate to include an equivalent provision in the bill to apply in the event of a public health state of emergency. The purpose of new clauses 187A and 187B is to empower the Chief Health Officer to authorise the administration, manufacture, supply and prescription of a poison during a public health emergency—for example, to authorise a mass vaccination program in the event of an outbreak of a serious vaccine-preventable infectious disease or the administration of potassium iodide tablets in the event of a serious radiation incident.

Dr K.D. HAMES: It gets me how they are called poisons.**Ms J.M. FREEMAN:** Yes. Why do they call it a poison when it really should be called a prescription or an antidote or something?**Dr K.D. HAMES:** There is a long history to that.**Mr R.H. COOK:** “Miracle cure” is not legal language.**Dr K.D. HAMES:** Is Professor Weeramanthri able to give us the history of why they are called poisons?**Mr R.H. COOK:** Surely the minister and two of his advisers studied this in first-year medicine.**Dr K.D. HAMES:** Professor Weeramanthri.

Professor T.S. Weeramanthri: I am happy to. All drugs are chemicals. All chemicals have a safe dosage, reasonable administration and duration of exposure. Any chemical can be therapeutic if it is at the right dose for the right amount of time.

Dr K.D. HAMES: Or it could kill the person, such as Panadol.

Professor T.S. Weeramanthri: But if the person exceeds the correct dose, it can have adverse effects and therefore be a poison. The best example is the complex molecule H₂O, or water, which will kill the person if they drink too much of it. There are clinical conditions —

Mr R.H. COOK: They need some fermented grapes to go in it!

Professor T.S. Weeramanthri: Basically, that just proves the point that any chemical can be either harmless or a medicine and/or a poison.

Ms J.M. FREEMAN: Yes, but we do not call water poison, do we? I get what Professor Weeramanthri is saying. Anything that is —

Dr K.D. HAMES: A better example would be paracetamol. Digitalis can kill a person very quickly if they have an excessive dosage.

Ms J.M. FREEMAN: I do not know what digitalis is other than a finger.

Dr K.D. HAMES: It comes from a leaf. Digitalis leaf makes digoxin, which is one of the best saviours of mankind that exist, yet it can kill very quickly.

Ms J.M. FREEMAN: The saviour of mankind!

Dr K.D. HAMES: It is. In the old days, the leaf was ground up and used particularly for heart failure. But if a person has too much of it, they will die.

New clause put and passed.

New clause 187B —

Dr K.D. HAMES: I move —

Page 154, after line 20 – To insert:

187B. Further provisions relating to authority to administer, manufacture, supply or prescribe poisons

(1) In this section —

authorisation means an authorisation given under section 187A(2)(a);

direction means a direction given under section 187A(3).

(2) An authorisation —

(a) is subject to any limitation in a declaration under section 158(3)(b) or 160 or 161; and

(b) must state that it is given under section 187A; and

(c) must generally describe the public health state of emergency to which it relates; and

(d) must specify —

(i) the person, or class of persons, to whom it applies; and

(ii) the poison, or class of poisons, to which it applies; and

(iii) the terms and conditions (if any) to which it is subject.

(3) The Chief Health Officer may vary or revoke an authorisation or a direction.

(4) Authorisations and directions, and variations and revocations of authorisations or directions —

(a) may be given orally or in writing; but

(b) if given orally, must be put in writing as soon as is practicable.

(5) A failure to put an authorisation or direction, or a variation of an authorisation or direction, in writing does not invalidate the authorisation, direction or variation or anything done under the authorisation or direction.

(6) The powers that an authorisation confers on a person are in addition to, and do not limit, the powers that the person may have under another written law or other law.

New clause put and passed.

Clauses 188 to 191 put and passed.

Clause 192: Entitlement to compensation —

Dr K.D. HAMES: I ask Dr Weeramanthri to talk us through part 12.

Professor T.S. Weeramanthri: As outlined in the explanatory memorandum, this part provides arrangements to address losses incurred by persons as a result of the exercise of part 10 and 11 powers. Given that they are extensive powers, it is appropriate to provide compensation arrangements and, in fact, this part is modelled on part 7 of the Emergency Management Act 2005.

Ms J.M. FREEMAN: Did Professor Weeramanthri say that it deals with part 10 and part 11, because it refers only to a power under division 6 of part 11 or clause 188? The entitlement to compensation at clause 192 just refers to that. That is because the previous clauses deal with a serious public health incident or emergency powers, so they are in part 10, are they not? Okay. I understand. Why did Professor Weeramanthri not talk about it as just being in part 10? Is there something in part 10 that has been left out?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: Those terms are defined. If we go back to the definitions —

Ms J.M. FREEMAN: Yes. “Serious public health incident power” and “emergency power” are defined.

Ms B. Peters: That is right. A “serious public health incident power” is a power provided for in clause 148(1) of part 10.

Ms J.M. FREEMAN: Is “public health emergency” not defined in the definitions?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: Is the member wondering why it refers to an emergency power?

Ms J.M. FREEMAN: No.

Dr K.D. HAMES: It has “a power under Part 11”.

Ms J.M. FREEMAN: I have been told that the terms in paragraphs (a) and (b) do not need to be called part 10 because they are defined. I am saying that the definitions clause does not have a definition of “public health emergency” or does it?

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: They are defined terms within clause 4 and define a serious public health incident power, which is a power provided for in clause 148(1). We also define an emergency power. It is just being very specific in terms of what powers that are exercised give rise to this right to compensation. It is just the exercise of those powers. There are other powers in there, but it is just those ones.

Ms J.M. FREEMAN: That is what I was asking. Let me go back to the original question because clearly I was not clear enough.

Dr K.D. HAMES: No.

Ms J.M. FREEMAN: If a person suffers because of the exercise of any power under division 6 in part 11 or clause 188, they are entitled to compensation or if their insurer tries to not give them compensation, there is a provision that will make the insurer give them compensation. However, paragraphs (a) and (b) do not refer to part 10, because there must be things in the powers in part 10 that are not included in the entitlement to compensation. What powers have been excluded because they have been particularly and meticulously and pointedly defined, whereas the other one has been defined as a power under part 11. The first answer to me was that that has been done because there are definitions, but there is also a definition of “public health emergency”, which is referred to in part 11.

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: We were just making it clear which powers give rise to the right to compensation. They are the powers in in clause 148(1), and the powers provided for in division 5 of part 11. We have been very specific in terms of what powers give rise to the right to compensation, so that people can know just what their rights are.

Ms J.M. FREEMAN: Okay. Which part of part 10 gives rise to these powers? I do not want to be told that it is a serious public health incident or emergency. I want to be told that it is division whatever of part 10 or clause whatever, and division whatever of part 10 or clause whatever.

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: Clause 148 lists this area as serious public health incident powers.

Ms J.M. FREEMAN: Clause 148 in division 2 of part 10 is for serious public health.

Dr K.D. HAMES: Professor Weeramanthri thinks he might have an answer.

Ms J.M. FREEMAN: I am happy to hear his answer.

Professor T.S. Weeramanthri: Clauses 149 to 152 make the reference, I believe, to clause 148. Basically, all the subsequent clauses refer to the serious incident powers under clause 148.

Ms J.M. FREEMAN: So that is in clauses 148 to 154. The emergency power is the —

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: That is in division 5 in part 11, and division 6 in part 11 is included, as is clause 188 in division 7.

Ms J.M. FREEMAN: It does not say “and”; it says “or”.

Ms B. Peters: It includes all of those things.

Ms J.M. FREEMAN: So it is division 5 of part 11 as well.

Ms B. Peters: Because those are the emergency powers.

Ms J.M. FREEMAN: Okay. I am confused as to why there are two separate ways of doing that.

Clause put and passed.

Clause 193: Applying for compensation —

Ms J.M. FREEMAN: I have two questions. What happens if the claimant dies before the minister makes a decision or before the minister accepts it?

The ACTING SPEAKER: Ms Peters.

Ms B. Peters: The estate would take over the application on behalf of the deceased person.

