PUBLIC HEALTH BILL 2014

Consideration in Detail

Postponed clause 5: Crown bound —

The clause was postponed on 10 November after it had been partly considered.

Mr R.H. COOK: Obviously, much of the Public Health Bill 2014 pivots around this clause. Binding the Crown is an aspect of the bill that gives us most concern. I think everyone looked forward to debate on the key issue of the capacity of the bill to bind the Crown in relation to its own conduct on issues of public health. Obviously, this plays out most vividly in Aboriginal communities, where the government has a big role to play and, as we know, many of the environmental conditions that the communities find themselves in are, indeed, detrimental to their public health. In the 1990s, a community sought to bring legal action against the Crown, but the courts at the time found that the Crown was not bound by the Health Act 1911. Binding the Crown was a key issue in the debate on the new Public Health Bill, and it was widely anticipated. The minister has heeded those calls, and on many occasions throughout the consideration in detail stage of this bill—I suspect it has taken some decades for this bill to be brought to this place —

Dr K.D. Hames: It took one decade.

Mr R.H. COOK: I have come across people who have insisted that they were involved in the 1960s review. I exaggerate, but it seems to have been going on for an awfully long time!

The Crown was indeed bound in every other iteration of this legislation; therefore, people widely anticipated this new bill. We acknowledge that the minister has heeded those calls and done his best, but he bumped into an immoveable object—that is, the regulatory gatekeeper in the Department of Treasury that insisted that other aspects of the bill must be doctored in a way that renders binding the Crown pretty much irrelevant. As we have described, that makes the bill somewhat of a toothless tiger when it comes to actually providing redress for people in situations in which the Crown has let the community down on public health.

Clause 5(1) states —

> This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Our greatest difficulty is with clause 5(2), which states —

> Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

Subclause (1) states that the Crown is bound and subclause (2) states that it does not matter whether the Crown is bound because the courts cannot do anything about it. That almost makes subclause (1) somewhat laughable, which is, I guess, one of the key disappointments of this legislation. Subclause (3) refers to how the minister could, under part 16, go about providing exemptions to the Crown being bound, which, of itself, is almost an extraordinary insult, because clause 5 already establishes that even though the Crown is bound, there is no redress for anyone to seek to force the state's hand to address a particular public health issue.

In my opening comments on this clause, I ask the minister to explain why we have subclause (1), which seeks to bind the Crown, but we render it inoperable because subclause (2) states, "Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence." This defeats the whole purpose of binding the Crown in the first place.

Dr K.D. HAMES: That is a very good question. As the member knows from discussions we have had, the original purpose of this bill was that the Crown be bound; however, that proposal did not make its way through the system. In this bill, this clause and a number of other clauses undo the binding of the Crown. Under this clause the Crown—that is, the agency that is responsible—can be issued with a compliance notice. I remember the court case involving the Aboriginal Lands Trust, but most cases would involve the Department of Housing; The agency should comply, but it does not have to comply. The department cannot be issued with an enforcement order, nor can it be prosecuted. Subclause (1) states that they are bound to comply, so they are supposed to do it, but if they do not, there is nothing we can do. I can give an exemption, by application, for departments not to have to comply. If I do not approve an exemption, they sort of have to comply, but not even I can do anything to force them to comply. I understand that sounds fairly bizarre.

Interestingly, I have been looking at what happens in other states, because the example was given that other states are bound by the Crown in one way or another. I have looked at the configuration of this clause in every other state, which is worth getting on the record. New South Wales is bound by the Crown, but can the Crown be

prosecuted? No, it cannot. Can the Crown be given an improvement notice or enforcement order? The answer is yes, it can. In New South Wales, the Crown cannot be exempted, but it is protected from civil liability, so it cannot be sued. It is bizarre when I look across the list and compare the states.

In Queensland, yes, the Crown is bound to comply, but it cannot be prosecuted, which is the same as in New South Wales. In Queensland, can the Crown be given an improvement notice or enforcement order? No, it cannot; so even though the Crown is bound, it cannot be given an enforcement order. Can the Crown be exempted from compliance? No, it cannot. But is it protected from civil liability? The answer is yes. Again, in Queensland, the Crown cannot be prosecuted. Almost every state is different. In South Australia the Crown is bound; and no, it cannot be prosecuted. Yes, it can be exempted; and yes, it is protected. Victoria has the strongest legislation: yes, the Crown is bound; yes, it can be prosecuted; yes, it can be given an enforcement order; yes, it can be exempted; and no, it is not protected. In Victoria, the Crown has to comply. It can be given an improvement notice and an enforcement order. It cannot be prosecuted, but it can be given an exemption. In the same way that I can give an exemption, so can the minister in Victoria. Victoria has the strongest legislation of all the states. The territories have similar amazing variations. In the Northern Territory, yes, the Crown is bound; but, no, it cannot be prosecuted. It is not protected from civil liability, but it can be given an exemption. Each state has something different. No state legislation is perfect. No state is bound by the Crown and treated in the same way as the public. That does not apply in any state. There is no Australian state in which the state can be bound by the Crown, given an enforcement notice or improvement order with which it has to comply, and there are no exemptions and it can be prosecuted. No state matches that definition.

Mr B.S. Wyatt: Do we protect the Crown from civil liability?

Dr K.D. HAMES: Yes, we do. Under this bill Western Australia is not bound and it cannot be prosecuted. Yes, the Crown can be given an improvement notice but not an enforcement order. Yes, the Crown can be exempt from compliance; and, yes, we are protected from civil liability.

Mr R.H. COOK: I acknowledge the minister's support, certainly in the early stages of this bill, for binding the Crown. Does the issue upon which the minister was blocked come down to a question of sovereignty, legal issues or a matter of expense?

Dr K.D. HAMES: It is totally a matter of expense. The concern from Treasury and from the regulatory gatekeeping unit is that across the whole system of Western Australia—Aboriginal housing is probably the most controversial area—the state cannot be prosecuted around sewerage issues and pesticides, but it is bound to comply. The concern was that in a large number of remote communities, the total cost of compliance would be so high that the state government could not afford to comply and that would almost inevitably lead to prosecution for not complying because of the vast array of issues. I point out that although the bill that was put forward by the Labor government made it very clear that the Crown was not bound, it had to comply, and there were components of that legislation not to give exemptions but to give time to do those things. In one area, it was a 10-year time frame to deal with certain issues because of exactly the same thing—the large cost to government for complying across the system with all the requirements of the Health Act. The former Labor government proposed a 10-year time span. This government has not done that, but has exempted the Crown. I will not be the Minister for Health for much longer, so it will be up to the minister of the day to grant exemptions.

However, while I am the minister I will not be giving too many exemptions. The only exemptions, I guess, that will be forced on me will be because of the total cost involved, and even then I will be likely to give a time span in which to comply. If it was not a terribly costly issue and if it was certainly for something that was significant to communities, I would make sure that I did not give an exemption. Having said that, what do I do then, because if the department does not comply with me not giving it an exemption, it cannot be prosecuted? The Minister for Health would have to go through the cabinet route and the Chief Health Officer would go through the directors general route to make sure that the department complied. That is the dilemma. Who knows what decision another Minister for Health would make? Whatever is in the act is in the act.

Mr R.H. COOK: It is about striking a balance. I am quite comfortable with the concept of the minister providing an exemption, because in some respects, once that exemption has been given, they are in a framework in which the minister can cajole, push and manage to get them to comply; but if there is no sting in the tail at the end of the day, the minister will have almost undermined his capacity to do that.

The Victorian legislation provides that sting in the tail, because the Crown in Victoria is bound and can be prosecuted, but it can be provided with exemptions.

Dr K.D. Hames: No; Victoria can be provided with exemptions —

Mr R.H. COOK: Yes.

Dr K.D. Hames: — but it can't be sued.

Mr R.H. COOK: I need some guidance from the minister.

Dr K.D. Hames: It can be prosecuted and it can be provided with exemptions. Sorry; you're right.

Mr R.H. COOK: They seem to be the two levers that are needed—one to hold the department in that space and the other for the health minister to provide the exemption, because that allows the minister to manage it. I wonder why the regulatory gatekeepers—whoever these faceless men and women are—decided on a model closer to the Queensland and South Australian models than the Victorian model and still saw the need for the Crown to not be able to be prosecuted.

Dr K.D. HAMES: I do not think I can answer that question.

Mr R.H. Cook: I assumed you were toiling away night and day, arguing with them.

