

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 unordered 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