Ms J.M. FREEMAN: So it does not mean that the person cannot have their insurance. Can I just quickly jump, because I need to? Clause 198 refers to the extension of policy of insurance. Does that override, basically, insurance policies? At the bottom of the page, clause 198(3) states —

A term of a policy of insurance that purports to vary or exclude the operation of subsection (2) is void.

How does that sit with the federal legislation? Is that okay? Can that be done, given that insurance law is federal law?

Dr R.H. COOK: Mr Lawn.

Mr G. Lawn: I think that is probably a matter for the High Court to determine.

Ms J.M. FREEMAN: Okay.

Clause put and passed.

Clauses 194 to 198 put and passed.

Clause 199: Terms used —

Dr K.D. HAMES: I ask Professor Weeramanthri to deal with part 13.

Professor T.S. Weeramanthri: This part should be read in association with the general public health duty. As members will remember, the general public health duty is set out in a prior part of the legislation, but the failure to carry out that duty does not in and of itself carry any penalty. If there was a case in which there was clearly a risk to public health, and there would have been a discussion between public health officers and the business or individual in relation to that and the risk had not been mitigated, there is now a tiered approach under this part of the legislation to go to an improvement notice and then to an enforcement order. This is consistent with the options available under, for example, the Food Act 2008 and allows for some certainty in terms of public expectation of what they have to do and allows for the state to be very clear about what needs to happen and for there to be clear consequences for failure of that to happen. We would have to lay out what the risk was, what measures need to be taken and under what time line, and there would be a process to ensure that that happened, and it could be escalated further to an enforcement order should that not happen. But breach of an improvement notice or an enforcement order must carry penalties in and of themselves.

Ms B. Peters: Not the improvement notice, only the enforcement order.

Professor T.S. Weeramanthri: I apologise.

Dr K.D. HAMES: Can Ms Peters just clarify that?

Ms B. Peters: There is no penalty for failing to comply with an improvement notice, but there is a penalty for failing to comply with an enforcement order. Effectively, the mechanism is that if an improvement notice is not complied with, an enforcement order will be issued.

Clause put and passed.

Clauses 200 to 215 put and passed.**Clause 216: Terms used —**

Mr R.H. COOK: Can the Chief Health Officer serve an enforcement notice on a government agency?

Dr K.D. HAMES: Professor Weeramanthri.

Professor T.S. Weeramanthri: The Chief Health Officer cannot serve an enforcement order on the Crown.

Mr R.H. COOK: Or an agency?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: An enforcement order cannot be issued to the Crown, as outlined in clause 282. Clause 281 clarifies that an improvement notice can be issued to the Crown.

Mr R.H. COOK: Sorry, could you say that again?

Ms B. Peters: Sorry, an improvement notice.

Dr K.D. HAMES: You can do an improvement notice —

Professor T.S. Weeramanthri: An improvement notice but not an enforcement notice.

Dr K.D. HAMES: An environmental health officer in council could issue an improvement notice on fixing up an Aboriginal house, for example. They could not incur an enforcement notice because the Crown is not bound, I presume.

Ms B. Peters: The Crown cannot be issued with an enforcement order.

Mr R.H. COOK: I was just wondering if someone could provide me with an explanation of clause 209.

Dr K.D. HAMES: “Application of Criminal and Found Property Disposal Act 2006”. Mr Lawn looks like the person to do that one.

Mr G. Lawn: For things seized under this provision, the Criminal and Found Property Disposal Act has procedures for allowing those things to be disposed of and for the person to get them back. They are just machinery provisions, essentially.

Mr R.H. COOK: Okay. So this might be in the event that one seizes a car full of cats or something like that, or it could potentially —

Dr K.D. HAMES: Can the member come up with a more logical example than a car full of cats? Has Mr Lawn got any examples for us that are better than a car full of cats?

Mr G. Lawn: Well, if someone has a load of mangoes that are going rotten and it is a public health risk.

Mr R.H. COOK: Okay, so all of a sudden mangoes are okay to talk about but not cats!

Dr K.D. HAMES: Unless the cats are diseased or —

Mr G. Lawn: If there is an enforcement order issued and the person does not comply, the enforcement agency can implement it under clause 208. They might seize the mangoes under clause 208(3)(c), but the Criminal and Found Property Disposal Act would allow them to dispose of those because they cannot hold them until court proceedings are determined.

Mr R.H. COOK: I am happy to vote on this, but I am troubled by the idea that an enforcement notice cannot be served, particularly in the scenario that given. In relation to the scenario that the minister talked about, how would one respond to a situation where the Aboriginal Lands Trust is saying, “Well, we’ve got no money, we’ve got no capacity to improve that house”? The authorised officer, who in this situation would be the authorised officer, is just confronted with the squalor. In practical terms, what happens?

Dr K.D. HAMES: It would not be the ALT because while the ALT owns the land, the houses are owned by the Department of Housing, so the notice would be given to the Department of Housing to say, “Fix this up”. The Department of Housing would need to comply with that because it is an order to do something. It has an option then to refuse, but it has to come to me for me to grant an exemption, so it has to notify me, as I understand it.

Mr R.H. COOK: Okay; as on page 16.

Dr K.D. HAMES: If it decides it does not want to have to comply, it would set out for me a reason why it will not comply. It might say there are 300 houses in a community and that none of them complies; they complied six months ago, but the kids have gone through and systematically wrecked every one, and it is beyond the department’s reach to make them comply. For example, if it was about sewerage and it still remained a public health risk, I would not grant an exemption; bad luck. The department would have to work on why the kids

wreck it in the first place, and it would need to fix it because it is a health risk. If it is a bashing, like they do, or rocks breaking the solar power, then I guess I would not approve that either. That is not a good example.

Mr R.H. COOK: That is all right; I get it.

Dr K.D. HAMES: One could criticise us on this under the “binding the Crown” clause. This is a separate clause. The general criticism about not binding the Crown can incorporate comments around those examples.

Clauses 199 to 215 put and passed.

Leave granted for clauses 216 to 228 to be considered together.

Clauses 216 to 228 —

The DEPUTY SPEAKER: I note that we have an amendment at clause 229.

Professor T.S. Weeramanthri: Thank you. This is a part of the bill that allows for inquiries, which would obviously be of an exceptional nature, to be conducted and provides a stronger framework for the commissioning of those inquiries, procedural fairness for those inquiries and the reporting of those inquiries. There are powers under the current Health Act to conduct inquiries; they have been a feature of other public health legislation for over 100 years, but a much more modern framework is provided under this bill. It can be instigated on the chief health officer's own initiative or at the request of the minister. I think, again, it shows that the government's policy to retain the independent statutory officer, the chief health officer, gives scope for that person to conduct inquiries on their own initiative. That is a measure of separation of the roles we discussed previously, but there has to be informing of the minister, as appropriate, and the terms of reference of the inquiry have to be formally written down. It is interesting; the procedural aspects of it allow for, if you like, a non-legally bound inquiry, so if the actual legislation says that the inquiry must act with as little formality as possible, it is not bound by the rules of evidence. It can receive submissions and consult any person the inquiry considers appropriate. That allows, if you like, for a kind of expert inquiry as opposed to a very legalistic inquiry. It allows for the particular skills of the chief health officer to gather evidence, ask questions and to bring a body of opinion together around a public health issue. The inquiry must be held in public although, of course, there is provision to hold certain sections as not public, if there is a particular reason.

Dr K.D. HAMES: Okay. Can I just ask a question about that? If we had not done the parliamentary inquiry into Esperance as a parliamentary inquiry, would this have been the sort of way we might have done it otherwise?

Professor T.S. Weeramanthri: Correct.

Mr R.H. COOK: It is a cracking clause, is it not?

Mr R.H. COOK: It is just fantastic! I was going to ask this: are there any penalties for giving false information to an inquiry or refusing to appear before an inquiry?

Dr K.D. HAMES: A good question. Ms Peters?

Ms B. Peters: Clause 225 provides a penalty for providing false information.

Dr K.D. HAMES: A penalty of 10 grand.