Dr K.D. HAMES: We were toiling away. This took a long time to get approval, as the member knows. We have been in government for seven years, and we started on this legislation well before that. At the end of the day, we have budgets that we have to comply with statewide. We have a debt issue, as the member knows. I am sure that the shadow Treasurer has a good understanding of the way that Treasury needs to work; it needs to have certainty around costs and expenditure. When there is something that is so up in the air that there is no certainty, it makes it difficult. I know, having been Minister for Aboriginal Affairs and Minister for Housing, that sometimes keeping abreast of cost pressures within housing—I am not just saying Aboriginal housing, but housing for the whole breadth of people who need state government housing—is not easy. There are a lot of issues to do with the care of those houses, what happens to them, the destruction of houses and the destruction of components of houses, so trying to keep abreast of those and keeping up with those costs can be extraordinarily difficult and expensive. To be fair to Treasury, it was concerned about what that unknown cost may be. It was happy to have a system whereby a government department would have to seek an exemption from being bound—it could not just automatically get out of it—even though it could not be prosecuted. The department would have to come to me with an explanation of why it did not want to comply and it could be issued with an enforcement order. A local council could issue the Aboriginal Lands Trust with an enforcement order for a house within an Aboriginal community. I will not refer to sewerage because that is more serious, but a good example would be the house in Roebourne where an Aboriginal child died from a breakage in a wall. The local council could inspect that house and say that it was not up to standard and the Department of Housing in that case—because it is not Aboriginal Lands Trust land—could be issued with an enforcement order and it would need to comply and fix that wall. If it did not, it would need to come to me and seek an exemption from having to fix the wall. The excuse might be that it had fixed the wall 10 times in the previous week but the tenants kept breaking it every time it was fixed. I expect that that is not likely to be the case and that it would probably be something that was broken and not reported. That would be the circumstance. The government, through me, has control over what has to be done to fix those things.

Mr B.S. WYATT: The minister will forgive me if my questions are a little broad; they are on this topic, but I did not have the chance to participate in the other place as I was in here for the past two weeks. The minister has explained why the Crown is not bound, and I get the reasons. I have a couple of questions. Firstly, I asked by interjection whether the Crown is being protected from civil liability, and the minister said yes. Does that also protect from—there may be a further clause that I am not aware of—any civil enforcement orders such as injunctions and things to force behaviour by the department? Secondly, does the legislation set out the requirements before the minister would make an exemption or would they be considered by the minister of the day? The minister gave the example of the hole in the wall. It is my understanding from what the minister has said tonight that it is likely to be more budgetary issues that will trigger an exemption from the minister. Do we stipulate when that is, because I imagine that it would not be an individual case but more a systemic issue that would require an exemption? I am trying to get some clarity around that.

Dr K.D. HAMES: Clause 268 provides a protection against liability for breach of statutory duty, but the bill does not affect other common law rights. That is the answer to the first question. I have forgotten the second question.

Mr B.S. Wyatt: It was about exemptions. What is going to trigger a decision around exemptions?

Dr K.D. HAMES: The answer I wrote down was yes. It is fairly open and broad. It is up to the minister to decide. Largely—in fact, almost inevitably—it would be around issues of cost and system-wide costs. It would not be for an individual house. If someone used an individual house, there is no way that they would be given an exemption, but if there were 500 houses with the same problem—I am exaggerating the number just to make the point—and it was going to cost $10 million, there would probably be phasing repairs to fix the problem over a period.

Mr B.S. WYATT: There is still effectively the common law right under the legislation to bring a writ to force behaviour by the department.

Dr K.D. Hames: Yes; that's what happened with Halls Creek. They lost because the legislation stated that the Crown could not be bound. It was the Aboriginal Lands Trust, but it was seen as a crown agency.

Mr B.S. WYATT: That is exactly why I was trying to clarify in my head what the legislation effectively provides by way of remedy for people outside of those who are directly employed by the Crown. I did have one other question.

Dr K.D. Hames: If you can't remember, this is just about clause 5. Most of the stuff on binding the Crown is in the subsequent clauses 255 to 267 and 280 to 282. Those are all the clauses about binding the Crown. There is plenty of opportunity for the member —

Mr R.H. Cook: Are we doing all of them tonight?

Dr K.D. Hames: No. We have to do clauses 5, 255 to 267, 280 to 282, 34 and 35 and 46.

Mr R.H. Cook: That is part 16.

Dr K.D. Hames: Part 16 is all about binding the Crown. The reality is that you guys don't agree with this. We understand that.

Mr R.H. COOK: I want to get clear in my mind how the process might work. For instance—forgive me if I digress to part 16—if a department said to the minister, "We're sorry; we can't comply with the order we have received. Can you please give us an exemption?", the minister would consider the conditions of that exemption and then provide that exemption. Is that correct?

Dr K.D. HAMES: Yes, I would consider the application and provide the exemption if I think it is warranted. That is the process. We have been through in other clauses what the consequences would be if I do not provide the exemption, which are not that great. I then have to fight the good fight to make sure that the minister complies.

Mr R.H. COOK: If at that point the minister is providing the exemption, we are not exposing the Crown to expense in that context. Again, I cannot understand the concern about the Crown being exposed to added expense or cost if, even after the event is discovered, the Minister for Health can provide that exemption. The minister said that the purpose of subclause (2) is to avoid overly exposing the state to great expense, but he is saying that the effect of subclause (3) is to negate any exposure to that expense. Again, I am not quite sure where the exposure is that the minister talked about around those cost aspects.

Dr K.D. HAMES: It would depend on what we did in comparison with what other states have done. If we used the Victorian model, the member might be right, but if we followed one of the other states in which the Crown is bound but can be given an exemption and cannot be prosecuted, it is really no different from ours. They have still protected themselves, but in a different way. We could have used a model under which we are bound, but I can provide an exemption, and we could not be prosecuted for not complying. This is the combination that has been chosen in Western Australia. Without that, it would depend on what else we did. If we took the Victorian model, that could potentially be a huge cost for the government at the time. Yes, the government is bound, it can be prosecuted —

Mr R.H. Cook: But the minister would provide the exemption anyway.

Dr K.D. HAMES: Yes, and the agency is not protected from civil liability, so it can be sued, but it can be given an exemption. Even in Victoria, the minister can give exemptions that save the cost to the Crown. If we wanted to protect the state government, to me, that would have been just as acceptable, because the government is still protected from cost. The reality is that our model is no worse; it is just different. We have the same escape hatch—the same way of getting out of costs to government.

Mr R.H. Cook: We have got two escape hatches, and Victoria has only one.

Dr K.D. HAMES: Yes, it has only one, but it is a pretty big escape hatch if the minister can exempt them from any binding of the Crown. Remember, the opposition's system was not going to be foolproof; it was tougher than what we have ended up with, but in effect it was going to be the Victorian model, so that there would still be exemptions. A proposed exemption that was being studied was a 10-year option for a department to be able to comply with an order to address things. There is no perfect system. If and when the opposition gets into government, to get that system in place it would have to do all those things—so no exemption, definitely bound, can be prosecuted, and can be issued with enforcement orders. The risk then would be that whoever was Treasurer might be a little nervous.

Mr B.S. WYATT: Minister, why do we have the exemption process? Ultimately, if the minister does not grant the exemption, there is nothing to be done anyway to force the department to act. If the government does not

grant the exemption, the public health officer or the director general or whoever is given the responsibility, can still say "Too bad; we're not going to fix those 500 houses", to use the minister's example, and nothing can be done. Why do we have the exemption process? Is it simply to create at least a political ownership of a decision?

Dr K.D. HAMES: That is exactly what it is there for—to create ownership by me, as Minister for Health, to have some say over the department and say that it is not exempt and it needs to carry out the order. To then go against the Minister for Health on a public health issue and say, "Bad luck, we're not doing it" would create enormous political pressure, not just externally, because it would be public knowledge that it had happened, but also internally within government. We sit around the cabinet table, and if there is a minister who is not complying with a direction, in effect, from the Minister for Health, there would be difficulties for that minister I would imagine.

Mr B.S. WYATT: Just one more question on that topic. Again, I have not gone through the legislation in detail. If an exemption is granted by the minister, is it then tabled in Parliament? Is that what happens?

Dr K.D. HAMES: It is, but it has to be gazetted, so it then becomes public knowledge. Division 4 of part 16 also provides for publication and reporting of an exemption.

Mr R.H. COOK: The minister has provided us with some good answers tonight, and just to provide some form and framework for the debate, I have an amendment to clause 5. I move —

Page 13, lines 4 and 5 — To delete the lines.

This amendment deletes subclause (2), which is the offending subclause that effectively provides the extra get-out for a department. Even in the event that the minister does not provide the exemption, there is no actual mechanism to force the state's hand to rectify what may be a material or serious public health risk. Obviously, that is of concern to the opposition. We are appreciative of the minister providing us with examples of different models and how they would work in other states, but we are more comfortable with the Victorian approach, and we think that is the appropriate way to move forward—that the Crown is bound, and it can be prosecuted but the minister can provide exemptions so that we can manage, as the minister says, the expense and the exposure to that expense that might come the Crown's way in the event of a successful prosecution. This amendment simply deletes those lines, which then puts in place the structure we are more comfortable with, which is the Victorian model.

Amendment put and negatived.

Postponed clause put and passed.

Postponed clause 34: General public health duty —

The clause was postponed on 11 November after it had been partly considered.

Ms J.M. FREEMAN: This clause deals with the general public health duty. I am grateful to the member for Armadale, because I looked at this clause and thought there was something in this clause that I am not particularly comfortable with. We are on clause 34, are we not?

