

**HEALTH SERVICES BILL 2016**

*Consideration in Detail*

**Postponed clause 20: Functions of Department CEO —**

Resumed from an earlier stage of the sitting.

**Mr J.H.D. DAY:** I will just make a comment in response to the questions that the member for Maylands asked before about clause 20(3) and (4). I am advised that all capital works, major or minor, are governed under the Public Works Act. Clause 20(1)(g), 20(3) and 20(4) enable the CEO of the Department of Health to carry out major or minor works with the agreement of the minister for works. The minister for works could exempt a class of work or a particular work under subclause (4), and this would be based on the value or the type of work. The reason for these two subclauses is that all capital works, as I mentioned, are governed under the Public Works Act, for which the minister for works has responsibility.

**Ms L.L. BAKER:** I thank the minister; that is very helpful. Just before I leave this issue, can the minister, maybe through his advisers, give me an example of what work or class of work might be exempt?

**Mr J.H.D. DAY:** It would be relatively minor. Works that are exempt could be things such as repairs and maintenance, replacement of windows and that sort of thing. I have just inquired about what the threshold might be and I am advised that it is probably—we would need to confirm this—up to \$1 million or so. Therefore, they would be minor renovations or repair works and so on. Anything larger than that would need more formal consideration.

**Mr W.J. JOHNSTON:** I want to draw the minister's attention to clause 20(1)(d), which states —

promoting the effective and efficient use of available resources in the provision of public health services in the State;

This morning at the public hearing of the Public Accounts Committee we had the benefit of a discussion with the director general and the deputy director general regarding the accountability process of the Department of Health. I wonder what will be done about an agency that can spend over \$40 million and apparently have no senior executive know about any of the expenditure. That is of course in respect of the Auditor General's report on the centralised computing services contract, because we will wait for some answer from the Public Accounts Committee. That was a public hearing and that is why I can talk about it. I understand the commentary from the agency in the media and the former Minister for Health's defence in here was that three individuals were able to spend over \$40 million of taxpayers' money, and no executive noticed that that money was spent. Clause 20(1) states —

(d) promoting the effective and efficient use of available resources ...

What will the Department of Health do so that it does not have executives completely unaware of over \$40 million being spent? It is inconceivable, quite frankly, that executives would not know that \$40 million was being spent. Will there be some accountability, will there be regular meetings and will there be financial committees? How exactly will we ensure that this sort of deep, deep incompetence at the senior levels of bureaucracy is not allowed to continue when the Health Services Bill 2016 comes into effect?

**Mr J.H.D. DAY:** I entirely agree that the spending of \$40 million or thereabouts on services and information technology equipment that have no useful role or need within the health system is a completely unsatisfactory situation, and that was well debated and publicised a couple of months ago when the Auditor General's report was published. I look forward to being briefed much more fully on how that sort of action will be prevented from occurring in the future. I have been in this role less than a week, and I do not pretend to have knowledge of every detail of health expenditure or what sort of protections will be put in place to ensure that that situation is not repeated, but I look forward to receiving that detail. Given that there was a hearing of the Public Accounts Committee this morning that the member just referred to, he probably knows more than me about what the department will be doing because I suspect it was already covered in the hearing this morning.

Briefly, I am advised that the CEO of the department will have overall responsibility for the performance of WA Health and the allocation of resources. Part 5 in the bill, which is a separate part, provides for service agreements to be established with performance requirements in relation to health support services. Policy frameworks will also be established that will be binding on WA Health, including on procurement and finance. What is put in place will directly relate to the requirements of the Financial Management Act 2006 and the State Supply Commission. I trust and certainly very much expect that there will be a much better system put in place than has been the case that allowed this very unsatisfactory situation to occur.

**Mr W.J. JOHNSTON:** I also ask the minister: will there be some procedure that ensures that the CEO continues to advise the minister of issues relating to the “effective and efficient use of available resources”? With the problems at Fiona Stanley Hospital that cost over \$100 million with the Serco contract when it paid for an empty hospital, this \$41 million-odd in the contracting of IT services, other problems in the health bureaucracy and the issues around cancer services, on each occasion these issues came up, the former minister’s defence was, “No-one told me.” What processes will we have to ensure that a future CEO is not as derelict in their duty as the former directors general who did not do something as simple as tell the minister about these problems? I remind the minister that the former minister, particularly in the cancer services example, had 14 or 15 meetings with the director general between the time he asked for the report on cancer services and when it was formerly received on his desk. Firstly, the minister never asked the former director general about the cancer services at any time in those 14 or 15 meetings, and, secondly, apparently and unbelievably, the director general was so incompetent as not to offer up an opinion about the report that was with the director general that had been commissioned by the minister but was not discussed. I would hate to see this clause of the bill as being seen as an out-clause by a minister to say, “Don’t look at me; look at him. It was his fault, not mine.” In the Westminster system, the buck is supposed to stop with the minister. Will there be a procedure in place to ensure the CEO keeps the minister informed so that we do not have a situation in which the minister or some future Minister for Health stands in the chamber and says, “Don’t blame me. Even though I get the money as the minister, and even though I have asked for all these things to happen, the fact that none of them happened I didn’t know because nobody told me”? Will there be some procedure to ensure that the CEO keeps the minister informed, so that we do not have it being an argument that this clause is an out for the minister to say that it is not his fault; it is the CEO’s business?