Ms B. Peters: Clause 222 also provides offences in relation to failing to attend as directed or to produce a document.

Dr K.D. HAMES: Up the top there is another \$10 000. Yes. That is pretty good.

Mr R.H. COOK: That is a cracker.

Clauses put and passed.

Clause 229: Powers of authorised officers —

Dr K.D. HAMES: Madam Deputy Speaker, I move —

Page 179, line 22 — To delete “subsection (3)(a)” and substitute —

Subsection (3)(b)

That does not make sense. Page 179, line 22, which is actually section 4.

Ms B. Peters: Yes. There is a reference in there to subsection (3)(a).

Dr K.D. HAMES: Delete subsection (3)(a) which is supposed to be (3)(b). Okay. Looking at the line that contains (3)(a), it is to delete “(3)(a)” and it is supposed to be “(3)(b)”.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 230 to 254 put and passed.

Leave granted for clauses 255 to 267 to be considered together.

Clauses 255 to 267 —

Professor T.S. Weeramanthri: Part 16 is the mechanism for application for a Crown exemption. We talked previously about how the bill binds the Crown in comparison with the current Health Act, which does not bind the Crown. In order to be exempted there has to be a specific procedure followed, which is laid out in part 16.

Dr K.D. HAMES: I do not know if we want to just defer this to the chamber or whether members want to ask some questions about it that the staff can answer before we do that.

Mr R.H. COOK: That is a really good question. I guess that is up to the minister. We obviously will refer this to the chamber.

Dr K.D. HAMES: Members can ask the staff questions directly in here, which they cannot do in the chamber.

Mr R.H. COOK: I am just aware of the fact that some of my colleagues who are not on the committee will probably dig into this as well in the chamber. That is a really kind offer, but the minister will probably get frustrated having to answer the same questions all over again.

Further consideration of clauses 255 to 267 postponed, on motion by Dr K.D. Hames (Minister for Health).

Dr K.D. HAMES: I request that the clauses 268 to clause 282 be considered en bloc.

The DEPUTY SPEAKER: Is leave granted?

Mr R.H. COOK: No, Madam Deputy Speaker, it is not. Division 3 of part 17 is all about enforcement of action against the Crown, so I suspect that there is stuff we will probably want to dig into there as well. Perhaps if we just move up to 279; does that make sense?

Dr K.D. HAMES: Yes.

The DEPUTY SPEAKER: So the question is that clause 268 to 279 be referred to the chamber?

Mr R.H. COOK: No, no. I said I am happy to do it.

Leave granted for clauses 268 to 279 to be considered together.

Clauses 268 to 279 —

The DEPUTY SPEAKER: Okay. Now, minister, do you want to have some explanation of those clauses?

Dr K.D. HAMES: No.

Mr R.H. COOK: Come on—liability, evidentiary and procedural provisions sounds fascinating!

Dr K.D. HAMES: Sorry, we do. I can ask Dr Weeramanthri to explain.

Professor T.S. Weeramanthri: I think this might be a question for one of the legally-trained!

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: The minister is looking for an explanation of divisions 1 and 2?

Dr K.D. HAMES: What is part 17, yes.

Ms B. Peters: Division 1 makes it clear that a breach of this bill is not actionable as a breach of statutory duty, so damages cannot be recovered from someone. Division 2 provides fairly standard provisions relating to how prosecutions are commenced and evidentiary provisions in relation to prosecutions. There are some particular powers in there in respect of registration and licences under clause 278.

Dr K.D. HAMES: That is it?

Ms B. Peters: That is about it, I think.

Clauses put and passed.**Further consideration of clauses 280 to 282 postponed, on motion by Dr K.D. Hames (Minister for Health).****Clause 283: Fees and charges may be fixed and recovered by enforcement agencies that are local governments —**

Dr K.D. HAMES: We are up to part 18, “Miscellaneous”. Is the member happy to go to the end?

Mr R.H. COOK: I think so. I have some questions about clause 283, which will probably just expose my extreme ignorance of this!

Dr K.D. HAMES: There is an amendment at 286, so we can just do them one by one.

Mr R.H. COOK: I am not overly familiar with the Local Government Act and obviously this particular clause empowers the local government to charge a fee for the purposes of the carrying out of duties under the proposed Public Health Act. I am wondering whether there are regulatory functions around what they can charge and how they can charge it, or is that essentially up to a local government authority to decide?

Ms B. Peters: In order to impose and recover the fee under those provisions, it has to relate to the performance of a function as an enforcement agency under the act. These are things like licence fees and registration —

Mr R.H. COOK: Pool inspections.

Ms B. Peters: — pool inspections, that type of thing. Where they are exercising a function, they can impose the fee and recover it in respect of that function.

Mr R.H. COOK: Yes. Thank you, Madam Chair. Do they have to come back to the Chief Health Officer or is there some overarching framework that says, you know, the Shire of Mukinbudin charges \$50 to inspect a pool fee, while the Shire of Northam charges \$500. Is there some sort of regime or regulatory framework under which that stuff takes place?

Ms B. Peters: The fee imposed would have to be cost recovery, otherwise it would constitute a tax. I do not believe there is any mechanism for the Chief Health Officer to have oversight, but Mr Lawn is more familiar with the Local Government Act than I am.

Mr G. Lawn: It is just over to the local government to set these fees and charges.

Dr K.D. HAMES: What if they do it as described—one charges \$500 and the other charges \$50?

Mr G. Lawn: That is their right to do that. I mean, they would have to justify that fee in terms of cost recovery.

Mr R.H. COOK: It would never happen in the City of Bayswater!

So it actually requires a ratepayer to be able to say, “Look, I think that is unreasonable” and potentially, I guess, go to the Minister for Local Government in that instance.

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: I guess they could complain, but they could also take action in a court if they were charged a fee and they could say, “Well, that is a tax and it is unlawful and I do not have to pay it”, and a court would determine whether it was a reasonable charge based on cost recovery.

Dr K.D. HAMES: The same way, I presume, Mr Peter Abetz and his committee, delegated legislation —

The DEPUTY SPEAKER: Absolutely. That is what I was going to say, if I was allowed to as Chair—that there is the delegated legislation committee where local government fees and charges can be examined.

Mr R.H. COOK: This is the Legislation Committee, we can do all kinds of things! Who knows what we get away with? Ignorance of the standing orders provides you with a licence to do just about anything!

Clause put and passed.

Clause 284 put and passed.

Clause 285: Chief Health Officer may act where no local government —

Mr D.J. KELLY: I am just curious to know if the Chief Health Officer can act outside of the areas that are within the boundaries of a local government district. Where in Western Australia is not in a local government?

Mr R.H. COOK: Rottnest Island.

[5.20 pm]

Mr D.J. KELLY: Is that the only one?

Dr K.D. HAMES: I am not sure. I think we are in a local government area for Rottnest. I think we come under Fremantle. Bold Park is another —

Ms B. Peters: The Abrolhos Islands?

Dr K.D. HAMES: No, Abrolhos was under Northampton, now it is Geraldton.

Mr R.H. COOK: I would be really interested to hear what Dr Weeramanthri has to say about this. He looks like he is inspired at the moment!

Professor T.S. Weeramanthri: Kings Park is another example.

Dr K.D. HAMES: Kings Park is not covered by City of Perth?

Clause put and passed.

Clause 286: Protection from liability for wrongdoing —**Dr K.D. HAMES:** I move —

Page 209, lines 13 to 16 — To delete the lines and substitute —

- (4) A person who, at the request or direction of an authorised officer or emergency officer or a person authorised under section 187A(2)(a), assists the officer or person to exercise a power under this Act is to be taken to be performing a function under this Act for the purposes of this section.

