

**ALCOHOL AND DRUG AUTHORITY AMENDMENT BILL 2014**

*Consideration in Detail*

Resumed from 10 September.

**Clause 1: Short title —**

Debate was adjourned after the clause had been partly considered.

**Mr R.H. COOK:** Given that we spent only five minutes discussing the Alcohol and Drug Authority Amendment Bill 2014 when it was last debated, I am struggling to remember what points we actually covered. However, the purpose of this legislation is to eliminate the Drug and Alcohol Office, so I am intrigued as to why the short title of the bill is actually titled the Alcohol and Drug Authority Amendment Bill, when really it would be more appropriately titled the “Alcohol and Drug Authority Repeal Bill”. I wonder whether the Premier will make some comment on why we are continuing this entity called the Alcohol and Drug Authority when clearly under this legislation it will no longer exist.

**Mr C.J. BARNETT:** Unfortunately, the use and abuse of alcohol and drugs remains an issue. The content of the Alcohol and Drug Authority Act 1974 therefore remains in place. We are simply amending this act to make it fall administratively within the Mental Health Commission, even though it will have its own identity in the commission. We therefore do not need to change the Mental Health Bill. We simply need to adjust the alcohol and drug legislation and make it a subset of the Mental Health Commission so that we do not remove the penalties and administrative aspects by taking away its name. That is why we are amending it in that way and not amending the Mental Health Bill itself.

**Mr R.H. COOK:** I guess that was going to be my follow-up question. Why has the government not put this into the Mental Health Bill, rather than continue its life in its own legislation? Is it a matter of style or a legal requirement?

**Mr C.J. BARNETT:** No, they are just amendments. The provisions relating to “alcohol and drug” remain intact under this legislation. All we are doing is putting that body administratively into the Mental Health Commission. It will continue to have its own legislation specific to “alcohol and drug”.

**Mrs M.H. ROBERTS:** I note the Premier’s comment that this is essentially a machinery-of-government bill, implying that nothing much is changing. I will ask the question now and if the Premier does not want to answer it, I can deal with it when we debate the relevant clauses. The issue is the replacement of the terms “suffering from the consumption or use of alcohol or other intoxicating liquors or drugs to excess” and “alcohol or drug abuse” with the term “experiencing alcohol or other drug use problems or co-occurring health issues”. Effectively, the new definition loses the words “suffering”, “excess” and “abuse”, and that alternative definition is repeated throughout existing section 18 and new section 11.

**Mr C.J. BARNETT:** The word “experiencing” is seen as being more contemporary and more modern terminology. The word “suffering” has a sort of emotive tone to it, and although that may be the case, I do not think it adds to an objective piece of legislation.

**Mrs M.H. Roberts:** Does the Premier regard it as broadening the legislation, though, or is it just modernising language?

**Mr C.J. BARNETT:** I think it is just probably modernising language. I do not read into it any more than that. The State Solicitor’s advice is that there is no functional or practical difference; it is just more modern terminology.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Long title replaced —**

**Mr R.H. COOK:** The opposition is seeking further clarification on this clause. I note that the long title makes very frequent reference to “mental illness”. Of course, the full range of people who confront drug and alcohol problems do not all have a mental illness. From that point of view, I am wondering why the government has chosen to couch the long title of the bill in this way, given that the preoccupation with mental illness covers only one aspect of the abuse of drugs and alcohol.

**Mr C.J. BARNETT:** I am advised that the long title includes the co-occurrence of both health issues, including persons who may have a mental illness as well as an addiction to other drugs or alcohol. The Mental Health Bill itself defines “mental illness” quite specifically. That is as it is. The end result is that the Mental Health Commission will look after all aspects of mental health including alcohol and drug abuse. It will be a simple

entity and, hopefully, not a silo environment in that people who specialise in, say, alcohol treatment may deal with some people who have a mental health issue and some who do not.

**Clause put and passed.**

**Clauses 5 and 6 put and passed.**

**Clause 7: Section 4 amended —**

**Mr R.H. COOK:** An amendment stands in my name on the notice paper, but before I go to that issue, I seek some clarification from the Premier about the role of the chief executive officer. Obviously, this legislation removes the role of the CEO as a separate entity or a separate statutory authority and creates the CEO of an organisation that is subsumed within another department. Where will the CEO of the Drug and Alcohol Office fit into the overall structure and management of authority in the Mental Health Commission?