**Mr J.H.D. DAY:** I expect to be kept fully informed about any major issues within the health system and have not seen any reason to believe that that will not occur. In the six days or so that I have been in this role, there has been a provision of a lot of information so far and a number of briefings, but there is still a long way to go.

**Mr R.H. Cook:** The briefings on IT services will be called the descent into madness.

**Mr J.H.D. DAY:** I thank the member for the advice; I look forward to having such briefings and ensuring that there will be adequate scrutiny of expenditure of taxpayers’ money.

To be more precise about what is provided for through this legislation, the CEO of the department will be responsible for the overall performance and governance of WA Health, and to report to the Minister for Health. Health service providers and health support services will have clear authority and accountability through service agreements and annual reports to Parliament. Putting in place service agreements is new through this legislation. In a statutory sense, they will be in place to some extent, but not established so much through legislation. The health service boards will also have full accountability and responsibilities under this legislation.

**Mr R.H. COOK:** I am taking some time to reacquaint myself with this clause, because this was obviously something that we talked at some length about. The member for Cannington’s comments have reminded me of the situation with Fiona Stanley Hospital, which was not only about things such as the engagement of IT services, but also the whole committee of inquiry that hinged on the question of the communication between the CEO and the minister around the timing of the hospital; that is, whether in December 2012, the minister had knowledge of whether the hospital would be delivered on time. I am keen to understand this in terms of providing strategic leadership and direction for the provision of public health services in the state under the chief executive officer’s responsibilities because under this legislation, the CEO will be the leader or the operator of the system. In the context of the particular scenario I provided of the development of significant infrastructure that falls outside the realm of the functions of the board, I want to make sure that in that context, the CEO will continue to have direct oversight and will not just be a systems operator.

**Mr J.H.D. DAY:** I am assured that the CEO of the department will have the role that the member just outlined. The CEO will be responsible for the oversight of what is happening across the whole system and will be able to require the provision of information where it is appropriate to do so. This legislation has been established to do everything that we can to ensure multiple accountability measures are put in place.

**Mr D.J. KELLY:** I refer to the service in Midland that will provide restricted health services that cannot be provided by the St John of God Midland Public Hospital. I am sure the minister is familiar with those services. Is that clinic or facility considered part of the public health system, thereby allowing the CEO’s function under clause 20 to apply?

**Mr J.H.D. DAY:** The arrangement that the member refers to is considered part of the broad Western Australian health system. It is a contracted health entity, a situation that is referred to in clause 7(3)(c). It reads —

a contracted health entity under a contract or other agreement entered into with the Department CEO on behalf of the State, a health service provider or the Minister.

The first line in subclause (3) reads, “A **public health service** is a health service provided by”, including what I just read out.

**Mr D.J. KELLY:** I thank the minister clarifying that the clinic is part of the WA public health system. As a result, will WA Health policies on recruitment, occupational health and safety and diversity apply to the clinic thereby, under clause 20, becoming part of the department’s CEO responsibility of ensuring and monitoring its performance? Does this provision apply to that clinic?

**Mr J.H.D. DAY:** I am advised that for those criteria to apply, they would need to be included within the contract. I expect that any entity within WA would need to comply with general Western Australian legislation, of course. The services provided by the organisation are regarded as a public health service. I referred to a contracted health entity earlier, which the member for Kwinana is clearly familiar with. The definition is provided on page 4, and states —

**contracted health entity** means a non-government entity that provides health services under a contract or other agreement entered into with the Department CEO on behalf of the State, a health service provider or the Minister;

In many cases those sorts of criteria are included in contracts—they are probably not there automatically—as if it is a direct party of the Western Australian health system or a state government agency.

**Postponed clause put and passed.**

**Postponed clause 102: Minister may dismiss all members of board —**

The clause was postponed on 24 March after it had been partly considered.