All the rest is the same, so all we have done is substituted “emergency officer” for —

Ms B. Peters: “Emergency officer” is there already and we have added a reference to —**Dr K.D. HAMES:** To “or person”.**Ms B. Peters:** Yes.**Dr K.D. HAMES:** So we have added the words, in effect, of “or person authorised under section 187A(2)(a)”. Ms Peters will explain what clause 187(2)(a) is.**Ms B. Peters:** This amendment addresses a technical issue arising from the insertion of clause 187A into the bill. At present, clause 286 of the bill applies to persons who assist an authorised officer or an emergency officer. The clause needs to be broadened to also apply to persons who assist a person who is authorised under the new clause 187A(2)(a) of the bill.**Amendment put and passed.****Clause, as amended, put and passed.****Clauses 287 to 311 put and passed.****The DEPUTY SPEAKER:** The question is that this is the long title of the bill.**Dr K.D. HAMES:** Okay. I just need to sort something out. There is a proposed amendment that we have given to Mr Cook to do what he wished us to do, which was to reinsert into the bill public policy. The problem is you have not really had a chance to read it.**Mr R.H. COOK:** I have not had a chance to have a look at it. Can we do that back in the big chamber? Is that okay?**Dr K.D. HAMES:** I gather it is a lot easier to put it in and we can debate it in the chamber.**Mr R.H. COOK:** I see what you mean.**Dr K.D. HAMES:** So we can move to insert that clause, then that becomes part of what we debate later. We can do that, can we not?**The DEPUTY SPEAKER:** I might just seek some advice.**Dr K.D. HAMES:** Yes. So we have a section that I will need to move to insert before that. So I move —

To insert a new Part 5A into the bill.

And the contents of that are listed below. And then I move that we debate it in the chamber.

The DEPUTY SPEAKER: Okay. Thank you, members. I am just receiving some advice. I am advised that we have already moved to refer the existing 5A, Mr Cook’s proposed 5A, to the chamber, so —**Dr K.D. HAMES:** Can we move to delete all your proposed section and insert this section instead?**Mr R.H. COOK:** Well, if you give me the dinner break perhaps to have a look at it, that would be helpful. That would be easier if you need me to withdraw my —**The DEPUTY SPEAKER:** Perhaps committee members would like to adjourn? Would that help just to work out what we are doing or would —**Dr K.D. HAMES:** What do you want to do, Roger?**Mr R.H. COOK:** What is the time now?**Dr K.D. HAMES:** It just does mean bringing everyone back at 7.00 pm, but that is probably not —**Mr R.H. COOK:** We have still got the consequential —**Dr K.D. HAMES:** We were going to go until seven. We have got the other section, anyway.**Mr R.H. COOK:** Yes, yes. So why do we not just pull the pin now, come back at seven o’clock and knock off the Public Health Bill and get to the consequential provisions? I will try and get some advice.

Dr K.D. HAMES: Well, if we adjourn debate now on this bill, can we then spend the next half-hour on the other bill? We have to do that anyway. That saves us going later. Are we able to do that?

The DEPUTY SPEAKER: I would imagine, with the leave of the committee, we probably could.

Dr K.D. HAMES: Are you happy to do that—and then we can do this other bill, the consequential provisions bill?

The DEPUTY SPEAKER: So I think we could by leave, but it is just whether —

Dr K.D. HAMES: Are you happy to do that? It might take five minutes, anyway.

Mr R.H. COOK: I have been studying that up. I might have extensive and far-reaching questions about it —

Dr K.D. HAMES: I move —

Debate on the Public Health Bill be adjourned.

And we will do that after the dinner break.

The DEPUTY SPEAKER: So, members, we have the motion of the Minister before us. Just to be clear, we still have not moved—so we have done up to and including clause 311. We have not moved to accept the long title of the bill. So that will need to be dealt with when we return from the adjournment, as well as whatever is decided about how to deal with Mr Cook’s proposed amendment and the Minister’s amendment. So with that in mind, the question is that the motion be agreed to.

Mr R.H. COOK: What was the motion?

The DEPUTY SPEAKER: Yes. That we adjourn the debate on the Public Health Bill until seven o’clock.

Further consideration of the bill postponed, on motion by Mr K.D. Hames (Minister for Health).

PUBLIC HEALTH (CONSEQUENTIAL PROVISIONS) BILL 2014

The DEPUTY SPEAKER: Thank you, members. We are now dealing with the Public Health (Consequential Provisions) Bill 2014. It has 351 clauses.

Leave granted for clauses 1 to 35 to be considered together.

Clauses 1 to 35 —

Mr R.H. COOK: Our entire research team is onto this as we speak!

Dr K.D. HAMES: Why not have an explanation from Ms Peters while the member is thinking about what is in this section.

Mr R.H. COOK: In part 1? Sure.

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: The purpose of the Public Health (Consequential Provisions) Bill 2014 is to amend the Health Act and a range of other acts as a consequence of the provisions in the Public Health Bill 2014. The Public Health (Consequential Provisions) Bill will be implemented at the same time as the Public Health Bill in a staged manner. That is reflected in the structure of the bill. Part 1 of the bill provides the short title and commencement provisions that will come into operation on the day the bill receives royal assent. We have just moved to consider part of part 2. Parts 2 and 3 will be proclaimed in the second stage of implementation. These parts amend the Health Act and a range of other acts to provide the framework of terminology that is consistent with that provided by the Public Health Bill 2014. Amongst other things, the title of the Health Act will be changed to the Health (Miscellaneous Provisions) Act. References to “Executive Director, Public Health” will be changed to “Chief Health Officer” and references to “environmental health officer” will be changed to “authorised officer”. These terminology amendments will facilitate the implementation of the substantive amendments provided by parts 4 and 5 of this bill.

Part 2 of the bill also amends parts XIII A, XIII B and XIII C of the Health Act to modernise some elements of the framework for the mortality committees as an interim measure, pending comprehensive reform. There are numerous provisions that amend the Health Act to implement gender-neutral language, provide for the immediate repeal of various redundant sections of the Health Act and provide for the insertion of schedule 6 into the Health Act to provide necessary transitional provisions.

Clauses put and passed.

Clause 36: Section 335 amended —

Dr K.D. HAMES: I move —

Page 21, lines 9 to 17 — To delete the lines and substitute —

(1) In section 335(1) delete “her,” and insert:

the midwife,

Mr R.H. COOK: Is this an additional one?

Dr K.D. HAMES: Yes.

Ms B. Peters: I am sorry, minister; it is to delete all of the current content of clause 36(1).

Dr K.D. HAMES: Yes, that is what I am saying. The effect of that is the original proposed clause deleted “she” and inserted “midwife”. We are getting rid of that and, instead, deleting “her” and inserting “midwife”. That is correct, is it not?

Ms B. Peters: We are also doing away with paragraph (a). That is a duplicate amendment and is why we are removing it.

Amendment put and passed.

Mr D.J. KELLY: Can I just say that I am glad the minister is making the effort to do this because in my short time in this place I have seen bills come through the house that have had a lot of work done on them but this sort of gender-specific language has not been removed.

Dr K.D. HAMES: Members can see this is a duplication. Paragraph (a) deletes “she” and inserts “midwife” and paragraph (b) deletes “her” and inserts “midwife”. We have a doubling up. We are taking them both out and just putting (b) back in as a stand-alone.

Mr R.H. COOK: I was sort of yelling across the table a short while ago in a rather unorderly fashion: does this clear up all of the gender-specific language?

Ms B. Peters: The purpose of the provisions in this bill is to address gender-neutral language, yes.

Mr R.H. COOK: So doctors stop becoming hes and nurses stop becoming shes, and things like that.

Ms B. Peters: Yes.

Dr K.D. HAMES: Because a midwife may be a he.

Mr R.H. COOK: That is right; exactly.

Mr D.J. KELLY: The minister has deleted “Chairman” and replaced it with “Chairperson” in a number of spots in the same section. I think that is a fine idea, but is that now standard government policy or standard language for all legislation?

Dr K.D. HAMES: I do not know, and I did not actually know that that was there because I am not actually au fait with that. “Man” does not refer to a man in chairman. Chairman is from the Latin “manus”, meaning “hand”, so it is the hand in charge of the meeting. That is what chairman means; it does not mean a male person in charge of a meeting.

Mr R.H. COOK: But it is how it is interpreted.