Dr K.D. Hames: Yes, clause 34.

Ms J.M. FREEMAN: My question applies to clause 35. I will sit down now

Ms L.L. BAKER: For the purpose of the record, this clause is to do with general public health, in particular the duty of an individual or a person. I think it would be worthwhile putting in *Hansard* the following points. The clause states in part —

(1) A person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.

(2) In determining what is reasonable and practicable for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to the following —

(a) the potential impact of a failure to comply with the duty;

(b) any environmental, social, economic or practical implications;

(c) any degrees of risk that may be involved;

(d) the nature, extent and duration of any harm;

(e) any matter prescribed by the regulations.

How do we determine that a person will be taken not to be in breach of all that I have just read out, if the person is acting —

(a) in a manner or in circumstances that accord with generally accepted practices taking into account community expectations and prevailing environmental, social and economic practices and standards; or

(b) in circumstances prescribed by the regulations

Clearly paragraph (a) is not referred to in the regulations, otherwise it would be stating the obvious by putting it in (b). Will the minister describe how the agency or agencies responsible for implementing this will decide the relevant circumstances around community expectations, environmental, social economic practices and standards to qualify under subclause (1)?

Dr K.D. HAMES: The explanation I have been given is that it is based on what is best practice for an industry. A good example is what temperature oysters should be stored at. If they are stored at four degrees, they would all die and increase the risk of infection. Oysters have to be stored at six degrees and have water flowing over them to keep them alive. It is determined by whatever is industry best practice. That is the best example I can give. Best practice for a particular industry determines the actions that are required.

Ms L.L. BAKER: If it is an industry standard, I assume there will be a process for making sure that all relevant health issues have a relevant standard developed somehow by the industry. I know this is a difficult question, but if we did not know about oysters and we needed an industry standard developed, how would we contact the industry to get that information?

Dr K.D. HAMES: I gather it is part of the Chief Health Officer guidelines. The Department of Health would research the issue and come back with guidelines for industry.

Dr A.D. BUTI: Clause 34(3) provides that a person will be taken not to be in breach of proposed subsection (1) if they meet the prevailing community standards or the circumstances prescribed by regulation. If the regulations are different from the prevailing standard, would the regulation take precedence? The bill does not say so.

Dr K.D. HAMES: The advice I have is that either may apply. In the example we used of oysters, the temperature should be six degrees. If the regulations say it should be four degrees and a person has them at six degrees and that is the community standard and what is needed to keep them safe, the person cannot be prosecuted. The sensible thing to do, of course, would be to alter the regulations so that the regulations match what is safe in the community.

Dr A.D. BUTI: Thank you, minister. The regulations do not have precedence over community standards and community standards do not have precedence over regulations. How is it adjudicated?

Dr K.D. HAMES: If either paragraph (a) or (b) applies, a person will not be in breach.

Mr B.S. WYATT: Taking reasonable and practical steps is a broader concept than subclause (3)(a) and (b). By that I mean reasonable and practical steps will encompass a broader range of behaviour captured by the duty than it would be in generally accepted practices or prescribed by the regulations. That is what we are trying to do.

Dr K.D. Hames: Yes.

Ms J.M. FREEMAN: What happens if someone wants to use the regulations to ensure that someone cannot argue that there is a prevailing community or environmental expectation but that community expectation or environmental, social and economic practice was averse to public health, for example, an issue around alcohol or other aspects of those sorts of public health areas? Will that not mean that someone could argue that they are not breaching it because there is a broad aspect under which they can argue that it is within community expectation, and therefore there is no breach?

Dr K.D. HAMES: Yes; someone could argue that but, at the end of the day, if it is a prosecutorial issue, one can put up that argument but if it is clearly unsafe for human consumption, it should not be supported and should be prosecuted. Take, for example, our good old oysters and people deciding they should be kept at 10 degrees. That would create a significantly increased risk of poor health outcomes and I would expect them to be prosecuted. If that was industry standards, industry standard would need to change to make it safe.

Ms J.M. FREEMAN: Oysters is a particular area. This could be a good thing. Often at community fairs or big community events in certain suburbs —

Dr K.D. Hames: Community barbecues, for example.

Ms J.M. FREEMAN: For example, the kid who put out the lemonade stand on the side of the road. The community expectation was that the lemonade stand would not pose a public health risk, but the council shut it down because it did not meet the council's prescribed requirement under other aspects of food acts. Will this

provision allow someone to argue against that? The minister used oysters as an example, which is food, so I am wondering whether this clause can give some leeway in practical and commonsense practices to override some zealotry when people sometimes go by the letter of the law. That takes away some of those practices in our community. For example, on Saturdays the Buddhist community tends to sell food from stalls. Quite often those stalls are closed down because they do not fulfil practices that are strictly within the food laws of local councils. It takes the social environment away from the Buddhist temple in Nollamara, which has been happening for the past 15 to 20 years. Everyone consents to it and everyone knows the risks they are taking in doing that or, in this case, selling the lemonade on the side of the road. I am interested to know whether that gives some flexibility.

Dr K.D. HAMES: I have a lot of sympathy for the young lady selling lemonade—in fact, for most of those other things. At lots of community functions I attend there are people cooking up a storm, which I think is fantastic. My advice is that that really comes under the Food Act rather than this bill. The Public Health Bill is more general. We used oysters as an example, but the Food Act more specifically covers those individual events.

Dr A.D. BUTI: I do not want to labour the point, minister, but —

Dr K.D. Hames: Yes, you do.

Dr A.D. BUTI: No, I do not actually want to labour the point. I am a bit uncomfortable that we can have either a regulation or a community standard—one or the other. There could be a regulation, but the community standard may derogate from that regulation. What is the point of regulations if we allow a derogation? The minister might say that allows flexibility and maybe allows different communities to abide by their practices. It seems strange to me to have either community standards or regulations. I do not think it sends a good signal to say there can be one or the other. One could argue that it shows disrespect to regulations if the minister allows derogation from regulations because there is a community standard. I would have thought it is a very strange way to operate.

Dr K.D. HAMES: My advice is that it is different from the previous act. The last clause has been added regarding regulations. The member is right; it is different. It was modelled on the South Australian act, which is the same as this. It will provide more flexibility in the act so that it is not so bound by regulations. I realise that that gives an out in some cases. The regulations need to model what is general practice. As we heard during the previous discussion regarding the Food Act, we can be so bound by regulations that we cannot do anything. There needs to be a bit of flexibility to give understanding and provide alternatives. If someone wants to prosecute someone, they have to be pretty sure they are doing something that is unsafe for public health. That is the key.

Mr B.S. WYATT: Has the definition of "public health duty" been lifted from another state or is this something that has fallen out of court decisions that have defined the duty of public health that applies to governments? I am curious about where "duty" comes from.

Dr K.D. HAMES: It was proposed by a report of the National Public Health Partnership in 2000.

Mr B.S. Wyatt: Not being engaged in the health sector: what is the National Public Health Partnership?

Dr K.D. HAMES: The National Public Health Partnership was a group that provided best practice guidance in public health in Australia. It comprised state government agencies; so clearly state government agencies with public health expertise getting together to provide guidance Australia-wide for best practice in public health.

Mr B.S. Wyatt: Is this duty embedded in the other states that the minister referred to tonight?

Dr K.D. HAMES: As I say, this one is a copy of the South Australian act.

Mr B.S. Wyatt: Okay; I missed that.

Postponed clause put and passed.

Postponed clause 35: Consequences of failure to comply with general public health duty —

The clause was postponed on 11 November after it had been partly considered.

Ms J.M. FREEMAN: Clause 35(1) states —

> A failure to comply with the general public health duty does not …
>
> (a) give rise to any right or remedy; or
>
> (b) constitute an offence.

Subclause (3) states —

> Subsection (1) is subject to any regulation made under section 293(3)(a)(i).

My concern is that subclause (3) could override "constitute an offence" or "give rise to any right or remedy". I thank the member for Armadale for assisting me with this: proposed section 293(3)(a)(i) states that the

regulations could constitute a breach of the general public health duty. The regulations can state only what constitutes a breach of the public health duty. It still cannot give rise to any right or remedy or constitute an offence. I just want to check that the purpose of clause 35(1), which is a failure to comply with that, does not of itself give rise to any right or remedy or constitute an offence. Subclause (3) states that proposed subsection (1) is subject to any of those regulations. Is the breach of the general public health duty simply just to define what the breach might be?

The DEPUTY SPEAKER: Order, members. Member for Mirrabooka, before you proceed I make it clear that clause 35 was amended in the legislation committee. The question we are dealing with relates to clause 35—that the amendment on page 31, lines 3 and 4 deleted, stand as printed. That may assist the member. In the legislation committee, subclause (3) was deleted.

Ms J.M. Freeman: I have an annotated copy. Was the copy subsequent to it? It says it is an amended copy of the bill from the legislation committee. It is in there.