**Ms J.M. FREEMAN:** I raised this issue with the previous Minister for Health. Under this clause, the minister may dismiss all board members. In other provisions in which a whole board can be dismissed, the responsible minister reports to the Parliament. For example, if the Minister for Local Government dismisses a whole board, the Local Government Act provides that a report must be presented to the Parliament as to why that occurred. The decision is given public scrutiny, which happens after a process. I will put on record the Legislative Assembly Legislation Committee *Hansard* from Thursday, 22 March 2016. Although the *Hansard* reads “Uncorrected Proof — Not to be Quoted”, I assume that enough time has passed that it can now be quoted. During the committee hearing, I said —

This is basically dismissing the whole board, so this is like dismissing the council under the Local Government Act. When that happens, a report is made to Parliament ...

The previous Minister for Health said —

I am not prepared to support that clause myself, so it leaves us with a mild dilemma.

**Mr J.H.D. Day:** Sorry, which clause is this?

**Ms J.M. FREEMAN:** This is clause 102. When I raised this issue with the previous minister, we talked about dismissing the whole board without making representations to Parliament and there being no capacity to know what went before that. We were a bit tight for time on Thursday, 24 March. We were trying to finish up what we could because we wanted to get the bill into the house so that it could pass. The previous Minister for Health said —

The plan is that we get through this bill today. I am not prepared to support that clause myself, so it leaves us with a mild dilemma. But remember that last time we postponed debate and discussion on some clauses and resumed them in the house, so I would like to look at that clause and reconsider it when we get back into the house.

The previous minister was not supportive of this clause because there is no procedural capacity to appeal and no reflection in terms of bringing the process prior to the dismissal before the house. If the local government minister dismisses a whole board, an investigation report goes to Parliament and post that there is a process of reporting to Parliament. Given that there are no procedural justice issues for members of the board and that the minister can dismiss the whole board if he finds the health service provider has failed to perform its functions effectively or has negligently or wilfully failed to comply with a service agreement or with a direction given by the minister under clause 60—all those things are very serious—how does the minister show the chamber that the board has failed to perform its functions effectively? How is that established? What is the process for establishing it and what is the reporting mechanism to Parliament for that? How does that operate? I remind this minister again that the previous minister said, “I am not prepared to support that clause myself, so it leaves us with a mild dilemma.”

**The ACTING SPEAKER (Mr P. Abetz):** Member for Mirrabooka, a word of caution: if you quote from the uncorrected proof, even though enough hours may have passed, there is always the possibility that someone has made some changes, which you would not have with you. That is just a little word of caution, but that is fine.

**Ms J.M. FREEMAN:** I asked for the *Hansard* from the clerks this morning before we started this process. I was given this by the clerks. If they did not give me the —

**The ACTING SPEAKER:** In that case, it would be correct; it is not an uncorrected proof.

**Ms J.M. FREEMAN:** It states at the bottom “uncorrected proof”. I asked the clerks for the *Hansard* today, and this is what I was given. I am assuming what they gave me was something I could quote in this Parliament; otherwise, they would have, as clerks of the Parliament, given me something that was more accurate to quote, because that is what I requested today.

**The ACTING SPEAKER:** Fine, we will follow that through.

**Mr J.H.D. DAY:** I am advised that clause 102 is consistent with provisions in other legislation for many other boards that operate in this state for which there is no requirement for a report to Parliament. The practical reality is that if the board of a health service provider, or just about any other board in the public sector for that matter, is going to be dismissed by a minister or government, there would be public debate or scrutiny about that. Any sensible minister would take such action only as a last resort. I cannot think of a possible situation in which there would not be the opportunity for parliamentary scrutiny of such a situation and for questions to be asked, debate to occur or whatever the case may be, so I do not think that is a major concern. I presume this was debated in the Legislation Committee. There would be a lead-up to such an event occurring, and clause 95 provides for the minister to appoint advisers to boards when that is considered necessary. Also, under clause 99, an administrator can be appointed. It is necessary to have a provision like this in the legislation. We are not talking about employees; we are talking about board members. It is not as though they are there for their primary employment—I would certainly hope not; they would be appointed on the basis of their expertise, capacity and particular specialised knowledge in a range of areas. The power needs to be available to the minister and the state government, whomever that may be, at a particular time for such action to be taken. There is a recent example in New South Wales, which the member may be aware of, in the provision of cancer services at St Vincent’s Hospital in Sydney. I do not know whether the board was dismissed, but whatever the case, there was a need for very strong action to be taken because of failures in the health services provided, and I understand that was something that the board should have known about or, at least, should have asked questions about. I do not pretend to have any more detailed knowledge—if I had more time, I would look up the news websites—but there are real examples of when action has needed to be taken. Indeed, in that sort of situation, when matters such as dismissal of the board would be contemplated, the opposition of the day would be very strongly critical of the government if strong action was not being taken over the provision of poor health services. There has been an example in South Australia just in the last week over pathology services. I do not know exactly what is at fault in all of that, but I know from the news reports that I saw that the head of the pathology service has lost his job as a result of what has happened. I am not sure whether that is justified and I am certainly not making any comment, but there are situations that arise in health services in which strong action needs to be taken for the protection of patients.