Mr D.J. KELLY: But given the scarce knowledge of Latin, I daresay not many people know that. But I am pleased it is happening. Has this happened by accident?

Mr G. Lawn: It has been the practice of the Parliamentary Counsel’s Office for many years now to draft in gender-neutral language and to amend legislation, where we can, to remove gender-specific language.

Mr D.J. KELLY: I will give you a manus clap for that! I think it is a fine thing.

Dr K.D. HAMES: Yes, the ignorance of Latin. Mind you, I failed junior Latin!

Mr D.J. KELLY: This is English, not Latin, by the way.

Clause, as amended, put and passed.

Dr K.D. HAMES: Can we do the rest en bloc?

Mr R.H. COOK: The entire thing?

Dr K.D. HAMES: Actually, I have another amendment—new clause 89A. Can we do clauses 37 to 89 en bloc? Leave granted for clauses 37 to 89 to be considered together.

Clauses 37 to 89 put and passed.

New clause 89A —

Dr K.D. HAMES: I move —

Page 61, after line 11 — To insert —

89A. Section 360 amended

Delete section 360(2) to (5) and insert:

- (2) Local laws and regulations made under this Act may create offences with —
 - (a) a maximum penalty of not more than \$10 000; and
 - (b) if the offence is a continuing offence, a daily penalty of not more than \$1 000.
- (3) For the purposes of subsection (2) —
 - (a) local laws and regulations may provide for the imposition of a minimum penalty for an offence; and
 - (b) the level of the penalty for an offence (whether the maximum penalty or a minimum penalty) may be related to either or both of the following —
 - (i) the circumstances or extent of the offence;
 - (ii) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.

Ms B. Peters: The purpose of this new clause is to replace section 360(2), (3) and (4) of the Health Act with a new provision that provides increased penalties for offences created under local laws and regulations. At present, the maximum penalty that may be imposed for the majority of regulations made under the Health Act is \$1 000. This is inadequate and of concern in the context of the management of asbestos when the costs of complying with applicable regulations can exceed the penalty for noncompliance. Although the Public Health Bill provides a modern framework that authorises regulations to impose maximum penalties of up to \$50 000, that bill will be implemented over a three to five-year period during which time the penalties provided by the Health Act will continue to apply. The purpose of the proposed amendment is to facilitate an interim solution so that more adequate penalties of up to \$10 000 can be applied to offences created under the regulations pending the implementation of the bill. The amount of \$10 000 is considered an adequate interim solution that goes some way to addressing the present difficulties but which is still on par with the other penalties provided by the Health Act.

New clause put and passed.

Leave granted for clauses 90 to 98 to be considered together.

Clauses 90 to 98 put and passed.

Clause 99: Various references to “Executive Director, Public Health” and “Executive Director, Personal Health” amended —

Dr K.D. HAMES: I move —

Page 74, after line 6, the Table the 15th row — To delete the 2nd column.

Ms B. Peters: We propose to delete the last entry in the right-hand column at the bottom of page 74. It is the entry relating to the relevant certifying officer. The reason for that is it is actually a duplicate amendment. It is already provided for in clause 12 of the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Leave granted for clauses 100 to 163 to be considered together.

Clauses 100 to 163 put and passed.

Clause 164: Act amended —

Mr R.H. COOK: I guess ultimately what we are talking about is clause 165 as well. I just wonder whether we could have a quick description. Does this clause in any way change the nature of the relationship between the Liquor Control Act and the Public Health Act?

Dr K.D. HAMES: The answer is no; it just changes the terminology. Members will notice the Liquor Control Act has “Executive Director”, so this proposed amendment will change it to the new terminology of “Chief Health Officer”. We are deleting the definition of “Executive Director” and inserting “Chief Health Officer”, which will have the same meaning as defined in the Public Sector Management Act That is all it does.

Clause put and passed.

Clause 165 put and passed.

Leave granted for clauses 166 and 167 to be considered together.

Clauses 166 and 167 —

Mr R.H. COOK: I think I have left my explanatory memoranda in my office. From memory, these clauses deal with taking out local governments exercising authority under this act or under the Local Government Act. I know the minister will sigh and slap his forehead because I am sure it is just because I do not understand where the local government fits in the scheme of things in terms of exercising its powers under the bill. I just want some revision in relation to that.

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: The Health Act provides local lawmaking powers for local governments. The bill does not provide local lawmaking powers for local governments and, instead, local laws will be made under the existing power to make local laws under the Local Government Act. The purpose of this provision is to make it clear that local laws can be made under that act irrespective of the fact that there is the Public Health Bill and the Health Act, in effect.

Mr R.H. COOK: So essentially what does it say? Previously, local governments would have exercised some of these powers under the Health Act.

Ms B. Peters: Yes.

Mr R.H. COOK: And now we have this modern Local Government Act that gives them all the powers they need anyway, so they do not need to exercise any powers under the new Public Health Act.

Ms B. Peters: Yes. I think the local lawmaking power is related to the good governance of the local government district. It is a very broad power and this is just inserted for the sake of clarity, to make sure that there is not an argument that that local lawmaking power does not extend to making local laws about matters relating to public health when there is separate legislation that deals with public health.

Dr K.D. HAMES: A good example of that, presumably, would be smoking on beaches, would it not? They can make local laws about smoking on beaches. I have asked a tough question.

Ms J.M. FREEMAN: It is a good question, though!

Ms B. Peters: I am not sure what act they make those local laws under.

Dr K.D. HAMES: They do it under the Local Government Act.

Ms B. Peters: Under the Local Government Act.

Mr R.H. COOK: Do they, or the Tobacco Products Control Act?

Ms J.M. FREEMAN: No. They make it under the Local Government Act —

Ms B. Peters: Yes.

Ms J.M. FREEMAN: There is an argument against it because they say it should not be a local law; it should be a law made under state law for the whole state. In previous times, it has been disallowed, although it was snuck through because everyone turned a blind eye when it came to smoking. There have been other health aspects that they have disallowed because —

Mr D.J. KELLY: Plastic bags or something; that is not a health issue.

Ms J.M. FREEMAN: Plastic bags are not really a health issue as such. That is an interesting one as to whether it is allowed, but the minister would know better than I.

Dr K.D. HAMES: We will leave it up to the committee.

Ms J.M. FREEMAN: It was actually the question I wanted to ask.

If a local law is made that the minister thinks is better made under the Public Health Act—a good example is the Cat Act, although that is probably not a public health issue either. If a local government makes a public health plan that the minister thinks would be better made under the Public Health Act, which is then instituted by local governments, what is the process for that?

Ms B. Peters: Sorry, is the member asking what would happen if a local government makes a local law under the Local Government Act and the Department of Health thinks it is better dealt with by way of regulation under the bill?

Ms J.M. FREEMAN: Yes.

Ms B. Peters: I would think that a local law could not be inconsistent with a regulation, but Mr Lawn may well clarify that.

Ms J.M. FREEMAN: But the regulation would have to be made subsequently—okay.

Mr D.J. KELLY: If a local government, for example, decided to ban sausage sizzles in its area because of the risk of —

Ms J.M. FREEMAN: Or ban McDonald's.

Mr D.J. KELLY: Or ban McDonald's because McDonald's is inherently unhealthy, could the local government still do that, or would it be disallowed because that is a matter that should be dealt with under this?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: It would not be disallowed unless there was some regulation that we could make it —

Mr D.J. KELLY: If there was some inconsistency?

Ms B. Peters: Those local laws would be scrutinised by the joint standing committee.

Mr D.J. KELLY: Sure. Is there anything in this legislation that stops a local government from passing laws that it sees as furthering public health?

Dr K.D. HAMES: Dr Weeramanthri will answer.

Professor T.S. Weeramanthri: My understanding is no. It is consistent with the principles underpinning the act and the partnership with local government. The nature of this act will go to planning, state public health plans and local government plans, and will deliberately switch the onus of lawmaking to local governments under the Local Government Act. Currently, many local laws have to come to my position for signing off. That is an overcentralised model and it is not in the spirit of this new act. There has been a deliberate decision to devolve those powers back to local government, where they belong. Unless a regulation prohibited something under this act, local governments are free to make their local laws as they see fit, subject to other considerations and other acts.

