

PUBLIC HEALTH BILL 2014

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Simon O'Brien) in the chair; Hon Donna Faragher (Minister for Planning) in charge of the bill.

Clause 5: Crown bound —

Committee was interrupted after the clause had been partly considered.

Hon SUE ELLERY: I wonder whether I might ask a question. In the earlier debate, I had flagged and asked Hon Lynn MacLaren a question about clause 5(2). It was my view that if we were to be serious about holding the Crown to be bound, we ought to try to delete that clause. I have had advice in the interim that that might not be the wisest step to take because clause 5(2), as it stands, incorporates not only civil action but also criminal action against the Crown. I want that confirmed on the record. If that is confirmed, which I think it will be, I indicate that I will not seek to delete that provision.

Hon DONNA FARAGHER: As I understand it, it relates only to criminal action.

Clause put and passed.

Clauses 6 to 63 put and passed.

Clause 64: Terms used —

Hon DONNA FARAGHER: I move —

Page 53, lines 13 to 16 — To delete the lines.

The definition of “proprietor” that appears in clause 64 is redundant as that term is not used in part 8 of the bill. Therefore, the purpose of the amendment is to remove that term.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 65 to 265 put and passed.

Clause 266: Terms used —

Hon SUE ELLERY: If I can just be given a moment, given that Hon Lynn MacLaren is absent.

Hon DONNA FARAGHER: In the interim, to assist the chamber I might seek your guidance, Mr Deputy Chair. Given that the previous proposed amendment by Hon Lynn MacLaren was defeated, and as that related to part 17, would the following amendments proposed by Hon Lynn MacLaren fall away?

The DEPUTY CHAIR (Hon Simon O'Brien): I believe that is the case, in effect. As the honourable member is not here in any case, or is not seeking the call to propose a further amendment, the question remains that clause 266 stands as printed.

Hon SUE ELLERY: She is back. Can I just get clear on the record that the first amendment moved by Hon Lynn MacLaren was to delete the line in clause 5 on page 13 —

(3) Subsection (1) —

That is, the Crown is bound —

is subject to Part 17.

Part 17 lists a range of exemptions. Given that that amendment was defeated, the advice that the chamber is receiving is that therefore the next amendment in the name of Hon Lynn MacLaren, which is to oppose the clause that sets out the exemptions, falls away. That is where we are at right now.

The DEPUTY CHAIR: That is as I see it, too.

Hon LYNN MacLAREN: My understanding is that given the amendment to clause 5 was defeated, the remaining amendments under my name fall away. I do not move them; I merely oppose the clauses. I will be opposing those clauses. That is my understanding. Is that the correct understanding, Mr Deputy Chair?

The DEPUTY CHAIR: Thank you, member. I understand that you are advising the committee that you will not be moving the amendment at 7/266 on the supplementary notice paper, for the reason you have given, and that you are indicating that you would like me to put the remaining clauses from 267 to 293 as separate questions so that the opportunity to oppose them is there. That is the perfectly right way to go about it, so I shall do that. The question remains that clause 266 do stand as printed.

Division

Clause put and a division taken, the Deputy Chair (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

Extract from *Hansard*
[COUNCIL — Wednesday, 29 June 2016]
p4253d-4257a

Hon Sue Ellery; Hon Donna Faragher; Deputy Chair; Hon Lynn MacLaren

Ayes (17)

Hon Martin Aldridge
Hon Ken Baston
Hon Liz Behjat
Hon Paul Brown
Hon Jim Chown

Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran
Hon Dave Grills
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Peter Katsambanis
Hon Mark Lewis
Hon Michael Mischin

Hon Simon O'Brien
Hon Phil Edman (*Teller*)

Noes (9)

Hon Robin Chapple
Hon Alanna Clohesy
Hon Kate Doust

Hon Sue Ellery
Hon Lynn MacLaren
Hon Martin Pritchard

Hon Amber-Jade Sanderson
Hon Ken Travers
Hon Samantha Rowe (*Teller*)

Pairs

Hon Brian Ellis
Hon Helen Morton
Hon Robyn McSweeney
Hon Jacqui Boydell

Hon Stephen Dawson
Hon Darren West
Hon Adele Farina
Hon Sally Talbot

Clause thus passed.