**Mr R.H. COOK:** The member for Mirrabooka referred to the comments by the member for Dawesville in the Legislation Committee when we retired this clause. His comments related to a question I asked about the dismissal of the board for noncompliance with a direction of the minister under clause 60 of the bill. One of the questions I asked, just prior to the minister of the day referring the bill back to this chamber, was about the boundaries around the scope for a direction under clause 60. At the moment, the minister has fairly broad powers; for instance, the minister can give a direction to a board about the performance or exercise of its function either generally or in relation to a particular matter; it cannot be about a specific person but it can be in relation to a whole range of things. Obviously, the Department of Health is responsible for delivering a range of very sensitive services, and I was keen to understand the scope the minister has in a direction under clause 60, understanding there might be a stand-off between the minister and a board and the board can be dismissed under clause 102. I will expedite this because of time. Under clause 60, the minister is required to lay the text of the direction before each house of Parliament within 14 days after it is given. In terms of what the member for Mirrabooka had to say, it is extraordinary that the direction to a particular board has to be laid before Parliament, but the decision to dismiss the whole board for failing to comply with that direction does not have to be reported to Parliament. That seems to be an imbalance; therefore, the issue the member for Mirrabooka raised in that context is a pretty reasonable proposition.

**Mr J.H.D. DAY:** From my experience of having responsibility for organisations that have boards, including in the culture and arts portfolio and my previous portfolio of planning, although powers generally exist for directions to require boards to take certain actions, it is extremely rare to use that power. If I recall correctly, one related to the Perth Theatre Trust board, and it was simply because it did not have a quorum at the time and it

needed a direction to take certain action. Normally, there is a cooperative relationship between boards and ministers, and the outcomes achieved are mutually agreed, generally speaking; albeit governments expect boards to provide clear advice and take actions on the basis of their knowledge and take responsibility for their actions to an extent that ministers should not always be expected to. I do not see any problems with either of those two aspects. In relation to the sort of scope of situations that may arise when a direction is required, I have said that it would be extremely rare. It might be if there is a requirement to provide particular health services in a particular area or to maintain a particular health service or specialty or whatever at a particular health service, but I would imagine that would be extremely unusual. If things get to the situation of those sorts of directions having to be given, either the minister or the board should not be there. As I said a little while ago, in my view, it is necessary to have this power; it is really a reserve power to remove boards to provide protection to the public. It would be extremely unlikely for the power to be used, and certainly if it were, it would be very well covered in the media and no doubt asked about in Parliament.

**Ms J.M. FREEMAN:** The minister said that it would be uncommon, but given that the minister's length of time in this place vastly exceeds mine, he may recollect that when Hon Jim McGinty was Minister for Health, he appointed himself as the board of the different regions after dismissing the sitting boards. The minister is giving himself a power, not just making a direction. The member for Kwinana put to the minister that if a direction lies before the house, the minister will have some knowledge about that direction and will come into this place and dismiss the board. That would at least provide some transparency. But clause 102(3)(a) and (b) includes the word "or" and reads —

... if the Minister is satisfied that —

- (a) the health service provider has failed to perform its functions effectively; or
- (b) the health service provider has negligently or wilfully failed to comply with a service agreement; or

I do not doubt that the minister should have the right to dismiss the whole board; I am not saying that he should not have that right. In fact, that right was exercised by a previous Labor member of Parliament —

**Mr J.H.D. Day:** You seemed to disagree with the action he took though; correct? You don't like what Jim McGinty did.

**Mr D.J. Kelly** interjected.

**Mr R.H. Cook:** Not even Kim Hames would question what Jim McGinty did.

**Mr D.J. Kelly:** No; that's true.

**Ms J.M. FREEMAN:** No, I would never question what Jim McGinty did—absolutely not.

**Mr R.H. Cook** interjected.

**Ms J.M. FREEMAN:** I would question Hon Jim McGinty and have a full and frank debate and discussion with him if I had a difference of opinion, but I would defer to his better knowledge. I was not suggesting that it was the wrong thing for the health minister of the time to do. As I understand it, the reason was to take some control of the health system and its profligate spending. Now we are doing the opposite by setting up boards because we do not want to control their profligate spending. We want boards to try to control their profligate spending, because if we leave it to government, someone else negotiates an agreement with a whole bunch of nurses just before an election, and then it has to be done with doctors and then there is profligate spending!