Clauses put and passed.

Leave granted for clauses 168 and 169 to be considered together.

Clauses 168 and 169 —

Mr D.J. KELLY: Under Division 19, what is the interaction between this legislation and the Marketing of Potatoes Act 1946?

Dr K.D. HAMES: What is the member for Bassendean's question?

Mr D.J. KELLY: I can see what the amendment is, but why will the Chief Health Officer be referred to in the Marketing of Potatoes Act 1946?

Dr K.D. HAMES: Does Mr Lawn know the answer?

Mr D.J. KELLY: What is the interaction?

Dr K.D. HAMES: Why is the CEO referred to in the Marketing of Potatoes Act?

Mr G. Lawn: I need to look at the Marketing of Potatoes Act, because I do not know it off by heart.

Mr D.J. KELLY: It might be a provision that might be a candidate for next year's red tape reduction week, unless there is some substantive reason why the Chief Health Officer needs to keep Mr Galati under control.

Dr K.D. HAMES: There is a reference in there.

Ms J.M. FREEMAN: Yes, but why?

Dr K.D. HAMES: Section 22B(8) of the Marketing of Potatoes Act reads —

Where an application for the registration of a business is granted, the Corporation shall issue to the applicant a certificate in the prescribed form identifying —

- (a) the commercial producer who is the holder; and
- (b) the name under which the holder is thereby authorised to carry on business; and
- (c) the location of the business; and
- (d) the size and nature of the activities under this Act thereby authorised; and
- (e) any other terms, and any conditions or restrictions, applicable.

Section 22B(5) reads —

The Corporation may —

- (a) refuse —
 - (i) to grant an application for the registration of a business; or
 - (ii) to approve the transfer of a registration; or

(iii) to issue, or to approve the transfer of, an area licence;
or

(b) cancel or suspend the operation of any such registration or licence,
at the written request of the CEO (Health) —

That is the bit we are changing. Section 22B(5) continues —

where that officer —

Meaning Professor Weeramanthri —

is of the opinion that a health risk exists, at the written request of the Director General of Agriculture where that officer is of the opinion that a risk exists by reason of any pest or disease, or if the applicant or prospective transferee is a person convicted of an offence under the *Health Act 1911* or this Act.

We are also changing the Health Act.

The DEPUTY SPEAKER: Does the Member for Bassendean have a further question?

Mr R.H. COOK: Does the minister want to take on Tony Galati?

Dr K.D. HAMES: What that section in the Marketing of Potatoes Act really means is that a licence may be cancelled if there is disease in a potato crop. For that to happen, the Chief Health Officer has to be consulted so the amendment is to change it to the proper term.

Mr D.J. KELLY: I am interested in knowing whether the Chief Health Officer has ever utilised that provision under the Marketing of Potatoes Act 1946.

Dr K.D. HAMES: Professor Weeramanthri.

Professor T.S. Weeramanthri: Not specifically, but, just to state the obvious, potatoes are a food and are covered under the Food Act.

Mr D.J. KELLY: I am glad Professor Weeramanthri clarified that potatoes are a food. I have had some potatoes that I have doubted!

Mr R.H. COOK: This is a high point for parliamentary democracy, is it not?

Mr D.J. KELLY: I thank Professor Weeramanthri for that clarification.

Clauses put and passed.

Leave granted for clauses 170 to 174 to be considered together.

Clauses 170 to 174 —

Ms J.M. FREEMAN: Division 20 will amend the Medicines and Poisons Act 2014, and division 24 will amend the Poisons Act 1964. We have two different acts because the upper house would not let the lower house do something it wanted to do at some stage, so we ended up with both acts, as I recall. I might be wrong on the reason for having two acts, but it does not really matter. The definition of “environmental health officer” will be deleted from the Poisons Act, and although there are insertions to and deletions from the Medicines and Poisons Act, nothing is being done to the definition of “environmental health officer”. How does that interplay?

Dr K.D. HAMES: Ms Peters will answer.

Ms B. Peters: We are amending both because both are still in effect. The substantive provisions of the Medicines and Poisons Act have not come into effect yet.

Ms B. Peters: I would have to look at the provisions, but I can only assume that the Medicines and Poisons Act does not contain that term, so we do not have to make a consequential amendment, whereas the Poisons Act does.

Ms J.M. FREEMAN: Okay.

Clauses put and passed.

New clause 174A —

Dr K.D. HAMES: I move —

Page 103, after line 22 – To insert —

174A. Section 157 deleted

Delete section 157.

We are Ms Peters will tell us why we are deleting section 157.

Ms B. Peters: This is to do with the interaction between this bill and the provisions of the Medicines and Poisons Act, and it relates to clause 89A, which we inserted earlier. The explanation reads that both clause 89A of the bill and section 157 of the Medicines and Poisons Act amend section 360(4) of what will be the Health (Miscellaneous Provisions) Act. In the event that section 360(4) of the Health (Miscellaneous Provisions) Act has been amended by clause 89A of the bill prior to section 157 of the Medicines and Poisons Act coming into operation, that section will be redundant and will be deleted by this clause.

MR R.H. COOK: Chair, I was just wondering if the member for Eyre could clarify —

Dr G.G. JACOBS: I will take Ms Peters' word for it.

New clause put and passed.

Clauses 175 to 182 put and passed.

Clause 183: Section 5 amended —

Ms J.M. FREEMAN: Why is the definition of environmental health officer being deleted? It will not be replaced any other definition. Clause 183(2) reads —

(2) In section 5(1) in the definition of authorised officer delete paragraph (a)

I do not know what paragraph (a) is, so I am not worried about that. Why is the definition of environmental health officer being deleted from the Poisons Act?

Dr K.D. HAMES: Ms Peters will answer.

Ms B. Peters: That term is being deleted because it is a cross-reference to the definition that provided in the Health Act, which will be repealed by this bill.

The DEPUTY SPEAKER: The committee is suspended for a division. Thank you, members.

Sitting suspended from 5.57 to 6.01 pm

Clause 183: Section 5 amended —

Debate was adjourned after the clause had been partly considered.

Sitting suspended from 6.03 pm to 7.02pm

PUBLIC HEALTH BILL 2014

Resumed from an earlier stage of the sitting.

Title —

Debate was adjourned after the title had been partly considered.

The DEPUTY SPEAKER: Do you have a question, Member for Kwinana?

Dr K.D. HAMES: The member for Kwinana's question is: what is the long title of the bill?

Mr R.H. COOK: The long title reads —

An Act to protect, promote and improve the health of the public of Western Australia and to reduce the incidence of preventable illness, and for related purposes.

Would the minister entertain an amendment to the long title of the bill so that it would read —

An Act to protect, promote and improve the health and well-being of the public of Western Australia and to reduce the incidence of preventable illness, and for related purposes.

Dr K.D. HAMES: I do not know. Is the member for Kwinana going to say that it has implications?

The DEPUTY SPEAKER: If you are proposing an amendment, member for Kwinana, what is the requirement? Does it need to be in writing?

Mr R.H. COOK: Yes, and I am happy to commit it to writing —

Dr K.D. HAMES: If there is a suggestion that I might agree?

Mr R.H. COOK: If there is, at some point —

Dr K.D. HAMES: So what has the member for Kwinana added?

Mr R.H. COOK: I move —

Page 1 — To insert after "health" —

and well-being

Dr K.D. HAMES: Can I accept that?

Ms J.M. FREEMAN: We do not have a problem with that.

Dr K.D. HAMES: The member does not have problem with that.

Ms J.M. FREEMAN: That aligns with clause 3(1)(a) of the objects.

Amendment put and passed.

Title, as amended, put and passed.

Reconsideration in Detail — Motion

On motion by **Dr K.D. Hames (Minister for Health)**, resolved —

That the Public Health Bill 2014 be reconsidered in detail for the purpose of a new part 5A.