**Mr C.J. BARNETT:** There is only one CEO, and that is the chief executive officer of the Mental Health Commission. My understanding is that the reference to the CEO in the Alcohol and Drug Authority Amendment Bill will be altered to make it clear that it refers to the CEO person or position currently at the top of the Mental Health Commission. We are therefore not talking about two CEOs. When the term “CEO” is used now, it will effectively refer to the CEO of the Mental Health Commission.

**Mr R.H. Cook:** Is that currently Tim Marney, the Mental Health Commissioner?

**Mr C.J. BARNETT:** Yes.

**Mr R.H. COOK:** I have no other inquiries. I move —

Page 4, line 21 — To insert after “Act” —

, and which shall be known as the Mental Health and Alcohol and Other Drugs Commission

I moved this amendment because, as I said in my contribution to the second reading debate, one of the key concerns that have been put to us, particularly by stakeholders working in the field, is that the Drug and Alcohol Office will lose its identity completely in this structural change. As I noted in my contribution, other states that have moved in this way have incorporated “alcohol and other drugs” in the title of their mental health authority. Just to recap, in New South Wales, for instance, it is the Mental Health and Drug and Alcohol Office; in Victoria it is the Mental Health, Drugs and Regions Division; in the Australian Capital Territory, it is Mental Health, Justice Health, Alcohol and Drug Services; in Queensland, it is the Mental Health Alcohol and Other Drugs Branch; and in South Australia, it is the Mental Health and Substance Abuse Division. Clearly, if there is to be an orthodoxy or a standard across the policy field nationally, it is to do what the state is currently doing—that is, to bring these services into the mental health area. However, more importantly, it is to continue to acknowledge the separate role that addresses the abuse of alcohol and other drugs, but not for it to be so totally consumed within the structure of the Mental Health Commission to the point where it is not even referred to in the title. It is quite clear from the practice in other states that it is accepted that it is appropriate to leave “alcohol and other drugs” in the title to continue to acknowledge that it is a very important part of the work that the department does; and that it is part of the overall delivery of mental health services, but not to the complete denial of the services that take place with alcohol and other drugs. Of course, one of the great advantages of being in government is getting to decide the name of these things; I understand that. However, we think this is an important distinction to make, and that has certainly been impressed on us by the stakeholders. I would be very keen to hear from the Premier whether this is a question of style, or whether other issues impacted on the government’s decision to no longer have any reference to alcohol and other drugs in the organisation’s title. If it is just a question of style, other agencies across this country have chosen a very different tack. I think that it is appropriate for the Premier to clarify these particular issues.

**Mr C.J. BARNETT:** A lot of professionals and people who run and organise drug and alcohol services have lobbied for the phrase “drug and alcohol” to be included in the agency’s name. The government carefully considered that, but decided against it. The major part of the reasoning—although I understand the argument to have the name there—is a genuine fear that if the agency is designated as “mental health, drug and alcohol” it will remain very compartmentalised and there will not be the professional overlap that needs to happen. To serve such a large and remote state, people need to be able to potentially work in both areas, as long as their qualifications are appropriate. In other states a similar situation arises, primarily because they generally do not have a Mental Health Commission, but simply a department of health. For example, the entity in New South Wales is simply New South Wales Health and a division within it is the Mental Health and Drug and Alcohol Office. Similarly, Queensland has Queensland Health, which has the Mental Health Alcohol and Other Drugs Branch. The entity proposed by this legislation is the Mental Health Commission, which will have a division within it that is drug, alcohol and preventative services. There will be a drug and alcohol identity within the department, but not in the name of the department. I think it is also important to simply have “mental health”

there. I am a layperson in the area, but to me addiction, in whatever form it takes, has a mental health aspect to it; I think that is acknowledged. I think a lot of the taboos and stigma associated with mental health are fast disappearing, and therefore it is appropriate to have the simple name “Mental Health Commission”, but within it a specialist area that concentrates on drug and alcohol addiction and abuse. That is what we decided. I understand the argument and we considered it at length, and there was quite a strong lobby for it. Although it would have been easy to say yes and just do that, I think it would have been a mistake. In the future, we will have a Mental Health Commission that is alongside the Department of Health and has a drug and alcohol division or branch within it. In talking to patients, I imagine that the letterhead might be “Mental Health Commission Drug and Alcohol Division” or something like that. I think practically that works quite easily.

