

WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 14: Term of office —

Debate was interrupted after the clause had been partly considered.

Mr R.H. COOK: Before the interruption we were talking about the appropriateness of members being limited to a term of nine years on the board.

Point of Order

Dr K.D. HAMES: Can I clarify who was the last speaker on this clause, or maybe it does not matter that the member has just spoken and is he allowed to continue?

The ACTING SPEAKER (Ms L.L. Baker): I have been told by the Clerk that it does not matter.

Debate Resumed

Mr R.H. COOK: As I said before the interruption, we were discussing the appropriateness of clause 14(2) —

A member is eligible for reappointment but cannot hold office for more than 9 years, consecutively or otherwise.

As the minister pointed out to the chamber, this is a new clause that was not previously included in the Tobacco Products Control Act. Although the minister is keen to point out that we have nothing to worry about in this bill because it is simply replicating what has gone on in the act that it is replacing, he now informs the chamber that unlike the good, old-fashioned saying “if it ain’t broke, don’t fix it” he has snuck this clause into the bill. The minister has relied relentlessly on his relationship with the former chair of Healthway, Dr Rosanna Capolingua, and his alleged discussions with the doctor about his intentions in this bill. The minister has spoken in broad terms about the reconfiguration of the board and, as I pointed out prior to the break, one of the unique features of the Healthway board is not only the longevity of board members, but also the corporate knowledge and strategic direction of the organisation over many years. It begs the question: why would the minister limit the time a member can be on the board of the new entity? The minister confessed that he had not discussed this aspect of it. It is concerning that the minister should want to include this new clause, which he says is administrative but which is an important aspect of the bill.

In particular, I appreciate it might be the case on other boards that are simply regulating an industry or dealing with issues that come up from time to time and are presented to a board, but this is a unique board and one that has to pursue strategies over a long time. We know that the minister’s friends in big alcohol have got very long memories and they partake in very long-term strategies. From that perspective, they lie in wait for the moment when a public health advocate is at their weakest so they can leap in and take back what was once theirs, which is unfettered access to promoting their products. Thanks to the long-term efforts of Healthway, we have slowly pushed back against the tide of alcohol, the proliferation of junk food advertising and the very poisonous aspects of the tobacco industry. Now, the minister is trying to shackle and to nobble public health advocates by limiting the time that they can be on the board. There is no time limit on the board members of Carlton and United Breweries, who are happy to plug away to make sure that they can take their opportunities when they present.

Mr D.A. TEMPLEMAN: I am very interested in the further development of the conversation of the member for Kwinana.

Dr K.D. Hames: You realise, of course, there is nothing that limits their access now. If they put up sponsorship dollars, it is up to the organisation they put that sponsorship to; it is not this legislation that limits their funding in any way, other than they are in competition with Healthway. That is the only limiting factor as to what they choose to accept.

Mr R.H. COOK: The point I was making was that the long-term work of Healthway, plugging away at trying to turn back the tide of dollars from big alcohol, junk food and previously big tobacco companies, is the long-term, concerted campaign and work that Healthway did, which was to squeeze out those big alcohol and junk food dollars from sporting and cultural activities. Healthway has limited the impact of what are some very unhealthy practices. The minister is wrong when he says that there is nothing to stop big tobacco, big alcohol and junk food promoters now; he is dead wrong—it is Healthway and the stoic and brave efforts of board members to push them back. All that big alcohol is waiting for is an opportunity, which was presented to them by the Premier and his spin doctors, to undermine Healthway. They created that little crack so that the minister could bring in his damaging legislation. Another aspect of the damage that this minister is doing is the nine years’ limitation he proposes for service on the board. By the way, the minister never consulted stakeholders about that limitation of nine years. That limitation will be warmly received by big alcohol and those executives who have been waiting

for their opportunity. They must be loving this debate and the minister's efforts. They have been waiting for this opportunity for many years, and this minister is about to hand it to them. One of the ways he will hand it to them is by putting a limit on the long-term efforts of board members. This is a regrettable subclause. The minister might use the defence that this is only an administrative aspect of the legislation, but it will have a clear, long-term, damaging impact upon the work of the people of the new entity that is Healthway.

Clause put and passed.

Clause 15: Casual vacancies —

Mr R.H. COOK: One of the concerns of the opposition is the independence of the board from political interference from the government. Clause 15 relates to casual vacancies of members on the board; in particular, the capacity of the minister to remove a member from office. I would like the minister to specifically address subclause (4) and describe the grounds upon which a minister may remove a member from the board.

Dr K.D. HAMES: I am interested in the comments of the shadow minister and wonder whether he would care to expand on them.

Mr R.H. COOK: In particular, of course, I am interested in the definition of "neglect of duty". We have seen some members of the Healthway board bravely going about their duties and we have seen the rich reward they have received for carrying out that duty—that is, to be sacked from the board after the hysterical campaign whipped up by the Premier's office. They were not only sacked but also harassed internationally by the minister, who used his leverage on that particular board member, who was also a public servant. In that case, we saw the government engage in some very regrettable practices to hound people off the board of Healthway. It is not surprising that we are very keen to understand the scope and definition of things such as "neglect of duty", "misconduct" and "incapacity". "Absence, without leave" is self-explanatory, but we are acutely concerned about those other terms and seek to gain an understanding of them.