**Mr R.H. Cook:** A senior public servant.

**Ms J.M. FREEMAN:** A senior public servant did that, yes. Maybe if a board did that, it could be seen as negligently or wilfully failing to comply with a services agreement and find itself suddenly dismissed. Meanwhile, the workers would probably still get their well-deserved pay rise. My point is that at no stage is there any procedural fairness in putting this before Parliament as an appropriate decision made by the minister if that minister was not satisfied that the provider had failed to perform its functions or negligently or wilfully failed to comply with the service agreement. The minister stood and said, "Well, there would be a public debate and something will happen. I have been around long enough to know about these things." Hopefully, after 2017, the member for Kwinana will be the minister, and I do not even want to see the member for Kwinana put before Parliament that he has dismissed a whole board. For transparency, if a decision such as that is made because the minister is satisfied that the health service provider failed to perform the functions effectively, or negligently or wilfully failed to comply with the service agreement, the minister should not put that before Parliament.

**Mr D.J. KELLY:** I would like to hear more from the member for Mirrabooka.

**Mr R.H. Cook:** Are you moving the amendment?

**Ms J.M. FREEMAN:** I keep talking because I have been reliably told by the Clerk that my amendment will hit my desk at any moment and I can then move it. It is my intention to move an amendment

**Mr D.J. Kelly** interjected.

**Ms J.M. FREEMAN:** I thank the member for Bassendean. I move —

Page 69, after line 25 — To insert —

- (5) If the Minister acts under subsection (1) then the action taken by the Minister in accordance with subsection (3) must be tabled before both Houses of Parliament.

I do not want to delay the house too much longer by speaking on this amendment. Before I moved the amendment, I apprised the house pretty comprehensively as to why I think it is necessary.

**Mr J.H.D. DAY:** In relation to history, the member referred to Hon Jim McGinty's removal of the Metropolitan Health Service Board when the Labor government was in office. I am pretty sure that happened under his predecessor as health minister, Bob Kucera.

**Mr R.H. Cook:** It was, too; you're quite correct.

**Mr J.H.D. DAY:** Bob Kucera was the first Labor health minister, but he did not survive all that long—he might have been in the job two years or so—and it was the Labor government's policy to remove the Metropolitan Health Service Board. I very well recall that, in the lead-up to the 2001 election, Geoff Gallop and the Labor Party told everyone that they were going to fix the health system and that one way to do that was to remove the Metropolitan Health Service Board. The establishment of the Metropolitan Health Service Board as an entity across the whole hospital system was somewhat contentious, but it was established for very good reasons: to remove duplication, reform the health system—which to some extent has happened, but perhaps not to the extent that was contemplated previously—and to try to deal with what is still an issue, of course, and that is the rapid increase in the cost of the health system and to try to get best value for the taxpayers' money put into the health system. Under a particular chief executive officer, the MHSB became somewhat contentious, but it was established for very good reasons, as I just outlined—and that is history, of course. To some extent under this legislation, we are going back to a situation of having not one board across the metropolitan system, but, effectively, three boards across the metropolitan system, an additional one for children's health services and an additional one for country health services.

The amendment requires that any action taken to dismiss a board be reported to Parliament. I am not sure that will be necessary, because, as I said, there is no way that such action would be taken without Parliament or the wider community becoming aware of it. However, I will get more advice and make sure that I am correct in my interpretation of the amendment.

**Ms J.M. FREEMAN:** I am happy to restate one of the most important aspects. The minister who had been the health minister since 2008 until last week and who had been a shadow spokesperson for health stated—now I can quote him, because I refer to the final version of *Hansard* —

I am not prepared to support that clause myself, so it leaves us with a mild dilemma.