Reconsideration in Detail

New part 5A —

Dr K.D. HAMES: I move —

Page 43, after line 10 — To insert —

Part 5A — Public health policies

47A. Minister may issue public health policies

- (1) The Minister may issue public health policies for any purposes relating to the objects of this Act.
- (2) A public health policy may be issued only if —
 - (a) sections 47B, 47C and 47E have been complied with in relation to a draft of the public health policy; and
 - (b) the Chief Health Officer has recommended under section 47E(2)(d) that the public health policy be issued.

47B. Chief Health Officer may prepare and publish draft public health policies

- (1) If the Chief Health Officer considers that it is in the interests of public health for a public health policy to be issued under section 47A, the Chief Health Officer may prepare a draft of the public health policy and make it available for public comment.
- (2) The Chief Health Officer must give public notice of the proposal to issue the public health policy, and the notice must —
 - (a) contain information about the draft policy; and
 - (b) specify where copies of the draft policy are available without charge; and
 - (c) invite interested persons to make submissions to the Chief Health Officer on the draft policy within a period specified in the notice; and
 - (d) specify how those submissions may be made.
- (3) The notice required by subsection (2) may be published in any way the Chief Health Officer considers appropriate, including (without limitation) by posting the notice on a website maintained by or on behalf of the Department.

47C. Chief Health Officer to consult on proposal to issue public health policy

- (1) The Chief Health Officer must make reasonable efforts to consult any public authority or other person or body that the Chief Health Officer considers may be affected if the draft policy becomes a public health policy under this Part.
- (2) Consultation may be undertaken in any way that the Chief Health Officer considers appropriate in the circumstances, having regard to the number of persons or bodies considered likely to be affected as described in subsection (1).

47D. Submissions may be made to the Chief Health Officer

A person may make submissions to the Chief Health Officer, in the manner and within the period specified in the relevant notice required by section 47B(2), in relation to the draft policy to which that notice relates.

47E. Chief Health Officer to report to Minister on outcome of consultation on draft policy

- (1) After the end of the period for making submissions under section 47B in relation to a draft policy, the Chief Health Officer —
 - (a) must consider any submissions made during that period and any views expressed by a public authority, person or body consulted under section 47C; and
 - (b) may —
 - (i) decide to recommend to the Minister that the draft policy be issued as a public health policy without revision; or
 - (ii) revise the draft policy to any extent the Chief Health Officer considers appropriate, and decide to recommend to the Minister that the draft policy (as revised) be issued as a public health policy; or
 - (iii) decide not to recommend to the Minister that the draft policy (whether revised or not) be issued as a public health policy.
- (2) After deciding what to do under subsection (1)(b), the Chief Health Officer must submit a report to the Minister that contains —
 - (a) a summary of the consultation undertaken by the Chief Health Officer under section 47C in relation to the draft policy; and
 - (b) a summary of the submissions made to the Chief Health Officer under section 47D on the draft policy; and
 - (c) the Chief Health Officer's decision under subsection (1)(b); and
 - (d) if the decision of the Chief Health Officer is to recommend to the Minister that the draft policy (whether revised under subsection (1)(b)(ii) or not) be issued as a public health policy —
 - (i) the Chief Health Officer's recommendation; and
 - (ii) a copy of the draft policy (as revised, if applicable) that the Chief Health Officer recommends be issued as a public health policy; and
 - (iii) if the Chief Health Officer has revised the draft policy recommended, the reasons for the revision.
- (3) Nothing in this section prevents the Chief Health Officer from consulting any public authority, body or person in relation to a draft policy revised under subsection (1)(b)(ii) before submitting the report to the Minister.

47F. Tabling of reports and public health policies

- (1) The Minister must cause a copy of a report submitted to the Minister by the Chief Health Officer under section 47E(2) to be laid before each House of Parliament as soon as is practicable after the Minister receives the report.
- (2) The Minister must cause a copy of a public health policy issued under this Part to be laid before each House of Parliament as soon as is practicable after the policy is issued.

47G. Publication of reports and public health policies

- (1) The Chief Health Officer must make the following publicly available without charge —
 - (a) reports submitted to the Minister by the Chief Health Officer under section 47E(2);
 - (b) current public health policies issued under section 47A.
- (2) The Chief Health Officer may comply with subsection (1) in any way the Chief Health Officer considers appropriate, including (without limitation) by making the documents available on a website maintained by or on behalf of the Department.

47H. Application of *Interpretation Act 1984* to public health policies

- (1) A public health policy is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (2) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to a public health policy as if it were subsidiary legislation.

47I. Power to make regulations not limited

Nothing in this Part or in any public health policy limits or affects the power to make regulations under section 293 or 311.

New part put and passed.

The DEPUTY SPEAKER: Member for Kwinana, are you happy to withdraw your first proposed amendment?

Mr R.H. COOK: No, I want to put it in as well, so we have lots of different clauses about public health policies! I am happy to withdraw.

Amendment, by leave, withdrawn.

The DEPUTY SPEAKER: Now, the question is —

That the bill be reported to the Assembly.

Question put and passed.

PUBLIC HEALTH (CONSEQUENTIAL PROVISIONS) BILL 2014

Resumed from an earlier stage of the sitting.

Clause 183: Section 5 amended —

Debate was adjourned after the clause had been partly considered.

Ms J.M. FREEMAN: I asked why we deleted the definition of “environmental health officer” and then the bells went?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: The term “environmental health officer” is a defined term under the Poisons Act, and it is defined by reference to the Health Act That needs to be removed because that definition will no longer exist. Subclause (2) refers to the definition of “authorised officer”, so these are the people who can exercise powers under the Poisons Act at the moment are environmental health officers, police officers or a person declared under section 52A to be an authorised officer. We are just deleting the reference to “environmental health officer” and the only people who will exercise powers under this act will be police officers or, effectively, persons designated in the department, not local government officers.

Clause put and passed.

Clauses 184 to 195 put and passed.

Clause 196: Act amended —

MR R.H. COOK: Obviously, the Tobacco Products Control Act is an act of parliament that is very close to our hearts, so I want to bring this up for particular attention. Division 29 solely deletes reference to environmental health officers. Would environmental health officers be responsible for regulation of retailers under the Tobacco Products Control Act or is this simply in terms of the role that local governments play under the act, such as making sure people do not smoke on the beaches and things like that?

Dr K.D. HAMES: I think I know the answer, but I had better go —

MR R.H. COOK: I think we should —

The DEPUTY SPEAKER: Dr Weeramanthri.

Dr K.D. HAMES: No. Ms Peters.

Ms B. Peters: Off the top of my head —

Mr G. Lawn: Can we check that, because it is an important question?

Ms B. Peters: We have a number of amendments here. Some powers are exercised under the Tobacco Products Control Act and there are restricted investigators and then there are investigators.

Mr G. Lawn: Can we just check section 78(4) to begin with?

Ms B. Peters: Yes. So section 78 of that act relates to the powers of restricted investigators. Section 78(4) says —

The powers that a restricted investigator may exercise are in addition to and do not derogate from the powers that an environmental health officers has under regulations made under section 125 or under any other written law.

The reference there to “environmental health officer” will be changed to be a reference to an “authorised officer”.

Dr K.D. HAMES: I am just checking. We are deleting “environmental health officer”. An “authorised officer” includes an “environmental health officer”, not someone who is authorised. It means that people, presumably, investigating breaches of the tobacco act do not have to be environmental health officers; they can be other officers authorised by council and the Chief Health Officer, so this broadens the scope. It means that in the same way that a pool inspector does not have to have to be an environmental health officer, this can be delegated to someone.

Mr R.H. COOK: Yes.

Dr K.D. HAMES: Frankly, the more people investigating breaches of the Tobacco Products Control Act the better.

Ms J.M. FREEMAN: Does that mean we could have a designated or an authorised person who is just a tobacco control officer?

Dr K.D. HAMES: If the council so wishes, yes. Environmental health officers are seriously well trained. We do not have to have someone at that level going around checking tobacco outlets. This gives scope for councils to employ additional people to go and do that sort of role.