The DEPUTY SPEAKER: Member for Mirrabooka, my understanding is that clause 35 was amended on page 31, lines 3 and 4 deleted.

Ms J.M. Freeman: Yes, and I have the amended copy of the document. The Deputy Speaker needs to go back to the original one. I understand that that was amended with the following amendment but the question is: is this the original or is that?

The DEPUTY SPEAKER: The document I have has been signed as correct.

Ms J.M. Freeman: Why do we not move, for the purposes of being clear in this place—because I am not clear; I have the amended copy of the document—that clause 35(3), lines 3 and 4 be deleted?

The DEPUTY SPEAKER: Thank you, member for Mirrabooka, but that has already been done in the Legislation Committee. There may be an error in the document that the member has, but the document I have here, which is the amended bill from the Legislation Committee, has the annotated deletion in it.

Point of Order

Mr R.H. COOK: The notice paper indicates that we will be amending that clause tonight.

The DEPUTY SPEAKER: I will seek some advice.

Mr R.H. COOK: Although we may have done it already, we might need to do it again.

Dr K.D. Hames: I can do it again; it is not a problem.

The DEPUTY SPEAKER: The clerks at the table have no doubt that the amendment occurred in the Legislative Assembly committee. Therefore we are dealing with clause 35, with the amendment—page 31, lines 3 and 4 deleted. That is what we are dealing with.

Debate Resumed

Dr K.D. HAMES: I would like to talk to the clause. I accept what the member says: clearly the document she has been given contains subclause (3). However, the pre-eminent bill that is before this Parliament is the bill that the Deputy Speaker has, and her copy already has it deleted. I moved in committee to delete it and we agreed to delete it. The document provided to the member does not have it deleted. Clearly, for the record, it was deleted in committee, so we cannot even debate it. I would move again to delete it, except I cannot because it is not in the bill.

Mr B.S. WYATT: My question flows on from the conversation we had previously about clause 5. Subclause 35(1) reads —

> A failure to comply with the general public health duty does not of itself —
>
> (a) give rise to any right or remedy; or
>
> (b) constitute an offence.

Can the minister confirm that this provision effectively removes any common law capacity to seek any remedy against the Crown for failure to comply with the general public health duty?

Dr K.D. HAMES: No, I am advised that is not correct. It does not affect the common law. I will repeat that: it does not affect the common law, so it does not take away anyone's rights to proceed under common law.

Mr B.S. WYATT: I would like a little clarity. Clause 35(1) is fairly clear and is a reference to statutory remedies. When we talked about clause 5, the minister referred me to clause 260-something.

Dr K.D. Hames: It is clause 268.

Mr B.S. WYATT: I might be able to work this out quickly while I am on my feet. Clause 268 states —

> A contravention of this Act is not actionable as a breach of statutory duty.

I get that, but clause 35 states that a failure to comply with the general public health duty does not of itself give rise to any right or remedy. I am concerned that the minister said that it does not affect any common law right; whereas it seems to me that regardless of clause 268, it does eliminate any right, common law or statutory.

Dr K.D. HAMES: Despite these words, I gather that there is a presumption that the bill does not interfere with any common law right unless the bill specifically says so.

Mr B.S. WYATT: This is the last point I want to make. I am pleased by that answer from the minister. Therefore, the advice of the minister to the house tonight is that if we were trying to eliminate common law rights, we would have to say specifically "including common law rights or remedies".

Dr K.D. Hames: For the record, that is correct.

The DEPUTY SPEAKER: Is the member for Mirrabooka satisfied?

Ms J.M. FREEMAN: Yes, I now have the reference.

Postponed clause, as amended, put and passed.

Postponed clause 46: Publication of current local public health plans —

The clause was postponed on 12 November after it had been partly considered.

Ms J.M. FREEMAN: I want to put on notice in this house that the minister pushed off the discussion we had on this clause that if those public health plans refer to any Australian Standards or International Standards, they also be made publicly available. I had intended on moving that amendment in the regulations part of the debate, but I was out of the committee room when that came on for debate. When I returned and asked my colleague how my amendment went, I found that he had missed my amendment. I just want to put on the record that if local government must make its current local public health plan publicly available without charge, it should also make any reference to standards publicly available.

Postponed clause put and passed.

Postponed clause 255 put and passed.

Postponed clause 256: Minister may exempt Crown or Crown authority from certain provisions —

The clause was postponed on 17 November after it had been partly considered.

Mr R.H. COOK: Could the minister provide some information for the chamber? We did not debate division 2 at all because we knew there would be a bit to chew on. The clause states that the minister may, by notice published in the *Government Gazette*, exempt the Crown or a Crown authority from the application of the proposed act. In drafting this clause, was any consideration given to a description of the type of exemptions that may be granted? Obviously, there is a material public risk, a serious public health risk and an emergency public health risk. From that point of view, was any consideration given to the circumstances and types of public health risk for which the minister may be able to create an exemption? For instance, the minister might be able to create an exemption about a serious public health risk that might be a large-scale thing; whereas a material public health risk, of itself, would not necessarily give rise to the creation of an exemption.

Dr K.D. HAMES: It is really covered in subclause (2), which refers to what I can and cannot exempt; in particular the reference to part 10. I will go through them. Part 8 refers to notifiable infectious diseases and related conditions, which I cannot exempt. Others that I cannot exempt are serious public health incidents; public health emergencies; any inquiries; powers of entry, inspection and seizure; liability, evidentiary and procedural matters; and miscellaneous matters. I do not know what "miscellaneous matters" refers to, but the point is that it is material public health risks to which I can give exemptions.

Mr B.S. WYATT: Again I want some confirmation. Subclause (2) states —

> An exemption cannot exempt the Crown or a Crown authority from the application of any of the following —

It lists the exemptions in paragraphs (a) through (g). However, due to clause 5, the Crown cannot be held liable for all those things. Can the minister confirm that?

Dr K.D. HAMES: Yes, that is correct.

Postponed clause put and passed.

Postponed clause 257: Duration of exemption —

The clause was postponed on 17 November after it had been partly considered.

Mr B.S. WYATT: An exemption can be issued for any period of not more than 10 years. Is the period of 10 years lifted from another piece of legislation? Is there any science behind that particular figure?

Dr K.D. HAMES: The member may remember me saying that when the Labor Party was in government in 2008, a proposal was put forward for an alternative version. The 10 years I spoke about was a Colorado clause, which was specific to water supplies. The reality is that 10 years is probably fairly arbitrary in a sense. It just gives what seems to be a time frame to do those things that need to be done and spreads that cost burden over a longer period. I do not think any special thing is attached to 10 years, other than it was used somewhere else.

Mr B.S. WYATT: Clause 257(4) specifically states that an exemption cannot be amended to extend its duration but one can apply for a new exemption. Are we doing that simply to require, at the very least, the minister to obtain the advice from recommendations of the Chief Health Officer before any changes are made? Is that just simply to require that process before there is any change to that exemption?

Dr K.D. HAMES: The advice I am given is that yes, that is the case. I would expect that after 10 years, it would not continue and that period would not have been chosen in the first place. I would certainly want advice from the Chief Health Officer. I can give another exemption beyond that, but clearly I would not want to do that without advice.

Postponed clause put and passed.

Postponed clause 258: Content of exemption —

The clause was postponed on 17 November after it had been partly considered.

Mr B.S. WYATT: Clause 258(2) states —

> An exemption must specify the following —
>
> (a) the exemption-holder;

Then it continues with paragraphs (b), (c), (d) and (e). I am just interested in the exemption holder. Presumably, the exemption holder will be the Department of Health. Can the minister clarify that? Who will be the exemption holder?

Dr K.D. HAMES: It will be whatever agency applied for the exemption. If it was the Department of Housing, for example, it would apply for an exemption. I would grant that exemption to the Department of Housing.

Mr B.S. WYATT: I am just trying to understand this. It relates to the point I was trying to make earlier when I asked what the point of the exemption process was. Ultimately, we cannot force the Crown to do anything anyway under this provision. If the Department of Housing is holding that exemption but the Department of Health or the Department of Local Government does not have that exemption, what rights does the Department of Housing have vis-a-vis other authorities that do not hold that exemption? Does the minister understand what I am saying? Are we creating a process simply to provide a process? Even if an authority is not an exemption holder, it cannot make anything anyway.

Dr K.D. HAMES: Suppose the exemption holder was the Department of Housing again and the issue related to something to do with Aboriginal housing that was across the system and I provided an exemption for that department. That exemption applies only to that department; it would not apply to any other owner of housing or any other government department that holds housing. For example, the Department of Health owns housing. It does not apply to our housing, only to the specific department for which that exemption is granted for the specific period that it is granted and only for the specific item that the exemption is granted for, not for other things that are unrelated.

Postponed clause put and passed.

Postponed clause 259: Effect of exemption —

The clause was postponed on 17 November after it had been partly considered.

Mr R.H. COOK: In effect, this clause provides the legal exemption for an exemption that is provided for a piece of legislation that cannot be used.