On the aspect that I raised with him, he said that it is the same as others, such as the Healthway one, but I quickly pointed out to him that it was not. The other ones give him the right to dismiss certain board members, but not the whole board. I am not asking for full disclosure when only one or two or a few members are dismissed; this is about the whole board. It is not good enough to say in here, "We're going to give full disclosure." Just look at what has been happening in question time over the last day or so. Full disclosure on what goes on in ministers' offices and what decisions are made is not given easily in this place. If it was all by direction, and if the amendment only said that the health service provider failed to comply with the direction given by the minister under clause 60, it would be fine. The direction would be in Parliament; it would be known by people. I do not know whether a direction can be debated in this house—it probably cannot—but a matter of public importance can be moved or questions can be asked about a direction. But this amendment will give the minister a capacity to say that the board failed to perform its functions effectively or that it negligently or wilfully failed to comply with a service agreement.

I do not want matters to be played out in the media like the Healthway issue was played out in a "he said, she said" way. I do not want members to be standing up saying that they have heard chatter in their ears from someone on the board and the opposition spokesperson for health asking questions, to which the minister answers, "That's not how it happened! It happened completely differently" or "It happened this way." This amendment provides a clear process for the government to deliver to the community a full and frank disclosure about why it is getting rid of a peak administrative body that the government put in to run the health system and health services in Western Australia. It is perfectly reasonable for the government to put its considerations and reasons for making those decisions in front of this house and the other house. I am not asking that those matters

be debated. I am not asking for any of that. I ask simply that the government make its decision known and put it before the house. Do not leave it to the scuttlebutt and the bits and pieces in the court of public opinion in the media and whatever else. Previously, with Healthway, the minister would stand up and say, “That is the shadow spokesperson just making up things again”, or the shadow spokesperson would stand up and say, “You’re just not telling us the truth about this.” That is what happened when the government sacked the members of that board—they were not sacked; they were all made to go. This will give the minister the ability to do a similar thing. All I say is that in the interests of the public, health and efficiency, put the decision before the house. It may never happen, but if it does, at least the government will be accountable.

**Mr J.H.D. DAY:** I will give the member a win. I am prepared to accept the amendment.

**Mr R.H. Cook:** You are undermining us at every twist and turn!

**Mr J.H.D. DAY:** The member was not expecting that, was she?

**Ms J.M. Freeman:** I was. I thought it was a great amendment!

**Mr J.H.D. DAY:** Such action of tabling in Parliament would be required to happen after the event. There is no way that any minister or government should be impeded by giving an explanation to Parliament before the action is taken. It may be necessary to take action quite quickly in some circumstances. As I said before, I cannot envisage a situation in which a health service board would be removed without it being very well known publicly and without reasons being given comprehensibly in both Parliament and the wider media. I think this is a bit of an academic exercise, but given that it does not appear to cause any problems or do any harm, I am prepared to accept it.

**Amendment put and passed.**

**Postponed clause, as amended, put and passed.**

**Postponed clause 141: Transfers between health service providers or between health services providers and the Department —**

The clause was postponed on 24 March after it had been partly considered.

**Ms J.M. FREEMAN:** This clause states—

- (1) If the employing authority of a health service provider considers it to be in the best interests of the health service provider or the WA health system to do so, the employing authority may —
  - (a) transfer an employee in the health service provider from one office in the health service provider ...

I think the question during the Legislation Committee hearing was whether this was a compulsory transfer or would the employee have a choice, and would it include the Midland St John of God campus and Fiona Stanley Hospital campus. To assist us in the deliberations, there was debate about whether, under the Public Sector Management Act provisions suitable alternative employment was considered to be at a private hospital—say, from Swan District Hospital to the Midland campus—and whether the Midland campus was considered to be another health service provider. I think this was resolved in the affirmative on the basis that the health service provider that they are transferring to will always be the public health service provider under the definition of “public health service provider”. I am requesting that that be clarified.

**Mr J.H.D. DAY:** In a moment I will ask the member to repeat the last question, but just to give an explanation in relation to the transfer of staff, I am advised that it is currently possible to require a hospital employee to relocate to another facility. If that situation arises, it is currently deemed to be an industrial matter, which is subject to review by the Western Australian Industrial Relations Commission under settlement procedure provisions within the relevant industrial agreements. That includes employees covered by the Health Services Union, the Australian Nursing and Midwifery Federation, and United Voice. The dispute settlement procedure process requires the employer to consult with the employee and issue the relevant notice provisions before putting the transfer in place. If the employee remains aggrieved, they have recourse under the relevant clause in the industrial agreement and the public sector transfer standard. Clause 141 provides the employing authorities—in other words, the boards—with the right to transfer an employee after consultation, and the employee has recourse under the dispute settlement procedure, as I said, and can lodge a breach of standards claim with the Public Sector Commissioner. Clause 141 replicates section 94 of the Public Sector Management Act, and the public sector transfer standard will continue to apply.