Dr K.D. HAMES: I want to clarify some of the changes provided for in this clause. Largely, this clause keeps intact the provisions of the original section, but I am advised that parliamentary counsel has updated the language in this provision to reflect modern drafting practices and has removed a provision that is no longer required. The changes in this clause include things that have been added, such as if a member dies—clearly, that is not unreasonable—which was not in the original legislation, or if a member is convicted of an offence punishable by imprisonment for more than 12 months. It is standard drafting practice to include those things. The clause that is being removed is that which provides for when a member becomes ineligible to hold office because they no longer represent the body that nominated the member. Bodies will not be nominating members anymore so that provision will be redundant. Grounds that have been added are "neglect of duty", which is a new condition, and "misbehaviour" has been changed to "misconduct". I am advised that the reason for that is the term "misconduct" is sufficiently broad to include misbehaviour and the word "misconduct" is used in other more modern board provisions. The changes are consistent with the routine updating of language undertaken by parliamentary counsel.

Mr C.J. TALLENTIRE: I am intrigued by the changes to this clause. I am concerned, given the history—in fact, recent events—that members of the Healthway board, in particular the chair, were pressured into resigning. I think that the term "misconduct" needs clarification. As things stand at the moment, somebody might be brave or courageous enough to put their name forward, agree to the position, but it appears we are creating terms that will enable them to be pressured away from that position should their advice to the minister and should their views about health advocacy be such that they conflict with the views of the minister or the Premier of the day. That does not sound like a good basis upon which to appoint people to an important board. We need to have people appointed and given some degree of security of tenure so that they can be frank and fearless with their advice and so that they can look towards the latest in public health advocacy. I think that at the moment we are introducing terminology that will mean that if there is some sort of disagreement, or if there is a minor falling out between the minister and the chair or members of the Healthway board, the minister will be able to replace them on the grounds that they have not conducted themselves well. That is what happened during the recent events at Healthway. That was a disgrace. We have discussed that at some length, but we should not forget it when we consider the terminologies involved here.

The pressure put on Dr Capolingua was disgraceful. There is no way she should have been forced to resign. What happened to her was a serious backward step for good public health advocacy in Western Australia. It is an absolute disgrace, and we should make sure that in this case the bill contains terms that not only enable the minister to remove someone should there be a case of genuine misconduct, but also protects them if something that is really just a disagreement occurs. If a view exists that perhaps the administration of the organisation is in need of further work, the chair should be able to make the necessary referrals to the Public Sector Commissioner without intrusion from the political class. The chair should be allowed to conduct their public health advocacy genuinely and unfettered. I am very concerned about the use of the term "misconduct" and the even vaguer term

“incompetence”. It would be totally unfair to describe what went on at Healthway as incompetence. It absolutely was not incompetence. There was great competence on the board. When the board spotted a problem, it knew there was a problem and it was on to it, and it would refer the matter to the Public Sector Commissioner. Questions could be asked about how effective the Public Sector Commissioner was, because Professor Rob Donovan has presented a massive report critiquing the Public Sector Commissioner. I am sure the Minister for Health is across that matter, because there is a whole lot of detail in that about how the Public Sector Commissioner had overlooked and misunderstood a whole lot of issues.

But when it came to the problems at Healthway, they were onto it, yet what happened? The Premier leant on the chair of Healthway to resign. We subsequently saw the resignation or dismissal—the minister can clarify that for me—of the whole of the Healthway board. We need terms that not only solve the problem of a serious case of misconduct, but also protect members of the board.

Dr K.D. HAMES: None of those board members was removed; they all resigned. I point out again that this Western Australian Health Promotion Foundation Bill is a recommendation for changes drafted by parliamentary counsel with no influence or input by government for the changes. They are consistent with other legislation containing those terms. The reality is that if the government had wanted to sack the board members, whether the term used was “misconduct” or “misbehaviour” is irrelevant. In fact, we would not have used either of those terms to sack those board members because I do not think those terms represent any of the board’s actions. The commissioner’s finding was that the board did not know about the significant issues to do with the use of tickets, when the board should have known. That was his finding—simple and clear.

As I have stated before, the chair’s actions in particular were blown completely out of proportion by the media, hence the subsequent court case and media apology, but that is not relevant to this clause. These are standard provisions recommended to the government by parliamentary counsel.

Mr C.J. TALLENTIRE: The minister said the Public Sector Commissioner’s finding was that there was inappropriate behaviour with the handing out of tickets and with hospitality arrangements.

Dr K.D. Hames: I can’t remember that far back. You’ll need to read the report yourself.

Mr C.J. TALLENTIRE: The minister is saying that the Public Sector Commissioner had the grand revelation, when, in fact, plenty of evidence shows that the chair of Healthway knew it. I keep saying that the chair of —

Dr K.D. Hames: I didn’t say that was not true. I said what the finding of the Public Sector Commissioner was.

Mr C.J. TALLENTIRE: The minister cannot have both.

Dr K.D. Hames: As I said before, she was the one who referred the matter to the commissioner. That is why the commissioner investigated it. I haven’t countermanded that statement.