Mr B.S. Wyatt: This confirms that if you don't have the exemption, it doesn't matter.

Mr R.H. COOK: I think that is correct. I want the minister to clarify that. What is the effect of clause 259, given that we already have clause 5(2), which has another guarantee, which is part 16? Is this clause simply layering clarification upon clarification upon clarification that this legislation can do nothing?

Dr K.D. HAMES: It is reinforcement and further clarification of clause 5, so it is fairly much as the member just put it.

Postponed clause put and passed.

Postponed clause 260: Minister to consult before amending or revoking exemption —

The clause was postponed on 17 November after it had been partly considered.

Mr B.S. WYATT: I am sure that the minister can point me to the relevant section. Under clause 257, which we just dealt with, subclause (4) states —

> An exemption cannot be amended to extend its duration, but that does not prevent the issue of a new exemption with the same terms or different terms.

Clause 260(1) states —

> Before amending or revoking an exemption, the Minister must —

Presumably, the minister has the capacity to amend an existing exemption on anything other than the duration. Can the minister point to those amending powers? Which section are they in?

Dr K.D. HAMES: There are general powers under the Interpretation Act 1984, which state that if the minister is given the power to do something, he can subsequently undo it. This clause clarifies issues around when the minister can do or undo something with an exemption order as per the act and makes it clear that he has to follow this process. So if the minister decides to undo something, this is the process that has to be followed.

Mr B.S. WYATT: I am surprised that a bill of such weight and detail would rely on the general provisions of the Interpretation Act, particularly when we made the point in the clause that was dealt with that the duration of an exemption cannot be amended. I specifically make that point. A new one has to be issued. We cannot amend it. Clause 260(1) states —

> Before amending or revoking an exemption, the Minister must —

Then it sets out paragraphs (a) and (b). Is there any provision elsewhere in this bill that specifically gives the minister the power to amend an exemption, even though we specifically deny the minister of the day the power to amend the duration of the exemption? At the very least, I am surprised that we simply rely on the Interpretation Act in that respect. Does the minister understand what I am saying? It is not even just about the power. The minister of the day can amend an exemption, except under the provisions of clause 257.

Dr K.D. HAMES: The understanding of my legal consultant is that the provisions of the Interpretation Act are adequate to do that. The Interpretation Act states that I can amend an exemption while this clause states that before amending an exemption, I must do certain things.

Mr B.S. Wyatt: Which section of the Interpretation Act is the minister referring to?

Dr K.D. HAMES: I do not know which section; it is one of the provisions of the Interpretation Act. Surely this clause is pretty clear. It clearly assumes that I can revoke or amend an exemption. It states that before I do that, which I can do, I must do certain things. Let us say that I have given the Department of Health an exemption for a period of time to fix whatever it is. I can give the department notice of my intention to amend it, so perhaps shorten the time, or even revoke the exemption when I find out that it is not as expensive as it was telling me.

Mr B.S. Wyatt: Is there a separate power to revoke?

Dr K.D. HAMES: Again —

Mr B.S. Wyatt: In the bill, I mean.

Dr K.D. HAMES: No. Again, the Interpretation Act states that if I do something, I can undo it. This clause acknowledges the fact that if I am going to undo the exemption, there are some things I have to do beforehand. I cannot just say that I am hereby revoking or amending the exemption; I have to give notice to the exemption holder that that is what I am going to do.

Mr B.S. WYATT: We will get to the Interpretation Act again. Clause 260(2) states —

> This section does not apply in relation to —
>
> (a) any amendment requested by the exemption-holder; or
>
> (b) the revocation of an exemption at the request of the exemption-holder.

I am trying to play this out. If an agency—the Department of Housing—has been given an exemption, and it decides that it wants it to be revoked, there is then the issue of consulting —

Dr K.D. Hames: They had an exemption, and they do not need it anymore because they are happy to get on and do it —

Mr B.S. WYATT: I am trying to work out why we are not applying the exemption. I have worked it out in my own mind, thank you.

Dr K.D. Hames: Good.

Mr R.H. COOK: I am trying to visualise the situation in which the minister has granted an exemption to a department.

Dr K.D. Hames: You are invisualising?

Mr R.H. COOK: I did not say "invisualise". I just said visualise, did I not?

Mr W.R. Marmion interjected.

Mr R.H. COOK: I thank the member for Nedlands for protecting me from that character assassination! Is the minister saying I said "invisualise"?

Mr W.R. Marmion: I have never heard of the word.

Mr R.H. COOK: Neither have I, because there is no such word, so why would I use it?

Dr K.D. Hames: I assume it was my poor hearing that led me to think that.

Mr R.H. COOK: Excellent. We will make sure that is on the record.

I am trying to visualise the circumstances in which the minister would provide an exemption to a department. That would obviously occur when something has been drawn to the minister's attention. Again, we come back to the situation of an Aboriginal community, or it might be a housing advocacy service or something like that. The minister would tap that department on the shoulder and say, "Listen here, you're not doing the right thing by the Public Health Act,", and they say, "Barlee", or, "Tough; what are you going to do about it?", and the minister, being a responsible minister, and not wanting to expose the Crown to too much undue embarrassment, or, indeed, any financial hardship, which we have already established would not occur anyway, would want to keep things neat, so he would provide the department with an exemption. The only relationship that the minister would then have is between him and the department, not the aggrieved party or the people who brought this to his attention in the first place. If the minister was amending or revoking an exemption—this would apply certainly in the case of amending; perhaps not so much in the case of revoking—would there not also be an obligation on the minister to consult with the relevant parties in terms of the exemption that was granted in the first place?

Dr K.D. HAMES: There is no obligation to do that. This is probably a good opportunity for me to think on my feet about what I would do and under what circumstances I would provide an exemption. Having been a Minister for Housing and a Minister for Aboriginal Affairs for a long time, I have been to a lot of Aboriginal communities, and I am sure the member has as well. If I were to get an environmental health officer to come with me to every house in every community in Western Australia, I think I would find breaches all over the place. I remember very well as Minister for Water going to a community—I forget the name of the community, but it was on the outskirts of Kununurra—that had only one water meter for everyone in the community. The Water Corporation was going to shut down the water supply for that community, because some people had not paid their bill. It was a community bill, but quite a lot of those people had moved on and were no longer living in the community, and other people had moved in. We went through some of the houses in the community, and, in one house, the water was constantly running in the sink, so I surreptitiously went over and tried to turn off the water, but I could not, because the tap has been calcified open because of the very high level of calcium in the water. That was just one house. We also found issues with fridge temperatures and with showers not working properly. If we went through a community, we would find a lot of circumstances just like that.

If all the environmental health officers in all the local governments got together and issued notices for all the Aboriginal houses in Western Australia because they did not comply, I think I would have a hard time saying they have to comply with all these things and on we go. I would need to provide some sort of exemption that gave them time to rectify things. In order to do that, we would need to have an assessment of the total cost, and put in place a procedure for how they should do it. As the member knows, the member's government before us tried to do those things. We had the remote area essential services program, which was designed to fix basic infrastructure in communities. Sometimes kids will stuff things down the toilet and suddenly it is blocked and the house is not complying. Many issues can develop in a community, and to try to rectify them all at once would be difficult. By the same token, if I had a notice served on a particular house that did not comply, we would require the department to fix that. It would be only if it was a collective problem that we would consider imposing an exemption.

Mr R.H. COOK: Forgive me, but I am trying to get a better understanding of how an exemption might be couched. For example, the minister might provide an exemption around the calcification of the water equipment and the calcium in the water itself, and the department might say that it also needs an exemption for the pipes that lead to that water equipment, or the minister might want to cover some other aspect and would need to tweak that exemption. Someone might say to the minister, "We reckon that the Department of Water is doing the wrong thing by this community." Therefore, the minister might say to that community, in good faith, that he is going to try to manage the department to correct all those things, and he will provide an exemption for six months to give the department time to fix the pipes.

However, at end of the day, the problem is the calcium in the water, and that will take three years to fix, so the minister provides another exemption for three years. Therefore, that community says, "Great; the health minister is on the job and we have got these exemptions in place." The Department of Water may come back to the minister in six months and say, "It is actually pretty hard. The board has been on leave, or the minister has been asleep at the wheel, and we will not be able to get it done in six months. Can you bump up both those exemptions to three years?" In that instance, the minister will consult with the exemption holder, because he is about to grant an extension of the exemption, but he has not consulted with the people who brought the issue to his attention in the first instance. That seems to me to be distorting the relationships that the Minister for Health would have with those people. Is that how the minister sees it working? Is that the nature of the exemption that would be given, or would it be at a higher level and be a grander gesture that would attract more attention than that?

Dr K.D. HAMES: The member is right; I do not have to consult with the community. However, there is nothing that would prevent me from doing that. If I were to amend an exemption order, I would need to put it in the *Government Gazette*, and in effect that would be a new order, so I would need to consult with the people affected by that. On issues such as that, the Department of Health would work with the community—it always has and it always will, under all governments. The reality is that in a lot of Aboriginal communities, there is a high level of calcium in the water and that causes problems with the calcification of pipes and taps. It is a difficult issue.

