

WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION BILL 2015

Third Reading

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [5.24 pm]: On behalf of the Minister for Health—I think, as members know, he has gone home ill—I move —

That the bill be now read a third time.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [5.25 pm]: Thank you, Mr Acting Speaker (Mr P. Abetz), for the opportunity to speak once more on this dreadful piece of legislation—the Western Australian Health Promotion Foundation Bill 2015. I notice I have 30 minutes on the clock and that it is 5.30 pm, so I would like people to just strap themselves in because this is a bill that we have opposed from day one, and will continue to oppose. This bill has, essentially, wrecked the careers and reputations of public servants and servants to public health in this state. It is a very sorry piece of legislation that has simply been brought to this place because the government had a political agenda that it wanted to run against public health and Healthway.

This bill had its origins in December 2013, when Healthway struck a very impressive world-leading and cutting-edge contract with the Western Australian Cricket Association; it is the deal that sealed its fate. There are two aspects to that. The first is that it attracted the attention of the Premier's media department, which then embarked on a long-term campaign to undermine Healthway and make sure that it brought this particular government agency to heel. The media department wanted to bring Healthway to heel because Healthway was putting together important public health advocacy policies associated with its contracts, and Ms Dixie Marshall—head of the Premier's media office—decided that she wanted to have ministers standing next to those cheque presentations, making political capital; not simply these cheques being handed out in the name of public health.

If we roll forward, during the second reading debate the minister did not deny that the State Solicitor's Office was engaged by the Premier's office to try to find a way to get around the all-important section 71(5) of the Tobacco Products Control Act that meant that no government member of Parliament could be seen to be taking favour from the process of grants awarded in the name of public health. I am sure the government's determination about that was all the more accentuated by the encouragement it got from big alcohol. During the debate we heard extensive quotations from the letter from Carlton and United Breweries, which, along with other members of the big alcohol industry, was keen to make sure that the government came down hard on Healthway to stop it handing over moneys for campaigns that drove down the incidence of alcohol abuse brought on in large part by the unbridled marketing of alcohol and promotion of alcohol, particularly to young children in the context of sporting promotion.

In early 2015, the Office of the Auditor General brought to the attention of officers of Healthway the problems that it thought existed around the controls associated with the hospitality processes associated with the contracts that Healthway had entered into. In June 2015, the executive director of Healthway, Mr David Malone, approached the Public Sector Commission to seek advice on how Healthway might go about improving those processes. Even at that early stage, it was Healthway that was seeking to improve the processes inside its organisation, to improve the governance of its hospitality arrangements and to make sure it could conduct the organisation in an appropriate way; and so it was that it sought that advice. The Public Sector Commissioner, hand in hand with the chair of Healthway and the Minister for Health, went about that investigation. It was rather disappointing to see the government make political capital out of the outcomes of that report. The opposition was disappointed, in particular, to see the government use that opportunity of the Public Sector Commissioner's report to deride the organisation, to wreck public reputations of those involved and to seek to bring down the organisation that we know as Healthway—that internationally renowned, leading advocacy organisation in the area of public health.

The bill does a range of things, but specifically it will remove the independence of Healthway in the way it hands out grants. Specifically, the legislation seeks to remove section 71(5) of the Tobacco Products Control Act 2006, which will allow the government to go around big-noting itself when the agency hands out funds in the name of public health to try to curry political favour with the public and in doing so politicise the process in the way we saw done in the Vasse by-election earlier this year. It was because of that that public health organisations and stakeholders in this state vehemently opposed the legislation. The government falsely brought the legislation to this place saying it was about reforming the governance of Healthway. It goes some way in that process but in a manner that the opposition does not think is appropriate. Nevertheless, it is true that the minister admitted that in both the second reading and consideration in detail stages, in a passing reference to the former chair of Healthway, Dr Rosanna Capolingua, about the changes in the governance of Healthway. What was never discussed with any of the public health stakeholders, staff or the board of Healthway was the real agenda of the

government to politicise the granting of public health cheques. Hidden inside the bill were mechanisms by which the government sought to get its grubby little political hands on the Healthway dollars. It is not an insignificant amount. Around \$20 million in this year's budget has been allocated to Healthway to continue to advance the cause of public health.