Mr C.J. TALLENTIRE: Exactly, Minister for Health. That demonstrates that Dr Capolingua was onto it. She knew there was a problem and she referred it to the Public Sector Commissioner, seeking the commissioner’s assistance in resolving the problem.

Dr K.D. Hames: I agree.

Mr C.J. TALLENTIRE: We cannot get better than that. The chair knew there was a problem; she had identified the problem and went to the highest public sector advisory body in the state, the Public Sector Commissioner. The board got that advice and was ready to act on it. The minister cannot then turn around and say that the board should be removed or they will be asked to resign because they have not done their job properly. He cannot pretend that is a legitimate way to argue, because they were onto it. It is totally unreasonable. That is why board members need protection. There is no question that those board members were asked to resign under duress. Pressure was applied. I would like to know what term under clause 15(4) the Healthway chair and board members were threatened with should they refuse to resign.

The ACTING SPEAKER (Ms J.M. Freeman): Members, the question is asked by the member on his feet and you stand to answer. That is the way we will roll because that is the way we should roll. Member, continue your remarks, ask your question, and the minister can stand and answer it.

Mr C.J. TALLENTIRE: Thank you, Madam Acting Speaker, for that guidance.

It is clear that the chair of Healthway and the Healthway board were asked to resign. The pressure on them was the threat that if they did not resign, they would be dismissed. I am asking which of these grounds would have been used had they refused to resign.

Mr R.H. COOK: If the minister said that the Public Sector Commissioner had said that the board was negligent in its duty, to paraphrase the minister, and that is why the board members should resign, can the minister point us to the finding that he believes makes that assertion?

Dr K.D. HAMES: I said that I did not remember the exact words of the findings but I have them here. I am happy to table the findings so the member can read them for himself.

[See paper 3222.]

Mr R.H. COOK: I thank the minister for making that available, although, of course, we all have a copy of the Public Sector Commissioner's report, and I have it in front of me. At no point does the commissioner say that the board members should resign because they did not understand what was going on with the ticketing.

Dr K.D. Hames: I didn't say that.

Mr R.H. COOK: What is the minister alleging?

Dr K.D. Hames: I am not alleging anything.

The ACTING SPEAKER: You can ask a question and sit down and the minister can stand to answer.

Mr R.H. COOK: My question to the minister is: does the minister believe that the Public Sector Commissioner's findings constitute part of the definition of neglect of duty, misconduct or incompetence?

Dr K.D. HAMES: As I have said, none of those members on the board were dismissed. There was no intention by government to dismiss them, so none of the clauses we are discussing here today—we seem to be moving onto other pathways rather than the clause before the house—are relevant to what happened to the board.

Mr R.H. COOK: I beg to differ from the minister that we are straying from the subject of this clause. This is absolutely germane to this clause because we know in the hysteria whipped up by the Premier's spin doctors to harass the current board members from their office, including pursuing them across the globe, that part of that was the Premier calling on them to resign. He said that they should resign, which he stated both implicitly and explicitly, because of the imbroglio his office had cooked up with the help of the Minister for Health, no doubt. Clearly, they formed a view that the board members should avail themselves of clause 15(3), "A member may at any time resign from office by written notice", or that subclause (4) would come into play, under which the board would be dismissed. There can be no other interpretation of what the Premier was calling for at that time. What he described as grossly excessive mismanagement or, essentially, misconduct of the organisation, required the board members to resign. In the context of that are the implicit—I might say by virtue of the Premier's comments, I think, fairly explicit—grounds for them to be sacked. The minister is now asking us to set the framework for how the government would go about sacking board members in the future. From that point of view, I am very keen to understand exactly what the minister would regard as grounds for dismissal. On what grounds would he utilise this clause?

We have seen before what happens when Healthway displeases the Premier of this state. On the one hand, we saw Carlton and United Breweries write to the Premier in October 2014 saying what it would like to see happen with Healthway. We saw the Premier's office whipped into an almost maniacal and insane frenzy around what we now know is small beer when it comes to hospitality ticket management. We now see this new legislation come forward, which describes what the Premier perhaps would have wanted to happen with Healthway prior to this whole issue happening, and that is, "How can I get rid of Healthway? If it displeases me, and if it displeases my friends at big alcohol, how can I get rid of it?" This is the mechanism that the Premier would have wanted to use to do that. Therefore, it is absolutely pertinent to and appropriate in this debate that the minister provide us with a definition around "neglect of duty" and "misconduct or incompetence".

Mr C.J. TALLENTIRE: I am disturbed that on this issue—which, yes, is the controversial point around the whole demise of Healthway—the Minister for Health remains seated and remains silent.

Dr K.D. Hames: That's because I've answered those things. You keep saying the same things over and again. I've given the answer.

The DEPUTY SPEAKER: Thank you, minister. Member for Gosnells, direct your question to clause 15.

Mr R.H. Cook interjected.

The DEPUTY SPEAKER: Member for Kwinana! I have already asked the minister as well, and both of you will be called if you continue to do so.

Mr C.J. TALLENTIRE: I was expressing some dismay at the failure of the minister to rise and respond directly to these issues. He claims he has answered these questions before. I do not think we have had a satisfactory answer. The evidence is there that the Healthway board and the Healthway chair were pressured into resigning. That is a matter of public record now. We have not had a defence. We got some very strange suggestion that they just spontaneously resigned—they voluntarily resigned. I do not think that is the case. Some sort of gun was put to their heads. Some sort of suggestion was put to them that, "If you don't resign, we will sack you."