What was the member’s last question?

**Ms J.M. Freeman:** Just run that past me again. What you’re saying is that these are the standards of the Public Sector Management Act and that, without that, that transfer is internally. That’s an internal transfer, under clause 141(1)(a) and (b), within the public health sector.

**Mr J.H.D. DAY:** Yes, that is my understanding.

**Ms J.M. Freeman:** So my last question was: does that include the Midland campus and the Fiona Stanley Hospital campus?

**Mr J.H.D. DAY:** I am advised that, as the member stated, it can be required for there to be transfers within the Western Australian public hospital system—for example, from Swan District Hospital to Fiona Stanley Hospital —

**Mr D.J. Kelly:** Swan District Hospital's closed.

**Mr J.H.D. DAY:** Yes, that is why they would be required to move from Swan District Hospital. That is why I used that example, because it has been closed, and —

**Ms J.M. Freeman:** By way of interjection, minister, if you're a cleaner at Swan District Hospital, and you're transferred to Fiona Stanley Hospital, you're going to a private employer.

**Mr J.H.D. DAY:** Yes, they would be employed by Serco, as I understand it, at Fiona Stanley Hospital.

**Ms J.M. Freeman:** So you could go from a public employment position to a private employer under this particular section of the act.

**Mr J.H.D. DAY:** I was about to say that I am advised that, especially if a situation arises in which there is no position available within the public sector, there is currently the ability to require an employee to transfer to a private sector employer that is providing a similar service. That is currently the case, as I said, but I am also advised that it has never been used.

**Mr D.J. KELLY:** To say that it has never been used is a completely unsatisfactory response to this issue. I have been in situations in hospitals all over the state in which people have been told that positions are to be made redundant and the threat of being forcibly transferred to the private sector is hung over people's heads like a sword. It is a terrible situation to put people in, minister. The government is giving itself a legal authority, but it is saying, "Oh, well, it's never been used", as if that somehow makes it a benevolent employer. I have actually seen circumstances in which that threat has been made to people and hung over their heads in order to get them to choose other options. They may be given the option of a redundancy or they may be given the option of a job that they actually do not think is suitable and does not meet their needs, for a whole range of reasons. They are told about the third option, which is, "Oh, well, we can force you to take a job with a private employer", but people find that offensive for a whole range of reasons—the loss of job security, the change in pay or simply not wanting to work for a multinational that is there primarily to make a profit, when the person has chosen for many years to work in the public sector because they actually believe in our public institutions and our public hospitals. They do not want to go and work for a multinational; they want to keep working in the public system. If this legislation is going to allow the government to do that, it is completely unacceptable. It is also completely unacceptable to say that it has never been used, because I have seen that hung over people's heads as a real threat, time and again.

**Mr R.H. Cook:** It's coercion.

**Mr D.J. KELLY:** Yes, it is coercion. It is intimidation, and it is used, as the minister would know, primarily against people who work part time. There are very few full-time jobs these days in support services in government hospitals. It is a workforce that is predominantly part time, most of them are female, and many of them are from non-English speaking backgrounds. People in this environment are really desperate to keep their jobs, and a bully of an employer like the minister can come along and say, "We're downsizing and your options are A, B and C, and C is that if you don't take A or B, we'll forcibly transfer you to the private sector." The minister should not stand here and say, "I'm a benevolent employer because these provisions have never been used", because in practice they are used. They are used as a threat and they are used as a method to coerce people into doing things that they otherwise would not be willing to do.

One of the most gutless things I have seen employers from the conservative side of politics do to low-paid workers—whether those in hospitals or, for example, cleaners in schools—is to use these types of provisions to bully people into doing things that they would not otherwise do. The Minister for Health and other ministers then have the gall to say, "Well, we didn't force anyone. They all chose, of their own free will, to do X or Y."

If this legislation gives the minister the ability to transfer people from the public sector, I think he needs to have another look at it. When we raised this issue during consideration in detail, the minister's predecessor said, "We wouldn't want to do that." We could say a lot of things about the previous minister, but if the current minister is going to bring a harder attitude to these things than his predecessor, we deserve more of an explanation as to whether he actually intends to use these provisions; and, if he does not, he should take them out.

**Mr J.H.D. DAY:** I understand the points the member has made. They relate to a wider philosophical debate that I think we have had on a number of occasions in this place. Certainly, the government has no intention of

treating employees badly. I think we have demonstrated through the actions that we have taken over recent years, including the level of wage increases that have occurred, that we treat public servants, including those within the health system, very well. Most people in the public sector in this state are paid well above the average of all other Australian jurisdictions and in most cases are at the top level. We treat employees well and we value Western Australian government employees, particularly those within the health system.