MR R.H. COOK: This is not checking tobacco outlets; is it? This is about policing where people smoke and do not smoke and things like that. The actual process of checking retail outlets is a function of the Department of Health under a separate from the public element.

Dr K.D. HAMES: Yes, you are right.

Mr R.H. COOK: I was just trying to clarify that we are not just using authorised officers in that role.

Dr K.D. HAMES: Yes.

Clause put and passed.

Clauses 197 to 209 put and passed.

Clause 210: Certain provisions repealed if not commenced: *Medicines and Poisons Act 2014* —

Dr K.D. HAMES: I move —

Page 115, line 11 — To delete “sections 171, 173 and 174” and substitute —
sections 171, 173, 174 and 174A

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 211 to 265 put and passed.

Clause 266: Section 360 amended —

Dr K.D. HAMES: I move —

Page 125, lines 11 to 17 — To delete the lines and substitute —
(6) In section 360(3)(a), delete “local laws and”.

Can you please explain that, Ms Peters?

Ms B. Peters: This relates to the amendment that we made to section 360 of the Health Act relating to local laws and regulations. Clause 266 of the bill amends section 360 of what will then be the Health (Miscellaneous Provisions) Act. The content of this clause requires modification in order to reflect the amendment to section 360 that will now be made by new clause 89A of this bill, which we have just inserted.

Mr R.H. COOK: There you go.

Ms J.M. FREEMAN: If we delete lines 11 to 17, we are deleting subclauses (6), (7), (8) and (9), and all we are putting in is subclause (6), which reads —

In section 360(3)(a), delete “local laws and”.

Then we jump straight to subclause (10), so we will not have subclauses (7), (8) and (9); is that right, minister? Clause 266 will go from subclause (6) to subclause (10).

Dr K.D. HAMES: Subclause (10) will become subclause (7).

Ms J.M. FREEMAN: No. It cannot become (7) unless you amend it.

Dr K.D. HAMES: Is that true? I do not think that is right.

Ms J.M. FREEMAN: So, the numbering is fixed? It can only change if we amend it.

Dr K.D. HAMES: No.

Ms J.M. FREEMAN: I am told the minister does not care about stuff like that!

The DEPUTY SPEAKER: Consequential renumbering after amendments and so on is actually dealt with by the clerks as a sort of miscellaneous amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 267 to 285 put and passed.

Clause 286: Section 3 amended —

Ms J.M. FREEMAN: What else can you look at when you are looking at transmissible diseases?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: These regulations are made under the Health Act.

Ms J.M. FREEMAN: Yes.

Ms B. Peters: There is actually, I think, a transitional provision in the main bill for those to be made under the Public Health Bill.

Ms J.M. FREEMAN: Yes.

Ms B. Peters: But this will provide flexibility, so we can make it under one or the other.

Ms J.M. FREEMAN: Yes. Okay. No worries.

Professor T. Weeramanthri: Can I just check that answer with the minister? I thought under division 2 we were referring to the Blood Donation (Limitation of Liability) Act.

Dr K.D. HAMES: We are.

Ms B. Peters: That's right.

Professor T. Weeramanthri: And so the Transmissible Disease Regulations are regulations made under that act?

Ms B. Peters: No. They are not.

Professor T. Weeramanthri: Okay.

Ms B. Peters: No. They are made under the Health Act.

Professor T. Weeramanthri: Thank you.

Ms J.M. FREEMAN: They are either made under the Hospitals Act 1911 or the Public Health Act and the other act that you just mentioned, I should think. That is probably is where it is talked about.

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: If you look at clause 109 of the bill, you will see there that part 3 of the bill deletes the existing definition of Transmissible Diseases Regulations and inserts a new definition, which says —

Transmissible Diseases Regulations means regulations that (a) are made under the Health (Miscellaneous Provisions) Act 1911 —

Which is the renamed Health Act —

and consist of or include provisions that provide for or require a person donating blood to make a declaration.

So we have taken out the reference to the Blood and Tissue (Transmissible Diseases) Regulations 1985 and made it general. So it is regulations made under the existing Health Act renamed or under the new Public Health Act.

Ms J.M. FREEMAN: Yes—and consist of or include provisions that provide for or require a person donating blood to make a declaration.

Mr G. Lawn: Yes.

Ms J.M. FREEMAN: Okay. I get it now.

Clause put and passed.

Clause 287: Act amended —

Mr R.H. COOK: If we just talk about this one as it also cracks the issue around Rottnest Island as well. So earlier in the bill, we were talking about the fact that if there is no local government authority, the Chief Health Officer takes over all these roles. However, in these provisions, 288 and 335, we go to quite great lengths to insert the role of the Chief Health Officer. What have we done there?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: At the moment section 7 of the Health Act allows the EDPH to exercise powers in those places that are not within the local government district. There is no such provision in the main bill. We have inserted specific provisions into those acts relevant to those places that fall outside of local government districts.

Mr R.H. COOK: I thought we had because we talked earlier about places like Rottnest Island and in the botanic gardens and stuff that the Chief Health Officer would have —

Ms B. Peters: Yes. You might be right.

Dr K.D. HAMES: Ms Peters is checking.

Mr R.H. COOK: This might just be a guarantee or, you know, making sure from the point of view of any sort mystery.

Ms B. Peters: Clause 284 of the bill allows the EDPH to exercise powers in places that are outside local government districts, but this power is actually different. This includes a power—so they have all the powers and authority of the local government, including the power to make local laws.

Mr R.H. COOK: Okay.

Ms B. Peters: It is a broader power because for these particular places, there may be a need for local laws to be made and there is no local government to make the local laws.

Mr R.H. COOK: So is there any other areas that would be similar to this?

Ms B. Peters: Yes. So there is an amendment to the Rottnest Island Authority Act.

Mr R.H. COOK: That is right. I mentioned that one. So there is Rotto and the botanic gardens.

Ms B. Peters: And the Land Administration Act as well. So that's division 12, clause 306. That applies to class-A reserves.

Clause put and passed.

Clauses 288 to 300 put and passed.

Clause 301: Act amended —

Ms J.M. FREEMAN: This relates to section 51 and deletes the definition of “local government” under the housing act. Can you tell me what that does and why you are doing it?

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: That act defines local government by reference to the Health Act and that definition will be deleted. Local government is actually a defined term in the Interpretation Act so it is not necessary for the definition to be there at all. So we have just deleted it.

Ms J.M. FREEMAN: Thanks.

The DEPUTY SPEAKER: Members, I think that was actually under clause 302.

Clause put and passed.

Clause 302 put and passed.

Clause 303 to 325 put and passed.

Clause 326: Act amended —

Ms J.M. FREEMAN: This is a division to amend the Public Health Act of 2014, which is actually still a bill. I am keen to know why you put it in this as consequential amendments and you just did not put it in as an amendment into the current bill?

Dr K.D. HAMES: How do you find these little things?

Ms J.M. FREEMAN: But it is a good question!

Dr K.D. HAMES: Ms Peters.

Ms B. Peters: Mr Lawn may be able to add to this, but this relates to clause 291 in the main bill that is about confidential information. That is an obligation not to release basically. We could not add a reference — yes; no. Can you explain, Geoff?

Dr K.D. HAMES: Mr Lawn.

Mr G. Lawn: Because the Health Act is amended sequentially, at a certain point the provisions related to confidential information, in the Public Health Act, need to deal with situations of confidentiality that arise under that act, but also that did arise under the Health Act. So it is making sure that the restrictions on the release of confidential information under the Public Health Act cover things that happened under the old Health Act.

Dr K.D. HAMES: One thing I know for sure is that I would be absolutely useless as a drafter!

Clause put and passed.

Clause 327 to 351 put and passed.

Title put and passed.

The DEPUTY SPEAKER: Now the question is —

That the bill be reported to the Assembly?

Question put and passed.

The DEPUTY SPEAKER: And we need an adjournment motion.

Ms J.M. FREEMAN: I move —

That debate be adjourned.

Question put and passed.

Committee adjourned at 7.33 pm