The DEPUTY SPEAKER: Member for Gosnells, I would like you to direct your question to clause 15.

Mr C.J. TALLENTIRE: Looking at clause 15, I am asking the question: which of the four elements in clause 15(4) would have been used to apply that pressure? I need to know that, because then we can look at how we resolve it and perhaps move to clarify the terminology. If the suggestion is that somehow the Healthway board members were engaged in misconduct, we need to understand what the government understands by the term “misconduct”. Was it misconduct to refer something to the Public Sector Commissioner when a problem was identified with the ticketing arrangements, or was that actually incompetence? What was it? There is my question, minister; can you please answer it?

Dr K.D. HAMES: I will give the member the same answer I gave him before, so he should listen to the answer this time. The answer is: none. That is the answer I gave the member last time, and that remains the answer. This clause has nothing to do with the fact that those members resigned. This clause was not intended to be used to dismiss those members. These are changes not instigated by government but put in place by parliamentary counsel, because they reflect other legislation that is exactly the same. I know the member is trying to make an issue of it, and I understand that. But he has made it. Making it over and over again because I do not stand up and answer it the second or third or fourth time does not change the fact that the member has had the opportunity to make his point. He has made it. Please, let us just move on.

Mr C.J. TALLENTIRE: The minister is not answering the question. The explanation has not been given as to why these members, including the chair, resigned.

Dr K.D. HAMES: That has nothing to do with this clause.

Mr C.J. TALLENTIRE: They resigned. We understand that they resigned. Pressure was applied to them.

Dr K.D. HAMES: Show the evidence.

Mr C.J. TALLENTIRE: Is the minister saying that they just resigned because they had had enough?

Dr K.D. HAMES: The Premier, on television I think, expressed the view that because of the findings of the Public Sector Commissioner, they should resign. They subsequently resigned.

Mr C.J. TALLENTIRE: I thank the minister for that. So, they resigned because some pressure was applied. The minister is suggesting that because of the findings of the Public Sector Commissioner’s report, as flawed as that is—we only have to look at the analysis by Professor Donovan to see that—some pressure was applied, and they resigned, and the Public Sector Commissioner’s report was the documentation of whatever their failings were. So, my question to the minister remains: Was that failing a matter of misconduct in the minister’s eyes or was it a matter of incompetence in the minister’s eyes? Which one was it?

Dr K.D. HAMES: I am not going to go into the findings of the commission. As I say, these provisions were not intended to be used. This clause is about definition. We can argue all we like about why those members resigned and what led to it. In my view, it was the comments by the Premier on television that suggested that they should do so.

Mr R.H. Cook: Did you tell him to say that?

Dr K.D. HAMES: No; I did not tell him to say that. I have responsibility for Healthway. The Premier has responsibility for the Public Sector Commission and Public Sector Commission reports, and all government agencies sit under that responsibility.

Ms J.M. FREEMAN: I understand that the minister is saying that this clause around casual vacancies, and in particular subclause (4), has been put in the bill on the basis of what is contained in other legislation. The Western Australian Health Promotion Foundation will be a body corporate, and I talked last night about how it will operate as a body corporate. The member for Armadale may be able to assist me somewhat in terms of how that will work. I note that the Associations Incorporation Act, which is the most contemporary way of looking at how the members of boards that run organisations should operate, deals in a different way with the duties of members, because it refers to duty of care and diligence. It takes a much more positive view about how they should operate. This clause takes a much more punitive view, because it provides that the members of this body corporate will have to perform all these duties, and, if they do not perform these duties, action can be taken against them in other ways. It states that the Minister “may” remove a member from office—it is not even “shall” remove a member from office—on the grounds of neglect of duty, misconduct or incompetence, or mental or physical incapacity. However, there is no definition of what that means. There is also no capacity to parallel that with what is contained in the Associations Incorporation Act. The Associations Incorporation Act has been taken from a body of well-defined law about the duties and processes for members of boards that operate organisations. My question to the minister is: how have we got before Parliament this contemporary piece of legislation that looks at the roles and responsibilities of board members in a manner that has a body of

law around it, yet we end up with something that is simply about punitive aspects that lack definition of what those areas really mean? How is the minister going to be guided about neglect of duty, misconduct and incompetence?

Dr K.D. HAMES: I point out that there is a definition of “misconduct” in the bill. The definition is in clause 15(1). The points the member makes about corporate legislation have some sensibility for me listening as a layperson. One would assume that parliamentary counsel would be aware of those things in drafting legislation and would take them into account. All I can do is to repeat what I said before—I am not sure whether the member was here when I said it. Parliamentary counsel has updated the language in this provision to reflect modern drafting practices. That is what they said to me. Remember, the majority of those things have been there since 1989. Parliamentary counsel has said that they have modernised it. That suggests that it is in other government legislation that has presumably passed through this house at previous times.

Mr W.J. Johnston: When?