**Mr R.H. COOK:** I take the point from the Premier that one of Bryant Stokes’ observations in his review was that emergency departments, particularly in smaller communities, should have greater integration with alcohol and drug services. If someone goes to those communities and says, “G’day, I am from the Mental Health Commission”, a person might say, “What has that got to do with me? I am just here because I am drunk—admittedly, I have been here twice this week already for the same reason.” It is good to get the reassurance that someone who googles the phrase “drug and alcohol” will have more than just “Mental Health Commission” coming up. As the Premier said, we do not want people to overlook or not be able to access services because they are looking for the wrong thing.

**Mr C.J. Barnett:** That is the integration of services, because people may have other issues as well. I think it is important.

**Mr R.H. COOK:** That is an important distinction. Out of respect to the stakeholders, we have moved this amendment, and we appreciate the consideration that the government has given it. We think it is still a worthy position, but acknowledge that the government has given it some consideration.

**Amendment put and negatived.**

**Clause put and passed.**

**Clause 8: Parts II, III and IV replaced —**

**Mr R.H. COOK:** I notice that this bill reproduces a lot of text from the Alcohol and Drug Authority Act 1974. It is reassuring to see a lot of the text of the old act in this bill, because it means that this is not radical legislation. I do not know whether this is old English or legalese text, but line 20 on page 8 states, “provide and turn to account advertising opportunities”. Could the Premier please clarify what the drafters of this legislation mean by the term “turn to account”?

**Mr C.J. BARNETT:** I am advised that that provision replicates the existing provision in the State Trading Concerns Act and it is for legal consistency.

**Mr R.H. COOK:** The dictionary definition is: to turn to one’s advantage. From a legal point of view, is that to turn to the advantage of the objects of the act or to the advantage of the minister? I do not say that to be contrite; I am really quite intrigued by the language used in that provision.

**Mr C.J. BARNETT:** I am advised that if there were, for example, a public information campaign on alcohol or drugs that had a slogan attached to it, this provision would protect that name for future campaigns. It is for that purpose. If it is “Think Again” or whatever, it holds the intellectual property.

**Mr R.H. COOK:** I refer the Premier to line 28 on page 9 and the provision that deals with the role and functions of the chief executive officer. Previously, this legislation did not have the wording “subject to the Minister’s consent”. The Premier clarified this to a certain extent when he clarified who the CEO was in relation to the Mental Health Commission, but why is the wording “subject to the Minister’s consent” in this clause? I think I now know why. I was confused before about who the CEO would be. Perhaps the Premier could indulge me on that.

**Mr C.J. BARNETT:** Apparently, it relates to property—real estate—that is in a number of different forms of government ownership and this brings it into the ministerial area and creates consistency.

**Mr R.H. Cook:** Now, it is just a departmental thing.

**Mr C.J. BARNETT:** Yes; that is correct.

**Mr R.H. COOK:** I now refer to line 8 on page 10. These proposed sections deal with the functions of the CEO, previously described as the functions of the Western Australian Alcohol and Drug Authority. In large part they are replicated in the act and the bill. Obviously, there are some aspects of it that now differ. Section 18(c) of the original act states —

- (c) to establish and maintain accommodation for persons for whom assessment, treatment, management, care, or rehabilitation services are provided under this Act and to subsidise and otherwise support, as the Authority thinks fit, —

Although now it would read “the CEO thinks fit” —

other persons and organizations establishing or maintaining such accommodation;

This section is being deleted in the bill. I wonder whether the Premier could now explain why.

**Mr C.J. BARNETT:** It is actually not being deleted. It is still there as proposed subsection (c).

**Mr R.H. COOK:** It now commences “subject to the Minister’s consent”. Well done—the Premier has spotted my deliberate error! It is good to see that he is on the ball.