It is important that these funds are handed out in a correct manner, but at no stage in the process of these grants being provided to sporting organisations, arts organisations and racing organisations was the actual propriety of the grants or contracts made with the foundation brought into question; it was the issues around the inadequacies that the Public Sector Commissioner identified in his report. As I said during consideration in detail and the second reading stage, Professor Rob Donovan from Curtin University found glaring inadequacies in the Public Sector Commissioner's report, which he has pointed out, very correctly, and to which the Public Sector Commissioner has been unable to respond. In fact, Professor Donovan has had to take those inquiries to the Ombudsman to try to get some sort of redress or adequate response from the Public Sector Commissioner.

I do not know whether it was deliberate or inadvertent, but the Public Sector Commissioner's report has been used by this government to bring down Healthway and it is being used in a very political way to wreck reputations and destroy that organisation. We oppose the Western Australian Health Promotion Foundation Bill 2015 because of its origins and the effect of its sections that undermine the independence of Healthway—the proposed Western Australian Health Promotion Foundation. The legislation is wrong in intent, it is wrong in effect and it is against the principle of making sure that we advance public health in a bipartisan way that seeks nothing other than to improve the health profile of Western Australians, rather than as a way to improve the political profile of the government or to gain it political favour by having its members photographed next to large cheques. It should simply improve the health of Western Australians.

I draw the attention of the chamber to the contributions from both the Liberal Party and the National Party at the time the legislation was originally struck when their members said that they actually wanted that provision in the bill because they did not want to see the new organisation—the WA Health Promotion Foundation—become a political plaything of the government of the day. Mr Minson at the time said —

The Liberal Party supports this amendment—

That is, the amendment to build the independence of the organisation —

and I thank the Minister for Health for including it. The most distasteful feature of the health promotion foundations in South Australia and Victoria is that virtually every week, in every community newspaper and particularly in marginal seats, Labor Party politicians can be seen handing out cheques.

That is the very culture that the Liberal Party of the day sought to avoid, and the Labor government of the day, as the sponsors of this legislation, supported it in that move. At the same time Dr Turnbull from the National Party rose to speak and said —

The National Party supports the Minister for Health's amendment because of the very great concerns of its members in relation to the Health Promotion Foundation being used as a promotional tool of the Government, its Ministers and members of the Labor Party.

The Labor Party, of course, was the party in government at that time. Back then, the Liberal Party and the National Party got it. They understood then what this government is about to do now. This is simply an exercise for the government to get its hands on the Healthway dollars so that its members can curry favour with the public by being photographed when handing out grants. This is a rank political exercise.

The ACTING SPEAKER (Mr P. Abetz): Member, I remind you that this is the third reading debate.

Mr R.H. COOK: Sorry; I am coming to the point that I am about to make. They understood what was going on back then and we understand what is going on now. We have brought to this place an amendment that would reinstate the independence of Healthway. We understood the minister's comments about legislating for reforming the governance of Healthway, but we did not think that was necessary. We simply thought all that was needed was a Minister for Health who actually had his or her eyes on the job and did not allow the infighting that had become so prominent within Healthway. Nevertheless, we went along with the governance reforms that this government said it wanted. However, we cannot countenance the use of an organisation such as Healthway to simply gain political favour. We proposed two amendments to this legislation. The first concerns the circumstances in which cheques can be paid. Under the earlier legislation, no money could be paid out under section 71(6) of the Tobacco Products Control Act where it states —

The Foundation is not to decide or announce any decision to disburse any part of the Account, under section 65(2)(a), during the period from the issue of the writ for a general election to be held within the State, whether State or Federal until the close of voting in that election.