Dr K.D. HAMES: I do not know; I said that I presume. Whatever, I am advised by parliamentary counsel that that is modern drafting, and that is what I have got to work with. I am not about to change, as the bill goes through Parliament, what are considered to be the standards for casual vacancies and to significantly vary them from what was there before, other than through the variations that are provided to me under advice by parliamentary counsel. I think that is a reasonable attitude for me to take.

Ms J.M. FREEMAN: I apologise; I did not see the definition of “misconduct”, but I do not know whether that helps me much in terms of its broad application. I take on board what the minister has said, which is that he is guided by parliamentary counsel, but the minister has brought this bill to the house. One assumes that in bringing it to the house he has had good advisers to help him, and that those good advisers would know that the most contemporary piece of legislation that is available at this time to the house—the minister saw that legislation go through this house—is the Associations Incorporation Bill, which will bring into play a whole set of duties for officers around duty of care, diligence and a number of other things that are a part of corporations law. What we have is this aspect of, “I’m going to determine, through a minister, how a board will operate.” I cannot resolve this conflict. The bill is setting up an organisation as a body corporate, and it will have all the responsibilities of a body corporate. I understand that, by virtue of it being a corporate body, it will have implied responsibilities based around corporations law and those aspects of operation. The board is going to run this body corporate. Despite the fact that it will not be able to employ the person who will direct it—that will be the minister’s job—it will be given all these responsibilities and will have to act in a certain way. However, under the Associations Incorporation Bill, the minister can remove members of the board from office at any time on grounds, which are not necessarily reflective of what we have just introduced into this Parliament, in. I will put that aside, because clearly the minister is going to stand up and say, “I got it from parliamentary counsel and, barleese, I don’t know”. The other house might want to investigate that inconsistency; it often has the capacity to do those things. Perhaps the minister should discuss with his parliamentary colleagues in the other house whether that is a pertinent thing to do, given the responsibilities that are being given to this organisation as a body corporate.

My next question goes on from that. The definition of “misconduct” in the bill simply states that it is conduct that renders the member unfit to hold office; it does not actually give a definition of what that misconduct may be. It will also be a discretionary decision of the minister to remove a member from office on the grounds of neglect of duty, misconduct or incompetence, or even absence without leave from three consecutive meetings of the foundation. How does a member whom the minister determines he is going to remove because their conduct falls within those areas appeal that decision? Do they have appeal rights? Given that they are sitting on a body corporate, can they go to the State Administrative Tribunal? If they were sitting on a board that comes under the Associations Incorporation Bill, they would have rights of appeal to the Supreme Court. Given that the minister will have this discretionary capacity, where will that appeal right come from? How will they appeal what is almost a base government decision? The minister may say that he did not force the resignation of a person or that a person resigned instead of him removing them, but at some stage the minister will be able to remove someone under this provision. The question then has to be: how do people get procedural justice around that if they are not going to buckle to the political bullying of the Premier of this state?

Dr K.D. HAMES: I will not go through the first part of the member’s comments because we have been through that already. The second question concerned whether they have appeal rights. The legal advice I am getting is that people can go to court. There is nothing in the legislation that states that, but they have a common law right to appeal something.

Ms J.M. Freeman: To the Supreme Court?

Dr K.D. HAMES: Yes, to the Supreme Court. Although it will operate as a body corporate, nevertheless, this is a committee that will be appointed by government for government to do government work, the same as hundreds

of other committees. Our government, the Labor government before that, our government before that and the Labor government before that included the same provisions in their legislation. The member will know that this has barely changed since 1989. Governments, by their very nature, have had some control over the groups that represent the distribution of government money on a board. Those clauses have been there for a long time.

Ms J.M. Freeman: Are all those other boards bodies corporate?

Dr K.D. HAMES: They usually are.

Clause put and passed.

Clause 16: Extension of term of office during vacancy —

Mr R.H. COOK: Could the minister describe to us the implications of this clause and how it will function?

Dr K.D. HAMES: It pretty much states it in the clause. I will go through it —

- (1) If the office of a member becomes vacant because the member's term of office expires by effluxion of time, the member must be taken to continue to be a member during that vacancy ...

That happens with all committees. If we do not reappoint someone, they do not drop off the committee just because the three years are up; they continue unless they resign, which they are free to do. I go on with subclause (1) —

... the member must be taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).

That is standard practice. The clause continues —

- (2) Subsection (1) ceases to apply if the member resigns —

That is what I just said —

or is removed from office ...

That is what we have seen from the previous clause. It continues —

- (3) The maximum period for which a member must be taken to continue to be a member under this section after the member's term of office expires is 3 months.

That gives flexibility to government. It is the same with all things. If we do not get ourselves organised and make sure that we either reappoint someone or replace them three months after their term expires, they cease to be a member. It just gives government some flexibility in the timing of getting things through cabinet for approval. That is the same as in the previous legislation and is the same as is in the legislation for all our other boards.

Mr C.J. TALLENTIRE: What is the capacity for multiple renewals for someone's term to be extended? Is there the capacity for someone to keep on renewing and renewing their term?

Dr K.D. HAMES: We covered that in the discussion of previous clauses. If the member goes back, he will see that clause 14(2) states —

A member is eligible for reappointment but cannot hold office for more than 9 years, ...

A person can be reappointed three times, depending, of course, on the term of the first appointment. The legislation states for nine years, rather than three times specifically.