In relation to transfers within the public sector, this provision replicates the provisions in the Public Sector Management Act, as I indicated earlier. Provisions exist currently for a review of decisions through Public Sector Commissioner's Instruction No 1, which requires that decisions are consistent with the principles of equity, interest and transparency. In relation to transfers to a private provider, which relates to the redeployment and redundancy provisions, they are covered under the Public Sector Management Act and there is no change as a result of this legislation. So, we can have the wider philosophical debate, and I understand that, but no change is being put in place as a result of this bill.

**Mr D.J. KELLY:** If there is no change, why is it necessary to have these transfer provisions in this legislation? It seems to me that if there is no change, the minister is wasting our time and wasting the paper that it is written on. If there is no change, why have these provisions been put into this bill? That is the obvious question arising from the minister's answer.

**Mr J.H.D. DAY:** It is clear that this is a whole new bill; it is not just amending legislation. Therefore, it is necessary to provide the whole framework of how things will operate in relation to employees and employers within the Western Australian health system. Therefore, it is necessary to provide all the detail in what is a very large piece of legislation. My statement that there is no change refers to the fact, as I am advised, that there is no change in the practical situation in relation to the employees we have been discussing.

**Ms J.M. FREEMAN:** I want to make the minister aware of the debate that we had in the Legislative Assembly Legislation Committee. I raised the issue that the minister could forcibly transfer a person from a public sector employment position to a private sector employment position without their agreement, and effectively the minister could use that as a tool to make that person leave the public sector. I used the example of what happened to education assistants and Aboriginal and Torres Strait Islander education officers in the education department. Those people were effectively told that either they would be forcibly sent to a position that was not suitable alternative employment for them or they could take the enhanced redundancy package; however, if they chose not to take that other position or not to take the package, they would be dealt with under the disciplinary procedures and would be made forcibly redundant in any event. I want to refer to what the Minister for Health at the time said. The then Minister for Health, who was the health minister since 2008, and prior to that was the shadow spokesperson for health, is the minister who oversaw the privatisation of Fiona Stanley Hospital for cleaners, gardeners and orderlies, and the privatisation of the Midland hospital campus for all the workers at that hospital. The then Minister for Health said—I am quoting from the uncorrected proof of the Legislative Assembly Legislation Committee of Thursday, 24 March —

I am happy if there is a suitable alternative position in our system—

He meant the public system —

for them to go to, but not to the private sector. That just does not seem right.

Because the committee was limited in time, the minister went on to talk about the deferral of some clauses and said —

We can defer them to the end of this sitting today ... We are supposed to get through the whole bill by 5.00 pm. Clearly, we have referred some clauses to the chamber.

Therefore, we deferred clause 161 as well, which also has to do with the issue that we are raising here.

In the debate on clause 141, when we first started to raise this issue, I was told—I will need to go back and have a quick look—that this clause was to apply only to the public health system. I was told that employees could be transferred only from one public health service provider to another public health service provider, and that this clause would not provide the capacity to transfer employees, in the best interests of the health service provider, from a public health service provider to a private health service provider. The current minister gave the example of a cleaner who is transferred from Swan District Hospital to Fiona Stanley Hospital. I understood from the debate in the Legislation Committee that clause 141 would not enable a cleaner in a public health position in which they had accrued length of service, sick leave, long service leave and a range of other entitlements, to be transferred to Fiona Stanley Hospital and the private sector and lose all their entitlements. The minister has said that that has always been the case. I am not aware, for the United Voice members, that that is the case. I have always had the understanding, although the minister has said in this house that that is not the case, that under the

current enterprise agreement for those employees, they would retain the provisions of redeployment and redundancy and would not be forced into that sort of alternative employment.

**Mr J.H.D. DAY:** Clause 141 deals with, as it states here, transfers between health service providers or between health service providers and the department. So, it is within the public system. It does not cover the situation of staff who take up positions in the private sector, which is covered later in the bill. Therefore, I think that the concerns that have been expressed about clause 141 do not apply. However, as I said, overall there is no change essentially to the system that is in operation now.

**Ms J.M. FREEMAN:** Just to clarify and put it on the record, clause 141 applies only to the public system. It applies only from public provider to public provider; it cannot apply to a public provider and Serco and it cannot apply to Midland. This is just to clarify clause 141.

**Mr J.H.D. Day:** Yes.

Debate adjourned, pursuant to standing orders.