Extract from Hansard

[ASSEMBLY — Thursday, 17 September 2015]

p6660c-6666a

Mr Joe Francis; Mr Roger Cook; Mr Chris Tallentire; Mr Colin Barnett

Again, that section was included in the act to ensure that the organisation was not seen to have a political bias. We saw the government utilise Lotterywest funding in the Vasse by-election to promote the then Liberal candidate, the now member for Vasse. We thought that was a most distasteful act and a distortion of what Lotterywest is supposed to be about, but as the minister or the Premier said in answers to questions in the upper house, “We can do it because technically speaking it is not outside the act for us to hand out cheques during a by-election as opposed to an election.” In relation to the spirit of whether it is appropriate to hand out cheques in the context of a by-election, the response of the minister or the Premier was, “Well, that’s politics.” We therefore brought in an amendment about stopping a government from utilising this process to hand out cheques during a by-election campaign, thereby undermining once again the independence of the organisation. In defence of the minister, he accepted the principle of what we were trying to do, so he amended our amendment to reflect that in the Western Australian Health Promotion Foundation Bill. I want to put on the record that we thank the minister for taking that attitude and for understanding what we were trying to achieve with that amendment and, in that sense, improving it through the work of the state’s draftspeople. With these legislative changes to the bill, the minister inadvertently exposed the very intention the government was trying to undertake—that is, to be seen to be handing out cheques and to utilise this bill to curry political favour in the name of public health, and we think that is inappropriate. The minister said that it was not about currying favour but, clearly, it is because he understood what we were trying to do with that amendment. Nevertheless, I think we should acknowledge that the minister understood what we were trying to do in that sense and he improved that amendment and we thank him for accepting that amendment.

The other amendment we brought in was to reinstate the part of old section 71(5) that stops any member of Parliament from being or appearing to be associated with any payment by the organisation. We know that this amendment was heavily supported by the public health stakeholders and that a range of those public health stakeholders wrote to the Premier saying they wanted that part reinstated. We were disappointed that the government did not see fit to reinsert that provision. It was done with all the best intent, as the state president of the Australian Medical Association, Dr Gerry Gannon—Mike Gannon, sorry; Gerry Gannon is a Twitteratchik! Dr Mike Gannon said he thought government members have only about 18 months to take advantage of this part of the legislation—that is, to have themselves handing out cheques—because he supposed that in March 2017 the opportunity to hand out cheques on behalf of Healthway by members of Parliament may be an opportunity for us and not members opposite. He was saying, “I’m not quite sure why the government is keen to do this because it will get only 18 months to do it anyway.” The government should have taken on our suggestion and our offer to maintain this bipartisanship and not bring about wrecking Healthway’s independence, based upon that bipartisanship, which, as I said, all parties supported when this legislation was originally put together. The opposition is disappointed that the government did not see fit to support the amendment, which I understand was insisted upon by the National and Liberal Parties when this legislation was originally struck, and it is disappointing that the government saw fit to gain political favour out of this process.

The government brought another amendment to the bill—which was introduced so that the government could veto any payments by Healthway—and it was vehemently opposed by the opposition and public health stakeholders. The minister’s defence of that amendment was that it was brought in because it would mirror what goes on in the current Lotterywest legislation. But Lotterywest is not responsible for brave, courageous public health advocacy; it is not in the business of making difficult decisions to address some of the public health issues that confront our society. Lotterywest is not in the business of occasionally offending big alcohol, junk food and tobacco companies. The Health Promotion Foundation needs legislation that will allow it to take a fearless approach to its work, because occasionally it will have to ruffle a few feathers, push back against public opinion and work in a manner that the government of the day might find a little uncomfortable. By inserting that particular amendment—I cannot understand for the life of me why it was not considered when the legislation was being drafted; it was an extraordinary act of incompetent drafting that the government should have to introduce an amendment to its own legislation—a future health minister will be placed in a very difficult position if, for example, Carlton & United Breweries opposes the work that the foundation is doing. To whom will Carlton & United go to try to stop that particular activity? It will go to the minister, because it will now know that the minister has the power to stop it. That is a very dangerous precedent and a very dangerous legislative change indeed.

I place on record my thanks to the advisers for the work they did on this legislation, and I thank the minister for taking a sensible approach to this bill. I call on the government to apologise to the board and staff, in particular Dr Rosanna Capolingua and the former executive director David Malone, for undermining their public reputations, trashing their careers and for doing them the grave injustice associated with the political manipulation of the Public Sector Commissioner’s report to justify a rank political exercise to nobble the Healthway organisation. It has trashed an internationally renowned public health advocacy organisation, and in doing so it has trashed the reputations of those involved. Dr Capolingua made it clear in her letter to the minister and the Premier that she and the board were up to making reforms. It was Healthway itself that brought in the

Public Sector Commissioner in the first place. Does that look like the act of an organisation that was trying to deceive and withhold facts from the government? No. It was an organisation properly going to the Public Sector Commissioner to seek advice on how to continue to improve its processes.