Clause put and passed.

Clause 17: Leave of absence —

Mr C.J. TALLENTIRE: When we talk about people who may have an academic background, leave of absence is very important, because I imagine that all sorts of sabbaticals and secondments could be involved, which can often be for fairly lengthy durations. I am curious to know whether the government anticipates how long a leave of absence might be granted for. I hope that the calibre of people we will have on this board will be of the same order as those we have already seen on the board, and they may well be involved in research in other states or overseas and I imagine it could be necessary for board members to seek a leave of absence for 12 months, which would not be unheard of. Does the government anticipate agreeing to a minimum length of leave of absence?

Dr K.D. HAMES: Once again, this is the same clause as the one in the previous legislation, and it is the same clause in all other legislation regarding boards that comes to the house. The bill states quite clearly —

The Foundation may, on any terms and conditions it thinks fit, grant a member leave to be absent from office.

That clause goes with clause 15(4)(d), which we discussed before, which states that absence without leave from three consecutive meetings is grounds for removal. The answer is quite clearly, yes. If someone wants to go on extended leave as a result of work commitments or whatever reason—any terms and conditions they think fit—up until, of course, the conclusion of their term of appointment, the foundation can make a decision about a leave of absence. That is what that clause states.

Mr R.H. COOK: Does this include the presiding member or is it just members at large?

Dr K.D. HAMES: The bill refers to a member, so it is any member. As I stated to the member before, I am keen on having a deputy chair, so if the chair wishes to be absent, the deputy chair would assume the position of chair.

Mr R.H. COOK: I assure the minister I am not trying to be sneaky, I am just wondering whether in the event that the presiding officer was in the role of chair, would they get the remuneration and other entitlements of the chairperson?

Dr K.D. HAMES: I do not think so, but Dr Weeramanthri has pointed out that the foundation may grant a member a leave of absence on any terms or conditions the foundation thinks fit. I would assume that if the chair decided to take nine months' leave of absence, it is quite within the remit of the foundation to appoint the deputy chair, or any other person for that matter, to act in the duties of the chair and receive the remuneration that would have otherwise gone to the chair. It is up to the foundation to sort that out.

Clause put and passed.

Clause 18: Alternate members —

Mr R.H. COOK: Again, in previous times, the alternate member would be provided by the organisation that nominated the delegate in the first place. We know, for instance, in the case of the Australian Medical Association, the delegate was nominated and put forward and the alternate delegate sat behind that nomination. Obviously, the alternate delegate had an opportunity to ensure they stayed abreast of the affairs of Healthway—not with access to information to the extent that a board member would be privy to—and that they were at least familiar with the operations and current issues impacting upon the organisation. As I said, previously, delegates were nominated by organisations detailed in the Tobacco Products Control Act, such as the AMA, the Western Australian Sports Federation, the Australian Council for Health, Physical Education and Recreation, the Western Australian Local Government Association, the WA Arts Federation and the Australian Council on Smoking and Health, which would also put up an alternate member. The alternate members played an important role to ensure the ongoing work of the board was not interrupted through the absence or otherwise of the delegate.

Under the current provisions of the bill before us, people will be appointed to the board by the minister having regard to those two particular areas. Will this legislation operate in a similar fashion as before; that is, will alternate members be appointed at the same time as, in the old language, the actual delegate, or the new board member, so that that person stands on the sidelines, for want of a better description, ready to jump in to represent the member?

Dr K.D. HAMES: No, it will not operate under the previous circumstances. There will be no deputy members appointed in anticipation of a member not being able to be present. Those members will be appointed by me, probably from the list of those who made an original application to be a member. But it is up to me to work that out. If a member is unable to act—other than the presiding member—perhaps because under clause 17 they are on leave, I can appoint someone to replace that person while they are on leave, but not the presiding member. If the deputy presiding member is unable to act in the presiding member's place—say the presiding member is stuck in a traffic jam and cannot get to the meeting, this clause states that the deputy presiding member can act in the presiding member's place and they can take on the role of chair, or the members may elect one of their number to chair. If there is no chair, presiding member or deputy, they can make someone else chair, providing they have a quorum, of course. Clause 18(2)(b) states —

subsection (1) applies as if the member elected were absent from the meeting.

I notice that this covers the question on the previous clause. Clause 18(3) states —

While acting in accordance with the appointment, the alternate member must be taken to be, and to have any entitlement of, a member.

I am not sure whether that relates to the entitlement to their role as presiding officer or their entitlement to receive the funds. Again, I am sure that is something the foundation and the Public Sector Commissioner would sort out between them.

Mr C.J. TALLENTIRE: I am struggling to understand the application of clause 18(4), which states —

An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

Can the minister describe how that would come into effect?

Dr K.D. HAMES: I am advised that if it turns out that the person who happens to be absent does not have a good excuse for being absent—he just was not there—that does not take away from any decisions made by the person acting in their place. That is the interpretation of subclause (4).

Mr R.H. COOK: I am curious to know at what point a minister would appoint an alternate member. Under the previous arrangement, the alternate member would always be appointed. For instance, if one of the delegates or board members of Healthway could not attend a meeting, the practice was to contact the alternate member to say that they cannot get there and ask, “Can you please go along and act in my stead?” Clearly, that is not the way the minister envisages this particular provision operating. After what period would the minister act to appoint an alternate member?