Madam Acting Speaker (Ms L.L. Baker) will understand my reluctance and care in asking the next question. I will make sure I have this one right. I refer to line 9 on page 11 of the act. There is currently a section that states “such other functions as are prescribed by any other Act or regulation, local law, by-law, or rule made under any other Act”. I hope I am on solid ground in saying that this section is being deleted. Can the Premier clarify that?

**Mr C.J. BARNETT:** Section 19, under “Powers” —

**Mr R.H. Cook:** The proposed section is titled “Functions of CEO” and the current section is titled “Functions of the Authority”. The final paragraph (i) in the current section 18 states —

such other functions as are prescribed by any other Act ...

**Mr C.J. BARNETT:** It was considered not to be necessary anymore. It will be removed. I cannot tell the Deputy Leader of the Opposition why, but the drafters did not think that was necessary.

**Mr R.H. Cook:** Thank you for your brutal honesty.

**Dr A.D. BUTI:** We are on clause 8. I go back to page 11 and proposed section 13, “Delegation by CEO”. The CEO may delegate any power or duty of the CEO, but the person that they delegate to cannot re-delegate the power or duty. Even though the power or duty may be delegated, does the CEO remain liable for any actions that the delegate may perform as a result of that delegation?

**Mr C.J. BARNETT:** I would think the CEO never loses overall responsibility. If there was some culpable act—for example, a mistreatment of a patient—I do not think that would fall as a liability of the CEO. But in administrative policy and in a care sense, the CEO is always responsible. That is my understanding.

**Dr A.D. BUTI:** I assume that the Premier is saying that as long as the delegation is done within the normal purview of —

**Mr C.J. Barnett:** And lawfully.

**Dr A.D. BUTI:** Is there any restriction as to what powers or duties can be delegated? I suppose there is; I am trying to find it. Is it under another provision of this bill? Is it any duty or power?

**Mr C.J. BARNETT:** Proposed section 13(2) states that the minister must not approve a delegation unless satisfied that the person is capable and appropriate to do it. That would be pretty typical. If it was a significant delegation—for example, overall responsibility for drug and alcohol—it would require ministerial approval. The minister of the day would seek advice from the Public Sector Commission or wherever.

**The ACTING SPEAKER (Mr P. Abetz):** The Premier has a proposed amendment to clause 8 on the notice paper.

**Mr C.J. BARNETT:** Yes. I move —

Page 10, line 32 — To insert after “which” —  
the use of

Section 18(g) of the act contains the words “the use of”; therefore, this amendment is effectively reinserting these words in the relevant clause of the bill. It is a clerical error as much as anything else. During the drafting process, it was considered that these words were superfluous. However, following advice from the State Solicitor, it was determined that the words were necessary. It puts the same terminology in this part of the bill as appears earlier.

**Mr R.H. COOK:** I have an inquiry related to proposed section 14, “Establishment of Board”, on page 12. Under this legislation, the former Drug and Alcohol Authority, or the board for want of a better description, will be abolished and replaced by an advisory board. I notice the language at proposed section 14(1) —

The Minister must establish the Alcohol and Other Drugs Advisory Board to provide advice to the CEO about matters relevant to the performance of functions under section 11.

I wonder whether that proposed section provides the minister with any discretion about whether the advisory board is set up. I assume that when it says “must establish”, discretion does not exist. When would the minister anticipate that board being established following the commencement of the act?

**Mr C.J. BARNETT:** I would hope that that board in practical terms is identified at the time the act legally comes into play. In part, it relates to the issue we spoke about before—to keep that special advice to the minister, particularly from those organisations working in the alcohol and drug area. The board’s role is advisory. That is important. It is professional and practical advice to the minister about what is happening in the community, but it does not have the authority to oversee and manage the finances of the whole show.

**Dr A.D. BUTI:** During my contribution to the second reading debate, I mentioned that certain professions should be designated. The Premier differs; that is fine. The Premier said that the trend now is not to prescribe certain professions. I have two questions. Is the CEO an ex-officio board member? For a number of days we have been dealing with conflicts of interest and pecuniary interests at the Environmental Protection Authority. I presume there is nothing in this bill or in the act that deals with pecuniary interests; and, if not, I suppose the normal governance obligations will be relevant here.