As I said both in my second reading contribution and during the consideration in detail stage, the tradition in Western Australia, and in pretty much every jurisdiction in the world, is for the Minister for Health to defend public health and public health organisations. We must have the first minister in history who joins in the exercise of attacking a public health organisation that, as I said, is internationally renowned. The minister made it clear that the changes to the act were about trying to get political favour out of handing out public health grants, and that is the reason he engaged in the debate on the amendments that we moved.

We tried to improve this legislation by reinjecting that level of independence and we brought those amendments to this place in good faith. However, it was clear by the way the government manipulated the media in the lead-up to this legislation, the way it manipulated the Public Sector Commissioner's report and the way it drafted this legislation, that it was going to use those political situations, particularly since it had struck that deal with the Western Australian Cricket Association in December 2013, as an opportunity to attack public health. The most impotent Minister for Health in this state's history stood back and let the Premier's office do it. He stood back and let the Premier kill a public health advocacy organisation that was internationally renowned for the work it had done to drive down the rate of tobacco use in this state, and for that the minister should be condemned. I am sure that every health stakeholder in this state will continue to remind him about what he did through negligence and through the way he stood with the Premier while they destroyed this organisation. It is a great shame.

We opposed this legislation at the second reading stage and we brought amendments to this legislation in good faith but they were rejected. We will oppose this legislation at the third reading stage, and we will continue to oppose it because it is bad, it is poorly put together and it is a politically motivated exercise because the Barnett government wants to get its hands on public health dollars for its own rank political advantage.

MR C.J. TALLENTIRE (Gosnells) [5.52 pm]: I rise to add my opposition to the Western Australian Health Promotion Foundation Bill 2015. It is a bill that I have examined closely. We heard the new Prime Minister of Australia talk about how his thoroughly Liberal government would be committed to the individual, to freedom and to the market. In many cases, those are valid values to hold. He described a commitment to the market as a value. I find that interesting, but we cannot always rely on a market-based solution, especially when we are talking about public health. A market-based solution for the delivery of public health messages will not work, because it will leave us at the mercy of those who are behind big alcohol and big junk food. They have an objective that is all about making a profit. It is not about protecting public health. That is why I found myself looking at this bill and asking myself the following questions: do the provisions make for a more effective promotion of diversion from mind-altering substances and health-destroying processed foods and drinks? The conclusion I have come to is no, they do not. Do Western Australian sports and cultural activities increase their benefit from diversion support funding from the WA government? The answer has to be no. Will the new provisions make it easier for large commercial organisations to buy credibility by association with highly regarded sports and cultural icons? The answer is yes. Sadly, this bill will continue to allow a big junk food company such as McDonald's, for example, to sponsor Little Athletics and thereby brand itself in a way that makes it appear healthy. I suggest that anybody in this place who has any doubt about the food nutritional values of McDonald's products go through the website and look at the sodium, fat and kilojoule content of a typical Big Mac. They are way in excess of what a good healthy diet would normally include. I know that McDonald's is going a long way to brand itself as delivering a healthier product, but it is just not the case. This bill means that we cannot use that clever approach that Healthway was taking, in that it was occupying the whole of the sponsorship market so that big alcohol, big fast food and big junk food could not buy into it. The position was working well at buying them out. However, they complained about it, and we have evidence of that. I will not rehash statements I made in the second reading debate, but it is clear that the Premier was contacted by big alcohol that said it did not like the way promoting health was becoming about lobbying for policy change. We also saw the minutes of the meeting between the Minister for Health and Coca-Cola Amatil that described the actions of Healthway as distorting the sponsorship market. I accept that there is a change in the sponsorship market, but surely to the good. If Healthway occupies the whole of the sponsorship market for a particular sporting venue or sporting code and freezes out and leaves no space for big junk food, that is a good thing. Unfortunately, this legislation will reduce the role of Healthway to just being the provider of grants to organisations that meet certain standards and that appeal to the seven members on the new Health Promotion Foundation board, and will not have the same level of initiative that it had before. That is a great shame.