Dr K.D. HAMES: That comes under clause 10, “Term used: unable to act”, which we have already covered. That clause enables me to appoint someone when the member is unable to act. The definition in the clause is as follows —

unable to act means unable to act as a member for any reason, including —

- (a) illness; and
- (b) absence; and
- (c) the operation of section 31(1).

Which we have not got to yet.

Mr R.H. COOK: I appreciate the minister’s guidance on that, but how long would the illness or absence be? With regard to clause 31(1), which is about a board member having a material personal interest, what must the extent of that personal interest be? For instance, I am aware that Healthway makes grants to organisations that some board members may or may not have a role in, so it is appropriate that the board member absents themselves, as they have always done, to avoid perceptions of conflict of interest, despite the accusations of a radio station in Western Australia from claims made by the Australian Taxpayers’ Alliance. Those accusations were also followed up with an apology to the board member involved. However, the question remains: to what extent must a member be absent or not be able to participate in a decision before the minister appoints an alternate member?

Dr K.D. HAMES: That is at my discretion. The provision is designed around the fact that I need to ensure a quorum is present. For example, if three or four members are off ill for a period and there is a threat of a quorum not being present and decisions not being made, I have to decide whether it is okay not to hold a meeting in one month because there is no quorum as people are sick, but next month they will be back. If there is something particularly urgent that needs to be discussed, I might appoint an alternate member just for that meeting to ensure that a quorum is present. It is a decision I have to make along the way to ensure that that committee is able to carry out its duties as required.

Mr R.H. COOK: Can the minister confirm that the only circumstances in which he would appoint an alternate member is to ensure that the board maintains a quorum for decision-making purposes?

Dr K.D. HAMES: I do not think so because I go back to illness and absences being the prime motivation, but by and large there is no good reason for me to want to appoint another member if someone is absent for only a brief time. If they are absent for a long period, it is probably still not an issue. There are six other members who can carry out the functions and providing they have no trouble getting a quorum, I most certainly would not worry. However, if one member is on long-term leave and another couple of members get sick or people are having trouble turning up for whatever reason and each week the foundation is struggling to get a quorum and only just maintaining it, I may well make the decision to put an extra person on the board to temporarily replace the member who is on leave until they return. Remember that the foundation can, on any terms it deems fit, grant leave to a member to be absent from office. What if it did that for two years and each week only four members turned up? I have to make sure that the foundation is operational. These are exceptional circumstances. I do not recall them occurring at any time other than when we had to put in people as temporary officers right now. According to the existing act, I have that power to appoint members.

Mr R.H. COOK: The minister has hit the proverbial nail on the head. Through the political interference from this government in the current board, we do not trust its motives or its conduct, so, obviously, we are concerned when this legislation provides an opportunity for a minister to sideline a sitting member of the board or to harass them, internationally if necessary and even while they are on leave. It is interesting to note that the sanctity of leave is embraced in one moment by this Parliament but not through the actions of others. In this particular instance, we are worried about the minister’s capacity to use these clauses to get up to more political mischief on behalf of big alcohol. Obviously, we are very concerned to hear that the minister has unfettered capacity to

appoint alternate members but he cannot provide us with the scope or the limitations and the circumstances other than maintaining a quorum in which he, in this case, would make an appointment. If the minister is of the view that the circumstances in which he would do it is only so that the board can be competent in making decisions—that is, it can constitute and form a quorum—why does this clause not just say that the minister may appoint an alternate member for the purpose of maintaining a quorum of the Healthway board?

Ms J.M. FREEMAN: I refer to clause 18 and putting an alternate member onto the board. If the minister appoints an alternate member because someone has a long-term illness and that alternate member votes in an opposite way to the original member appointed—I am not sure whether this question has been asked and answered already; has it?

Mr R.H. Cook: Not yet.

Ms J.M. FREEMAN: If the minister appoints a foundation member who has, for example, expertise in the arts and the minister appoints an alternate member because that original member became ill for a long time and the alternate member votes in a manner opposite to how the original or permanent member would act, how is that conflict dealt with? Can the permanent member who is unfortunately off with an illness have any impact on the determinations and decision-making of the alternate member, or does that alternate member represent themselves and their position accordingly? Is there a risk that someone could use that capacity to have an alternate member who would not necessarily have been someone that the broader community would think is an appropriate person to sit on the Healthway board?

I assume that the minister does not have to publicly announce the name of the alternate member. I assume that the minister will not have to come into this Parliament and say that he has just appointed such and such to the Healthway board as an alternate member. I assume that the process is that the minister says that an alternate member has been appointed because someone has 12 months' leave because they are getting treatment for cancer or something else has happened; knock on wood none of those things happen to any of the members. My issue is that every person the minister appoints to Healthway will be scrutinised. There is no doubt about that because this whole process has been politicised and is highly contentious. If someone is absent long term and gives the minister in this government and ministers in subsequent governments an opportunity to appoint an alternate member maybe during a critical time in the lead-up to the election, how does that person get scrutinised? What happens if the permanent member disagrees with the way the alternate member votes? How will the minister balance that dispute if it occurs?