The DEPUTY CHAIR: Members, there are no further amendments until clause 293. However, we have had an indication that there are a number of clauses, including the next dozen or so in order that a member wishes to oppose. Therefore, it is my intention that each of those clauses as notified will be put separately so that the member, and any other members of a like mind, may vote against them and even defeat them. However, in the interests of facilitating debate, if Hon Lynn MacLaren would like me to put the question that clauses 267 through to 278 inclusive be put as a single question, we can do that.

Hon LYNN MacLAREN: Thank you, Mr Deputy Chair. I would like to do that, if we can put it as a single question. It is clear that I am opposing all those clauses and I would like that question put. I intend to oppose all those clauses.

The DEPUTY CHAIR: I think that is quite clear. That being the case, and in the interests of facilitating the debate, I am going to put two proposals forward. Firstly, I will ask, as I normally do whether there any other members wish to address any clause before clause 278 inclusive.

Hon SUE ELLERY: I want to address the bundle in one speech, whether I do that now or when you call the bundle.

The DEPUTY CHAIR: I will make sure that the opportunity is given, depending on how we go in a moment. That is the first matter. The second matter is that I might see whether the minister would like the call so that under standing order 132, she can seek leave for clauses 267 to 278 to be put as one question.

Hon DONNA FARAGHER: I seek leave to do so.

Leave granted for clauses 267 to 278 to be considered together.

Clauses 267 to 278 —

Hon SUE ELLERY: I rise to indicate that the Labor Party will also oppose these clauses because they go to the list of exemptions, which can effectively mean that the Crown is not bound by the provisions of this very important piece of legislation. As I made clear in my contribution to the second reading debate, we think that the Public Health Bill 2014 is a fantastic move forward in addressing, in a really progressive, modern and efficient way, a range of matters, not the least of which is safe water and a range of other matters, including infectious diseases in remote Indigenous communities. By creating such a wide range of exemptions and, indeed, being quite open about the fact that the Crown does not want to include a capacity to be held to account for its own public health measures, we think it is a lost opportunity. Some might even say that it is a disgraceful position to take on public health for all Western Australians in 2016. For those reasons, we will oppose all the clauses before the chamber now because they go to the capacity of the government of the day to exempt itself from the provisions of the bill.

Hon LYNN MacLAREN: I welcome the support of the opposition in the suggestion that we all oppose these clauses. Clearly, this is the detail of how the Crown is exempted from the very important provisions of this Public Health Bill. That is why it is important today that part 17 of this bill and the clauses identified are opposed to ensure that—we have particularly highlighted them—remote communities can be protected long into the future by the public health provisions in this bill.

Division

Clauses put and a division taken, the Deputy Chair (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

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Ayes (17)

Hon Martin Aldridge
Hon Ken Baston
Hon Liz Behjat
Hon Paul Brown
Hon Jim Chown

Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran
Hon Dave Grills
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Peter Katsambanis
Hon Mark Lewis
Hon Michael Mischin

Hon Simon O'Brien
Hon Phil Edman (*Teller*)

Noes (9)

Hon Robin Chapple
Hon Alanna Clohesy
Hon Kate Doust

Hon Sue Ellery
Hon Lynn MacLaren
Hon Martin Pritchard

Hon Amber-Jade Sanderson
Hon Ken Travers
Hon Samantha Rowe (*Teller*)

Pairs

Hon Brian Ellis
Hon Helen Morton
Hon Robyn McSweeney
Hon Jacqui Boydell

Hon Stephen Dawson
Hon Darren West
Hon Adele Farina
Hon Sally Talbot

Clauses thus passed.

Clause 279 to 292 put and passed.