I want to also say that the former chair of Healthway, Dr Rosanna Capolingua, was very shabbily treated in this matter; there is no doubt about that in my mind. I have seen some measure of an apology made in *The West Australian*. However, I think the Premier's involvement in her poor treatment deserves a more thorough airing than we have been able to give it in this analysis of the bill before us. The promotion of public health should be a top priority of any government, and it is very important to have innovative measures in place.

That capacity has been lost, as the organisation will be reduced to merely a health-focused version of Lotterywest—and that is not good enough. I will be opposing this legislation and I think it is a great shame that the people of Western Australia will be deprived of the innovative body that was Healthway.

MR C.J. BARNETT (Cottesloe — Premier) [5.58 pm] — in reply: This brings the debate on the Western Australian Health Promotion Foundation Bill 2015 to a conclusion. I will make only a couple of comments.

This bill will bring the Healthway board into a structure very similar to Lotterywest—basically identical. It means that the board will make recommendations and decisions. The role of the Minister for Health will be to basically sign off on those decisions, and that will give the Minister for Health and therefore the government the ability to question some of the decisions. I have been the minister responsible for Lotterywest, which is a far larger organisation that deals with a turnover of around \$1 billion.

Mr C.J. Tallentire: Does it have any policy change work?

Mr C.J. BARNETT: I will answer the member.

That is the procedure. The Lotterywest board meets on advice from within Lotterywest and it allocates the grants. I think in one case only, from memory, have I questioned a grant, which was actually a grant in my electorate. The board came back to me, gave an explanation for why it thought it was appropriate and I signed off on it. The suggestion that government ministers will interfere is wrong. Lotterywest handles money collected from the sale of lotto tickets and the like, so in a sense it is community money. The Health Promotion Foundation will deal with taxpayer, or government, funds and it is absolutely essential that the Minister for Health play a role in the expenditure of government funds that the foundation will administer. I think that is accountable and correct and there will be probably no question—or very rarely. All sorts of accusations have been made. The member for Gosnells seems to think that this is some contrivance between the Liberal Party and big alcohol or whatever else.

Mr C.J. Tallentire: We have the letters.

Mr C.J. BARNETT: The member has a letter that they wrote to me, and I refused to meet with them.

Several members interjected.

The SPEAKER: Members!

Mr C.J. BARNETT: To suggest that there is some cosy arrangement is simply wrong; it is incorrect. It has never happened and it never will. That is the member for Gosnell's theory.

The member for Kwinana seems to think it is all about Liberal or National Party members and ministers wanting to hand out cheques. There are various reasons that might happen. First, it is government money—it is public funding—and there is nothing at all wrong with a minister being there to hand out a cheque. There will be occasions when an organisation will actually want a minister to be there. From memory, I think I have been involved in only one significant Healthway event, which was last year for the Busselton jetty swim. Healthway invited me because it wanted the Premier there to fire the gun or wave the flag to start the event and to add to the whole event. Is that not correct? Why should the Premier, the Minister for Health, the Minister for Training and Workforce Development or whoever not be part of an event? This is public money. This is government money. That is not abusing or misusing Healthway in any sense. That theory is just wrong. Organisers, sporting clubs and community groups that are running a Healthway message want the minister to be there. If they are holding a sporting event, they probably want the Minister for Sport and Recreation there to add to the event, to attract more people and, indeed, to draw more public and media attention to the health message being put out.

Mr R.H. Cook: Doesn't that undermine your whole argument, because you are able to be associated with it anyway under the old legislation?

Mr C.J. BARNETT: No, this requires a ministerial tick. I do not accept the arguments the member for Kwinana has put forward.

The other change in this legislation is that members of the Healthway board work in a form that is representative of various organisations. If they are on the board as representatives of various organisations, by definition the independence argument is lost. Independence means individual people are on the board because of their expertise or experience or whatever else. If there is a Healthway board with the Australian Medical Association—I do not know what the other groups were; I think they were sports and arts groups and so on—that is not independence; the board would be representing a constituency, a group or an organisation. There is nothing independent about that.

Mr C.J. Tallentire interjected.

The SPEAKER: Member for Gosnells!

Mr C.J. BARNETT: That is not independence. Independence is professional people who can make recommendations that can go through the board and then go to the minister for agreement. That is true independence. I think, having been Premier for a few years, in a range of areas—outside the judiciary—there is very little independence in any organisation. Government and non-government organisations and the like all have a point of view that they will promote, and that was part of the problem with Healthway.