Dr K.D. HAMES: This process is no different from the process that occurs on all the boards that have been in place for all this time. If a person is at a meeting, they represent their point of view, clearly free of direction from government. I cannot make that person step aside or stand down but if something happens that causes them to take leave such as an illness, as the member suggested, I have to choose a person to replace them. The member says that I would not let anyone know about that and that it can be done in secret. I do not have to tell anyone about the members I appoint to the board. We will make an announcement about who they are but I do not have to. Someone will be appointed in their place.

Ms J.M. Freeman: I thought you would have to name them as members, at least in the annual report.

Dr K.D. HAMES: The members of the board are listed on the website of Healthway. If an alternate member is appointed, the foundation would put that on the website. It is not a secret. That person would vote according to their view. They cannot necessarily influence the foundation other than by words. They cannot influence the foundation by their vote because they have only one vote. That occurs whether there is a quorum of four or a committee of seven.

Ms J.M. Freeman: That is a pretty strong vote if there is a quorum of four.

Dr K.D. HAMES: Sure, but it is only 25 per cent of the vote. As the member would know from the proceedings in this house, that is not enough to overturn a decision. If the person who is on leave is friends with the person on the board, I am sure they could ring them and try to influence them. It is not appropriate for someone who is not there to impose their view on someone who is filling in. We should remember that they do not represent a group anymore. That was the case before and that was one of the problems. If someone was on the board and then the deputy came in, they were obliged to represent the views of the organisation that they belong to. That is not the case. People will have individual points of view. The government does not direct that. They are perfectly free to argue or vote however they want or put forward any position they like. The member is suggesting that if decisions are made by the board that I do not like and, luckily for me, one of them becomes ill, even though I appointed the first person and maybe I do not like the way they are voting, I could change the direction of the whole foundation by appointing a person who everyone hates and thinks is blind —

Ms J.M. Freeman: No.

Dr K.D. HAMES: That is what the member suggested.

Ms J.M. Freeman: I'm saying if you've got two people on who vote the way you think they should be voting and one person who holds it back from 25 per cent and that person goes, you would have an opportunity to influence.

Dr K.D. HAMES: Only by their word, not by their vote, unless more than half their colleagues considered that was a correct point of view. Again, it is up to the foundation, not the government, to make those determinations. Sure, I could appoint someone who loved the government and who would vote the way we wanted but I could do that with any board. I could have appointed different members in the first place. I could wait until people's terms expired and appoint a whole new lot of people. At the end of the day, the board is independent in its decision-making but the government appoints the members the same as any other board. The member should look at some of the members of boards that her party appointed over the years it was in government. The influence and direction they chose to take their boards had strong affiliations with the government of the day. I hope the member will see when this board is appointed that that is not the sort of board we will have. I hope that if and when the Labor Party is back in government, it does not do these things that the member is saying could be done.

Mr R.H. COOK: This clause relates to clause 11, which deals with the appointment of the main members of the board. Clause 11 goes some way to instructing the minister about the balance of the views of those members who are appointed to the board. I refresh the chamber's memory on this. At least one person must have knowledge of and experience in the arts, at least one must have knowledge of and experience in health and one must have knowledge of and experience in sport. When appointing alternate members, is the minister compelled under this clause to maintain that balance? For instance, if the member who has knowledge of and experience in sport is unable to act, does the alternate member that the minister appoints also have to have knowledge of that particular category?

Dr K.D. HAMES: I think the answer is probably a little mixed. I have to maintain the integrity of the board in terms of its representation. Let us suppose that two people on the board have a health background and I need only one person. If one of those people is sick, I presume it is within my right to appoint someone from the arts, for instance, as a temporary member providing the balance of members are of the right mix. If one of those seven people represents health, the replacement must be someone who represents health, and the same for the other categories.

Mr R.H. COOK: It is an interesting point. I guess it comes down to how clause 11 operates. I always believed it basically meant that if the minister appointed the member for Hillarys to the board pursuant to clause 11(2)(a), the alternate member would also have to be someone who is competent to replace the member. Can the minister please indulge us by perhaps explaining how that would work? Would he have an individual nominate under clause 11(2)(a), (b) and (c) and any others and would the alternate member also have to be appointed pursuant to clause 11?

Dr K.D. HAMES: I thought that is what I just answered.

Mr R.H. Cook: No, you didn't. We might have been talking at cross-purposes.

Dr K.D. HAMES: I will say it again and the member can tell me where I am wrong. I have seven people on the board. Under clause 11, I must have one from the arts, one from health, one from sport and others in those other areas. Suppose I have two members from health, not one, which I am allowed to have. In fact, it is my intention to try to get a couple from health, a couple from the arts and a couple from sport to ensure we have a good representation.

Mr R.H. Cook: You'll struggle to have a lawyer.

Dr K.D. HAMES: Yes, but we can have someone from the arts who is a lawyer or an accountant. I can appoint people with multiple skills. It is my intention to appoint people with multiple skills in those areas, so there is a broad mix of people. I will probably have two people from those other areas who have at least some background in that area. If I had one person from the arts and that person was on leave, I must replace that person with an expert in arts to ensure that I maintain the balance required under clause 11.

Debate interrupted, pursuant to standing orders.

[Continued on page 5742.]