**Mr C.J. BARNETT:** The CEO would not be a member of the board, even in an ex-officio way, because they are an advisor to him and to the minister. In practical terms, he would obviously meet with them, as would the minister, on a fairly regular basis.

**Dr A.D. BUTI:** The Premier was getting advice when I asked my second question related to the possible conflict-of-interest issue. I presume there is nothing in the legislation that automatically disqualifies someone who might, for instance, have a pecuniary interest in a certain company that deals with an alcohol company or whatever. Is it just the normal governance and conflict-of-interest duties that will govern their responsibilities?

**Mr C.J. BARNETT:** The normal Public Sector Commission advice would apply. There might be someone on that advisory board who operates a not-for-profit organisation in the area and there could be a pecuniary interest for that organisation. The normal Public Sector Commission rules would apply in that if an issue arose, they would have to declare that interest and lodge their interest. It is possible in an area such as this, yes.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 9 to 11 put and passed.**

**Clause 12: Powers of CEO —**

**Mr R.H. COOK:** My inquiry is about proposed section 37(1) on page 17, which reads —

The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the commencement of the *Alcohol and Drug Authority Amendment Act 2014* section 8.

Could the Premier clarify the reference to “section 8” in that part of the bill, and its effect?

**Mr C.J. BARNETT:** Proposed section 8, which is outlined at the beginning, basically identifies all the parts that have been changed. I guess that means that the review is a review of those changes, rather than necessarily of the whole drug and alcohol act. The member might argue that that is back to front, and I might agree with the member when I think about it!

**Dr A.D. BUTI:** I am not so sure about that. The Premier might be right, obviously—he is the Premier!—but the wording reads —

The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the commencement of the *Alcohol and Drug Authority Amendment Act 2014* section 8.

I think it is actually a review of the whole act.

**Mr C.J. Barnett:** Yes, okay; I concede that. I think you are right.

**Mr R.H. COOK:** Does that mean we should remove the reference to “section 8”?

**Dr A.D. Buti:** No; it means that the review starts five years after the operation of proposed section 8, so the review is to happen five years after this legislation has passed and proposed section 8 has been inserted and it becomes operational. But the review is of the whole —

**Mr C.J. Barnett:** The review will be triggered five years after the passing of this amendment bill, but the review is of the whole act.

**Mr R.H. COOK:** The whole act?

**Dr A.D. Buti:** Yes. That proposed section 8 —

**The ACTING SPEAKER:** Member for Kwinana, it is going to be a little tricky for Hansard to keep up with who is talking.

**Mr R.H. COOK:** These are interjections on my very articulate summation of the issues.

**The ACTING SPEAKER:** Member for Kwinana, is that all good?

**Mr R.H. COOK:** Yes; I was just standing up because I thought someone should!

**Clause put and passed.**

**Clause 13: Delegation by CEO —**

**Mr R.H. COOK:** I just wanted to take the opportunity to review my notes —

**The ACTING SPEAKER:** I will give you 30 seconds—that is fine.

**Mr R.H. COOK:** Might I just say that the weather at the moment is extraordinary, and I would like to thank everyone for being here today.

**Clause put and passed.**

**New clause 13A —**

**Mr C.J. BARNETT:** I move —

Page 35, after line 1 — To insert —

**13A. *Constitution Acts Amendment Act 1899 amended***

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 2 Division 2 delete “*Act 1951*, or the Western Australian Alcohol and Drug Authority established under the *Alcohol and Drug Authority Act 1974*.” and insert:  
*Act 1951*.

This amendment will insert a new clause that will amend the Constitution Acts Amendment Act 1899. The new clause simply deletes reference to the Western Australian Alcohol and Drug Authority in the Constitution Acts Amendment Act 1899. This is a necessary consequential amendment as the authority will no longer exist following the proclamation of this legislation. Although part 3 of the bill contains a number of consequential amendments, the necessity for this amendment was not identified until after the bill had been introduced. It was only later that it was picked up that the authority was referred to in the constitution act.

**New clause put and passed.**

**Clauses 14 to 17 put and passed.**

**Title put and passed.**

*House adjourned at 4.17 pm*

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