Mr B.S. WYATT: I do not want to spend my life on the Interpretation Act, but with a couple of questions I have asked we have used presumptions. The answer the minister gave me on subclause (1) was that there is a presumption under the Interpretation Act that when the minister is given a power, he is also given the power to revoke; that is, the minister is given a power to do something and given a power to revoke. Could the minister direct me to that in the Interpretation Act? Section 51(1) of that act reads —

> Where a written law confers power upon a person to issue, grant, give or renew any licence, registration, lease, right, authority, approval, permit, or exemption, the person so empowered shall have a discretion … to …

We have confirmed that. The minister is also given the power to enforce that power. I refer the minister to the Interpretation Act, which reads —

> **52. Power to appoint includes power to remove, suspend, appoint acting officer etc.**
>
> (1) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position, including an acting appointment, the person having such power or duty shall also have the power —
>
> (a) to remove or suspend …

That is not what we are dealing with here. Can the minister give me some direction about where the Interpretation Act gives that right for the minister to amend the exemption?

Dr K.D. HAMES: My adviser needs time to consider that. Would it be satisfactory if we provided that answer prior to the third reading?

Mr B.S. WYATT: I know that we will not have a third reading, but if the minister could provide that before we finish with the bill.

The DEPUTY SPEAKER: There will be a third reading stage.

Mr B.S. WYATT: I stand corrected—my mistake. I had it confused with the Bell Group legislation that is coming down from the upper house. There is a third reading.

Dr K.D. HAMES: I give an undertaking that during my response to the third reading debate, I will provide an answer. Perhaps we can provide a written response prior to that so that the member can incorporate that into his third reading contribution.

Postponed clause put and passed.

Postponed clause 261: Application of *Interpretation Act 1984* to exemptions —

Mr B.S. WYATT: I will bowl up another question, since we are on the Interpretation Act. Why are we not treating an exemption to subsidiary legislation under the Interpretation Act?

Dr K.D. HAMES: My adviser is saying that the clause makes clear that an exemption is not subsidiary legislation and that the general provisions of the Interpretation Act that apply to subsidiary legislation do not apply to the exemption. I am sorry to have to explain that to the member in that way, but I am not understanding the legal interpretation. It is for good reason that I am a doctor and not a lawyer. My adviser states that that is except for clause 261(2). I wish the member for Victoria Park had been in the Legislation Committee and could have got this information directly.

Mr B.S. WYATT: I was not here in the last two weeks. We are relying on the Interpretation Act to give the minister power to amend the exemption, but we are not treating the exemption as subsidiary legislation. What is the government trying to avoid—I do not mean that in a negative sense—by not having the exemption treated as subsidiary legislation?

Dr K.D. HAMES: It is so that sections such as section 42 of the Interpretation Act do not apply to exemptions.

Mr B.S. WYATT: The minister does not want exemptions to be disallowable instruments. Looking at those nodding heads, I think that is the key point. We are simply trying to ensure that an exemption is a decision made by the executive and does not come to the Parliament for consideration or disallowance.

Dr K.D. HAMES: Yes.

Postponed clause put and passed.

Postponed clause 262: Exemption may require compliance plan —

Mr B.S. WYATT: The clause reads —

> (1) The Minister may attach a condition to an exemption requiring the exemption-holder to develop a compliance plan within a period specified in the exemption.
>
> (2) A compliance plan sets out the steps that the exemption-holder will take, by the time the exemption expires …

This makes sense to me because, at the very least, even though the minister is granting an exemption to an agency, the minister is at least requiring something to happen. Am I reading this correctly?

Dr K.D. Hames: Absolutely.

Mr B.S. WYATT: Can the minister give me some idea of the detail? I understand the politics of the department of the day saying no to the minister, but if the minister requires a compliance plan, will the compliance plan be captured by clause 5, which states, "Nothing in this Act makes the Crown in any capacity liable"? If the minister creates a compliance plan, is he creating a liability, a requirement, a right or a remedy?

Dr K.D. HAMES: This clause provides that a compliance plan is created; in fact, I would require that to be done before giving an exemption.

Postponed clause put and passed.

Postponed clause 263: Development and approval of compliance plan —

The clause was postponed on 17 November after it had been partly considered.

Mr B.S. WYATT: When is the minister likely to be an exemption holder?

Dr K.D. HAMES: That is a good question. It is possible that it could be a section of my own department; for example, if I am Minister for Health and I am responsible for aged care in an area and there is an issue of compliance with water, it is possible that I might give an exemption to another section of the Department of Health. The section under the Chief Health Officer is a separate section responsible for public health and there are other sections in the department, so, in effect, one part of the department might be seeking an exemption. As minister overall, there is a conflict there, but the subclause does apply. I would have to get one part of the department—that is, the Chief Health Officer—to oversee any exemption that I might provide, for example, for WA Country Health Service managing an aged-care facility. Once again, I would have to publish that in the *Government Gazette* so that it would be public knowledge that I had exempted another section of the Department of Health.

Mr B.S. WYATT: I had a very different understanding. I was thinking that an exemption would be given to the agency that would otherwise be liable for non-activity. That is how I understood it. I am mistaken, I think, because the minister's answer was about giving the minister an exemption. Ultimately, it is not so much the

minister as the department that has the liability. The minister is saying that an exemption for the minister is really to handle a conflict scenario, not a liability issue. I am just trying to understand whether I got that right. I am trying to understand what the minister said.

Dr K.D. HAMES: I do not think so. It is all agency driven. The Crown is run by the agency, whether it is the Department of Housing or the Department of Water, so the minister just has supervision of all those things. For those things, I would give those agencies the exemption. The minister is ultimately responsible, but it is the department that has to provide the plan and comply. He would have to go to the minister obviously to get authority for funding in most instances. If, for example, it is aged care managed by the WA Country Health Service, I would give an exemption to the agency, but a separate component of that agency—in this case, the public health component—would be responsible for oversight of that other part of the agency in complying with the exemption, if I had given it. The department would still need to have a plan and it would still have to do all those other things and there would be a time line in which to complete the issues. It would be extremely unlikely. That is just an example. The WA Country Health Service would have to comply with a range of standards for its aged-care accommodation. It is hard to imagine that I would even consider giving an exemption to my own department because noncompliance with any of those standards would result in a significant risk to the public health of the people within that facility.

Postponed clause put and passed.

Postponed clauses 264 to 266 put and passed.

Postponed clause 267: Annual report to include information about exemption and compliance plan —

The clause was postponed on 17 November after it had been partly considered.

Mr B.S. WYATT: I will be brief. Obviously, there are some transparency provisions around the annual report. Subclause (2) states —

> If an exemption-holder does not have an accountable authority that can comply with subsection (1) …

When would that be the case with the health portfolio?

Dr K.D. HAMES: This subclause provides that if someone does not have to report under the Financial Management Act, the Department of Health will still report. That is one provision. The other advice I have is that I can have a requirement for the new health boards that I am creating to report. We talked about how that would affect Health. That might be one example.

Postponed clause put and passed.

Postponed clause 280 put and passed.

Postponed clause 281: Improvement notices may be given to Crown —

The clause was postponed on 17 November.

Mr R.H. COOK: I am curious under what circumstances an improvement notice would be given to the Crown. Would it not just be, by proxy, a flag for an exemption?

Dr K.D. HAMES: No, that is not the case. Generally, in most cases, this would apply to an environmental health officer in the employ of a council. If they found something wrong, they could issue an improvement notice to the department. We have been through this before. As the member knows, the department cannot be given an enforcement order, but it can be given an improvement order. That is all this clause covers. Basically, it provides that improvement notices can be given by an environmental health officer.

Postponed clause put and passed.

Postponed clause 282: Enforcement orders cannot be given to Crown —

The clause was postponed on 17 November.

Mr R.H. COOK: According to the same rationale, why is it not competent for a public health officer to issue an enforcement order to a public agency?

Dr K.D. HAMES: It is because noncompliance constitutes an offence. It provides that an enforcement order is the response to an offence and the Crown is not bound.

Mr R.H. COOK: Obviously, if the Crown were served with an enforcement order, that would bring the issue to the attention of the Minister for Health, who would then arrange an exemption. Would that not just be a logical step in the process for providing exemptions?

Dr K.D. HAMES: The member is right. I am just trying to find out the way that it would come to the attention of the Chief Health Officer. The environmental health officer would issue an improvement notice. If that notice

was not complied with, he would report it to the Chief Health Officer. He cannot issue an enforcement notice, but the Department of Health would immediately be notified that an improvement notice had not been complied with, in which case the Chief Health Officer would talk to the responsible department and tell it that if it was not going to comply with the improvement notice, it would need to seek an exemption from the minister and it would need to proceed with getting an exemption.