I have great respect for the former chairman, Dr Rosanna Capolingua. I know her well and I think she is a very fine person. But the Healthway board had failed in its governance responsibility. When board members go to promoters and ask them for large numbers of high-value tickets and distribute them amongst family, friends and staff totally unnecessarily, that is failing in their responsibility. That is what was going on, and it was unacceptable. Members opposite suggested Dr Rosanna Capolingua was treated poorly; she was not.

Mr C.J. Tallentire: She was.

Mr C.J. BARNETT: The member can say that, but I will tell him how —

The SPEAKER: Members!

Mr C.J. BARNETT: I listened to the member in silence. I will tell the member what happened —

Mr C.J. Tallentire interjected.

The SPEAKER: Member for Gosnells, you have had your chance; I do not want to have this cross banter all the time.

Mr C.J. BARNETT: I know Rosanna well and I regard her as a friend. I called her into my office —

Mrs M.H. Roberts interjected.

The SPEAKER: Member for Midland!

Mr C.J. BARNETT: I called her into my office—just the two of us—and went through the Public Sector Commission report, some of the issues that sporting and arts organisations had raised and some of the conduct, not of Rosanna but of others, including senior staff. I simply made the point to Rosanna that that is unacceptable in the handling of a public responsibility in governance, and the handling of public funds—taxpayers' money, government money; whichever way it is described. I put to her that the best solution here would be for the resignation of her and the board, and a clean start. The alternative would have been dragging out details of events and behaviour and the like. That is not the way to promote public health.

I think the Minister for Health should be front and centre in the promotion of public health issues, and if that means handing out a cheque or a certificate or opening an event, so be it—so should the Minister for Culture and the Arts when arts funding is involved, and so should the Minister for Sport and Recreation, when sporting funding is involved, as well as local government. Why should we shy away as a government, whether Liberal or Labor, from promoting public health, and being part of the promotion and presentation of that message? That is why we have made these changes, and the opposition's assumption that it is some secret grubby deal with junk food or alcohol suppliers is totally wrong, and the assumption that this legislation is trying to take away any independence is also structurally, philosophically and intellectually wrong. This has been done for the right reason, and the Lotterywest model, which is a model used around Australia, is the best model, and Healthway will gain and improve from this, as will public health messages.

Division

Question put and a division taken with the following result —

Ayes (24)

Mr P. Abetz
Mr C.J. Barnett
Mr I.M. Britza
Mr G.M. Castrilli
Mr M.J. Cowper
Ms M.J. Davies

Mr J.H.D. Day
Mr J.M. Francis
Mrs L.M. Harvey
Mr C.D. Hatton
Mr A.P. Jacob
Mr S.K. L'Estrange

Mr W.R. Marmion
Mr J.E. McGrath
Mr P.T. Miles
Ms A.R. Mitchell
Mr N.W. Morton
Dr M.D. Nahan

Mr D.C. Nalder
Mr J. Norberger
Mr A.J. Simpson
Mr M.H. Taylor
Mr T.K. Waldron
Mr A. Krsticevic (*Teller*)

Extract from *Hansard*

[ASSEMBLY — Thursday, 17 September 2015]

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Mr Joe Francis; Mr Roger Cook; Mr Chris Tallentire; Mr Colin Barnett

Noes (13)

Ms L.L. Baker
Mr R.H. Cook
Ms J.M. Freeman
Mr W.J. Johnston

Mr D.J. Kelly
Mr F.M. Logan
Mr M. McGowan
Ms M.M. Quirk

Mrs M.H. Roberts
Ms R. Saffioti
Mr C.J. Tallentire
Mr B.S. Wyatt

Ms S.F. McGurk (*Teller*)

Pairs

Mr D.T. Redman
Ms L. Mettam
Mr R.S. Love
Mrs G.J. Godfrey
Mr R.F. Johnson

Mr D.A. Templeman
Mr P.C. Tinley
Ms J. Farrer
Dr A.D. Buti
Mr P.B. Watson

Question thus passed.

Bill read a third time and transmitted to the Council.

House adjourned at 6.10 pm