Mr R.H. COOK: The minister is saying that if an improvement notice was issued and the department said, "Mate, we've seen the Public Health Act; it's not worth much. We don't want to comply with that", the health officer would say, "All right; I'll give you another improvement notice then. That'll show you." Why could there not be an escalation situation to put that department under pressure? Why would the government not have a provision similar to clause 282, which states that an enforcement order can be given under this proposed act, but is subject to an exemption provided by the minister?

Dr K.D. HAMES: That clause states that an enforcement order cannot be given. Before, the member asked whether a government department that is given an improvement notice and does not comply can be given another improvement notice. That is not the case. The department will be given the first improvement notice, and if it does not comply, the Chief Health Officer will be informed that this department is not complying with an improvement notice. I suspect that that is going to happen a lot. That is what environmental health officers will do. The Chief Health Officer will have a lot of work to do initially, talking to government departments about their compliance with improvement notices, advising them that if they do not wish to comply with the improvement notice, their option is not just to say, "Nick off"; they are required to seek an exemption from the Minister for Health.

Postponed clause put and passed.

Third Reading

DR K.D. HAMES (Dawesville — Minister for Health) [9.12 pm]: I move —

That the bill be now read a third time.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [9.12 pm]: Thank you, Mr Acting Speaker —

Ms J.M. Freeman: "Generally I am wonderful", you should say, member for Kwinana. Could you put on the record that you agreed to a great process in which you achieved many things so that it goes on the record? Generally, you are wonderful, and you should put that on record.

Mr R.H. COOK: I thank the member for Mirrabooka for that very constructive interjection. I hope it was caught by Hansard!

We have come to the end of a journey. As has been pointed out in this place before, the current Health Act was passed in 1911. We have now updated legislation that is well and truly over 100 years old. When the public health lobby first approached me about this, they said, "Can you imagine that we would get to a situation where the current Health Act is over a century old?" We thought it was a ridiculous concept. Time and again I asked the Minister for Health where the new legislation was and when it would be introduced. The minister told me in 2010 that it was coming, he reported to the then member for Alfred Cove at the beginning of 2011 that it was coming, and again at the end of 2011 he said that the legislation was still coming. Then we had the election, and there was still no Public Health Bill. Now it has at last been introduced to this place. There seems to be some conjecture about when this process kicked off. I had a wonderful opportunity to speak with some former public servants who gave me some insight into what they were trying to achieve in the early days of updating this legislation. It is clear that many hands and minds have been applied to the process of updating the legislation.

The opposition is disappointed with the issue of binding the Crown. This was an important aspect of the legislation. In my second reading contribution I talked about an article that quoted Professor Ted Wilkes, who was at that point anticipating the future of the bill, and saying how excited he was because at last he would have a legal remedy to make the state do the correct thing by people affected by government departments and resolve some of these chronic public health issues. There are chronic public health issues. Some communities in the north west and the Kimberley are living in conditions that we would not recognise in the metropolitan area. Children are being struck down with tuberculosis. I understand that in very recent times, people who had sores on their feet and were thought to be diabetic were discovered to actually have contracted leprosy. These diseases should not exist in any community today, and certainly should not exist in a first-world economy and society such as ours, yet they do.

It is important that we have a public health act that can resolve these issues, and bring about changes so that we can protect people. In the consideration in detail stage, we talked about what a public health crisis would look

like and the extent to which this legislation would provide the Minister for Health with the policy instruments he or she needs to reverse such a situation. If leprosy is not a public health crisis, I do not know what is. For that reason, it is important that we have a strong public health act and that the Minister for Health is given every power necessary to deal with these public health issues.

In the process of considering this bill, the minister offered us an opportunity to participate in a legislative process that I understand is called the Legislation Committee, which considered in detail the bulk of this legislation. The legislation is very comprehensive and detailed, and the Legislation Committee gave us an opportunity to discuss in great detail and at great length the different aspects of this bill, without detaining the house from considering other legislation. More importantly the committee provided the opposition with the opportunity to quiz the minister's advisers directly, albeit through the minister, without the minister having to take advice and then repeat it to the house.

We were able to hear directly from the minister's advisers and to that extent, we are extremely indebted to Professor Tarun Weeramanthri, the assistant director general of the Department of Health; Ms Kelly Crossley, principal adviser in environmental health at the Department of Health; Ms Bronwyn Peters, senior solicitor in legal and legislative services at the Department of Health; and Mr Geoff Lawn, parliamentary counsel. They displayed great passion for the legislation and also great patience with the committee members, in particular the member for Mirrabooka and me. We wanted not so much to cross-examine the advisers, but to gain a really good understanding of the legislation. I am greatly appreciative of the member for Mirrabooka and the member for Maylands in working on our side of the committee to provide that examination.

I must say that not a great deal of attention was paid by the government members of the Legislation Committee, although I am sure they were with us in body if they did not necessarily join us in great debate on the committee's considerations. But I think it was a really healthy exercise. As I said, it provided us with an opportunity to speak to the advisers and get a better appreciation for not only the technical merits of the legislation, but also the extent to which I think the advisers thought we were crafting good legislation, not just technically competent legislation. It also freed up the minister, I might say, to have the opportunity to, I guess, step back, although not physically, from the debate and watch it with a fresh set of eyes and provide further cross-examination on the Public Health Bill to make sure that we did our job competently as a committee. From that point of view, I am indebted to the Minister for Health for the attitude he brought to that process. It was done in good faith and allowed us to consider a range of amendments. I am very pleased to say that he accepted some of the amendments we put forward. We believe they strengthen the legislation. It certainly built our confidence in that legislative process. I also thank the clerks who assisted us and the Acting Speakers who sat through those hours while we considered the bill in great detail.

This is something of a melancholy task. I will miss the Health Act 1911. I was looking at it tonight and we will miss section 98, "Punishment for placing sewage in streets etc.", which reads in part —

> Any person spilling, casting, throwing, or otherwise putting down or depositing or causing or allowing to be spilt … sewage into or upon any road, street, tramway, channel or tunnel, footway, lane …

It is great reading and I am almost sorry that it will be struck off the statute book because these things remind us of a time passed. One of my other favourite sections is section 132, "Power to seize and destroy pigs etc. trespassing on rivers etc." I am very pleased that the legislators at the time gave consideration to things such as the frequency with which one cleaned the soil closets and occupying of cellar dwellings and how many goats might be kept in such cellars. It makes great reading and I am sure it will take pride of place in a parliamentary museum somewhere. This new legislation obviously equips us better to deal with the modern challenges of public health, being crafted as legislation that takes us to a risk-management regime and making sure we depend on the public health plans developed by the local government authorities by clearly spelling out the roles of the Chief Health Officer and the environmental health officers.

We had a range of criticisms prior to this legislation. We are very pleased to say that some of our criticisms were taken on board by the government and therefore amendments to the effect of those were accepted. For that reason, we are very, very pleased to support the legislation not only because, as we said before, we would support it, but also with a great deal more enthusiasm now than perhaps we had at the beginning of the process.

In conclusion, I think it was quite a healthy process in parliamentary democracy, certainly in making amendments to the legislation that we feel happy with. I am very pleased to see that after 104 years, we now have new legislation to deal with public health issues in this state.

MS J.M. FREEMAN (Mirrabooka) [9.24 pm]: I, too, rise to speak on this very important Public Health Bill 2014. I have had the privilege of being involved in the process. I must admit that when the proposal was first put to us to use the Legislation Committee process and it was not successful, the member for Kwinana will know

that I was quite disappointed, because I saw it as a great way of ensuring that we delivered to the community legislation that it had been calling for over a long time. I was therefore pleased with my colleagues on this side of the house, when it was agreed that we deal with the consideration in detail stage in the Legislative Assembly committee room as the Legislation Committee to consider the Public Health Bill and the Public Health (Consequential Provisions) Bill. I want to put on record that when we walked into that tiny room, I found it a bit confronting. When we are on a standing committee, we are used to the bigger committee rooms. It is quite interesting to go from this house to the small space between people in which we were a bit irreverent and a bit cheeky, as we can be. Suddenly, we are sitting in front of the advisers directly and we sometimes realise that despite our age, we are probably not as grown up as we should be when considering such weighty and important matters. I was certainly considering weighty and important matters and asking questions. To put it on record, perhaps we might want to think about the physical space. I think the physical space used by the standing committees work a lot better. I have often said that part of the problem in this place is that the large physical space probably feeds some of the aggression or some of the conflict because we are away from each other. When I first went into the committee room, the physical space was a bit confronting and took some settling into. I often find it really funny when I am asked to speak up because I have never considered myself to be a quiet person.

Mr R.H. Cook: You were quiet.

Ms J.M. FREEMAN: Yes, because I am introspective—shy and reserved!

It was an interesting process. The best part of the process for me was being able to have direct discussions with the advisers. Can I say that all the advisers were excellent, so I put on record my appreciation of Professor Weeramanthri and the other advisers.

Dr K.D. Hames: Ms Crossley, Ms Peters and Mr Lawn.

Ms J.M. FREEMAN: Yes.

Dr K.D. Hames: Today we had Jim.

Ms J.M. FREEMAN: We thank Jim, the adviser, for being here with us today to help us out. I have to say that by the end of the committee process, I felt that it had been quite an enlightening experience. I would like to put on record some of the comments made by Professor Weeramanthri. They are on record in *Hansard*. When we started talking about wellbeing, he indicated that in the context of this bill wellbeing encompassed mental as well as physical health and the aspects of the principles broadly written. He indicated that the Public Health Bill before us is a proactive approach to health and moves away from the reactive approach to health, and it is about improving the health of the average population. Professor Weeramanthri stated very clearly that it is about caring for those disadvantaged groups that are missing out on mainstream improvements. It is about everyone's health, but it also has the particular objective of catering for those disadvantaged groups. Clause 3(1)(i) is particularly important to include as part of the objectives because it specifically refers to disadvantaged groups. We discussed issues about the Crown because often issues around those disadvantaged groups are at the power of the government to address. I understand why the minister wants exemptions, but to provide it without the force of being bound was an opportunity missed. If there was no exemption or it did not comply with the exemption, there should a penalty or an implication for that. An opportunity was missed to put some solid consequence behind this bill to deliver to the whole community.

I put on record that I do not think this bill is just about physical inequality. It is also about substantive inequality, which goes to issues as broad as the economic and social impacts of health based on World Health Organization principles about health inequities. The social and economic impacts on health really need to be considered as part of this bill.

There was a bit of discussion about cost effectiveness versus cost benefit. Despite the member for Kwinana's example that it would be more cost effective for people to pass from this mortal coil a bit sooner if they are sick, rather than needing to frame cost effectiveness in this bill, it is more cost effective to prevent disease in the first place. It is cost effective to have a proactive approach to promote health, prevent disease and manage risk. Government should remember that when it is looking at its budget bottom line. There is a long-term consequence if we do not fund public health in the best way we possibly can to ensure that money is spent on prevention.

I will talk about the important role that local government will play. This bill shifts a lot of responsibility onto local government in the form of local government health plans. It is very important that we consider the role local government will play in the health plans. I commend the councils that have already done those health plans for their good work. I look forward to the other local governments setting health plans. Members of Parliament are sometimes asked some curly questions about how to deal with the consequences of health and wellbeing in the community. To be able to look at a local government public health plan and work with it to deliver to the constituents we represent will be of great benefit to us all.

The process was an exceptional one. It meant that important opposition amendments were accepted, particularly the amendment around health policy. I commend the Minister for Health for spending the time to put in a health policy position that was agreeable to the opposition. Health policies as a whole will be of benefit to the community. I understand that they are not mandatory; they are more about setting high principles. Those mandatory things will be in guidelines and regulations. Policy is a powerful tool to frame for both the government and the Chief Health Officer and the people who work in his area. I understand now that the real work begins in making the regulations. I commend the good work that the department will do in those regulations.

I thought I had a marked-up copy of the bill but I did not actually have one. The changes substantially changed the format of the bill, so cross-referencing was affected. We were enormously impressed at how well this bill had been drafted. When we said that we were concerned, for example, about a public health setting involving a request being made of someone in an emergency removing certain items of clothing, reference was made shortly after to that being done with appropriate cultural and gender sensitivities. We were incredibly impressed by the capacity of these people who had worked on the bill for such a long period. We also need to take the next step in the process—that is, to ensure that making amendments in this house does not throw out the numbering, processes and functions in the whole bill. I understood that this bill will still keep its formatting. I often think that sometimes advisers are reluctant to consider amendments because of the implications it will have in terms of cross-referencing and the hard work that they have put in to format it.

From the point of view of opening up more discussion about possible cross-party amendments that we can reach agreement on, it would be a really effective tool if we found some way in this place to not suddenly send the bill off for redrafting as that affects the cross-referencing. It makes it much more complex for advisers in the redrafting process. I understood that would also be a possibility with this bill, but that has not come to fruition. I appeal to the good sense of the Leader of the House for a mechanism so that when we raise an issue in this house around an amendment or an inclusion, we know whether it is not being considered simply because of the inconvenience it will cause to the format and layout of the bill. If we raise something in this house that is reasonable, considered and appropriate, we want to know that the advisers and the minister will consider it on its merit, not on the basis of what effect it will have on the physical structure of the bill. That would complete what I think has been a really positive process. We have taken away a complex piece of legislation and been able to understand it and drill down into some of those aspects. We have been able to agree on very good changes that enhance the bill and will make it operate better. It would also enhance it not to have it bogged down in a procedural process that delays it from getting to the other house and delays it from being enacted.

I thank the house for what was a very enjoyable process and procedure. I particularly thank the advisers for their tolerance of my questioning. The minister is never tolerant of my questioning, so I will not thank him for that! I thank the advisers for their tolerance, for their good advice and for the enormous knowledge that they shared with us in the legislation committee that we were privileged to be a part of.

DR K.D. HAMES (Dawesville — Minister for Health) [9.39 pm] — in reply: I thank members for their contribution, particularly the members of the advisory team, who I said were free to leave but are still in the back of the chamber listening to the conclusion of this debate. I, too, thank them for the great assistance they were able to provide. Members would have noted during the committee part of the debate that it was extremely difficult for me in the areas of law that I did not understand. To be able to relay the advice of my advisers was one of the great strengths of having the committee. It was the first time for a considerable period since the process had been done through the Legislation Committee—I think since 2004—and it went very smoothly. It was a great way of dealing with detailed legislation, as it gave members, particularly opposition members, a chance to ask detailed questions. The member for Mirrabooka is right in that I did get a little frustrated with her questions. But on reflection I have no criticism because, although her questions were forensic, she clearly has a detailed knowledge of that sort of issue relating to the law—probably from her past experience. She was doing no more than her job in making sure that the legislation was as it should be. As I said, it was a great opportunity to have those advisers there who were able to give her detailed explanations to all the questions she asked that I would have had absolutely no hope of answering if we had been in this chamber.

The shadow minister said that the Health Act goes back to 1911. I had a few favourites myself of some of the contents of the current act. Members talked about the removal of nightsoil. I referred in my second reading speech to provisions such as the treatment and custody of lepers; the regulation of offensive trades such as bone mills, knackeries, gut scraping and blood-drying establishments; the requirement of the keeper of lodging houses to report deaths to the nearest coroner; and to protect water holes from trespassing pigs, dogs, ducks and geese.

Ms J.M. Freeman: We should need that for the FIFO report!

Dr K.D. HAMES: I am sure that many other things could foul water holes, but an incredible array of things are in the act. In some ways it is sad to see them go, but it is amazing that it took so long. Although I have had

responsibility for seven years as Minister for Health and at least the previous Minister for Health initiated this process, we must wonder why it took so long after 2011 —

Mr R.H. Cook: There were two health ministers. There was Bob Kucera as well.

Dr K.D. HAMES: Did he start it before?

Mr R.H. Cook: That is my understanding, yes.

Dr K.D. HAMES: All right. We have been told it took 10 years, which dates it to Jim McGinty, as I have been minister for seven years and he was minister for five years. That means it is considerably longer than 10 years if that is the case. However, it has taken an enormously long time. I have a list of states that contains the date of their most recent public health bill. The two oldest are Tasmania and the Australian Capital Territory at 1997. I would have thought that 18 years was a pretty long time, but here we are in this state at more than 100 years since our last public health bill.

I thank the opposition too for agreeing to refer the bill to the Legislation Committee. Initially the answer from the opposition was no, but it became clear, given the other legislation that was before the house, that the time it was going to take to go through such a detailed bill was well in excess of the time available for us to finish the bill in this house before the end of the sitting in this calendar year. Dealing with it in the committee, therefore, gave us the opportunity to do those things and get it into this house, and as part of that we agreed to bring the more controversial issues back to the house, the chief of which was the provision on binding the Crown. I have to say that, as members know, I was none too happy with our removing the requirement to bind the Crown, but I also have to say that I do not feel as bad anymore now that I look at what other states have done. An example was given that every other state binds the Crown, and when I read through their bills I found that they do not really do that. Every one of them, across all the states, had either exemptions or some "out" that prevents the Crown from being bound.

Mr R.H. Cook: If I may by interjection, it seems that our 2015 legislation mirrors more the 1990s state legislation rather than the more recent ones in terms of structure.

Dr K.D. HAMES: Yes, that may be the case. Although the New South Wales act of 2010 binds the Crown, the Crown cannot be prosecuted; and the Crown can give improvements and is protected from civil liability. It is therefore variable across states. As I said, every state and territory has some different combination of those things on what can and should be done.

I will not delay the house any longer. It is a great moment for me and, I believe, for this house to get a bill through Parliament to replace an act that has been in place for such a long time. This is progressive legislation that will create a modern framework and provide opportunities for management of the health system far beyond that which is available in the current act. The bill will provide for a proactive way of dealing with public health issues. I believe the bill will stand the test of time for many years to come and I commend it to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.