Clause 293: Enforcement orders cannot be given to Crown —

Hon LYNN MacLAREN: I will be opposing this clause because it allows the Crown to escape enforcement orders. In other words, this clause provides that enforcement orders cannot be given to the Crown. We have just agreed that the Crown may be given improvement notices, but this is the final piece of the puzzle to enable us to ensure that the Public Health Bill and all its provisions that we want to pursue can actually be done. In the first degree, yes, we want to give an improvement notice to the Crown, which delivers very important services, particularly to remote communities. We are saying that it is appropriate for its agencies to be given improvement notices. It is more appropriate for them to be given enforcement orders because that will ensure that its duty is done. That will ensure that this bill can be enforced on all those agencies of the Crown that deliver essential services, particularly to remote communities. We want to delete this clause because it allows the Crown to escape enforcement orders. If members feel that the Crown should not be bound because we have all this expenditure to pay to meet the public health criteria, which really should be the standard of a modern community and of Western Australia, and if, until this point, members have agreed with the majority of people in this house that the Crown should not be bound, this is the one thing that we can do to at least order the Crown to undertake activities and ensure that high public health standards are met. I implore members to at least consider supporting this amendment, which deletes this one clause from the bill. We have left all the other exemptions in. Let us delete this one clause from the bill so that we can issue enforcement orders to the Crown so that it must deliver quality water for drinking, quality sewerage facilities, and quality waste removal. These are basic things that most people expect. The Crown is delivering them in remote communities and it will not be bound. If we allow this bill to pass without enabling some mechanism to ensure that the Crown meets the criteria that we have set, it would be ridiculous. I propose that we delete this clause from the bill to enable the state of Western Australia to issue enforcement orders to the Crown.

Hon SUE ELLERY: I too rise to oppose this clause. This clause states —

An enforcement order cannot be given under this Act to the Crown in any of its capacities.

Any provisions on public health that are set out in this very good bill cannot be the subject of an enforcement order. In 2016, I think that is ridiculous.

Hon DONNA FARAGHER: I rise to indicate that the government will not support the proposition put by Hon Lynn MacLaren. Opposing the clause and thereby deleting it from the bill will not have the effect of authorising an enforcement order to be issued to the Crown. I appreciate where Hon Lynn MacLaren is going with this, but I hope I can be of some assistance to help explain this. As I understand it, a specific clause similar to clause 292 about improvement notices would need to be included for such orders to be given. I appreciate the member's view but we do not support it. On reading the clause, I can see why it would have to be replaced with something else if we were to remove it.

Division

Clause put and a division taken, the Deputy Chair (Hon Simon O'Brien) casting his vote with the ayes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Peter Collier	Hon Alyssa Hayden	Hon Simon O'Brien
Hon Ken Baston	Hon Donna Faragher	Hon Col Holt	Hon Phil Edman (<i>Teller</i>)
Hon Liz Behjat	Hon Nick Goiran	Hon Peter Katsambanis	
Hon Paul Brown	Hon Dave Grills	Hon Mark Lewis	
Hon Jim Chown	Hon Nigel Hallett	Hon Michael Mischin	

Noes (9)

Hon Robin Chapple	Hon Sue Ellery	Hon Amber-Jade Sanderson
Hon Alanna Clohesy	Hon Lynn MacLaren	Hon Ken Travers
Hon Kate Doust	Hon Martin Pritchard	Hon Samantha Rowe (<i>Teller</i>)

Pairs

Hon Helen Morton	Hon Stephen Dawson
Hon Brian Ellis	Hon Darren West
Hon Robyn McSweeney	Hon Adele Farina
Hon Jacqui Boydell	Hon Sally Talbot

Clause thus passed.

Clauses 294 to 298 put and passed.

Clause 299: Information sharing —

Hon DONNA FARAGHER: I move —

Page 218, line 25 — To delete “Word” and insert —

World

This amendment corrects a typographical error.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 300 to 304 put and passed.

Clause 305: Regulations may adopt codes or legislation —

Hon DONNA FARAGHER: I move —

Page 224, lines 6 to 15 — To delete the lines and insert —

- (4) If regulations adopt by reference a code or subsidiary legislation, other than any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies —
 - (a) the code or subsidiary legislation is adopted as existing or in force when the regulations are made; and
 - (b) any amendments made to the code or subsidiary legislation after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.
- (4A) If regulations adopt by reference any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies, the subsidiary legislation is adopted as existing or in force from time to time.
- (4B) Subsections (4) and (4A) do not apply if regulations state that a particular text is adopted.

Page 224, lines 16 to 17 — To delete “a code or subsidiary legislation by reference,” and insert —

by reference a code or subsidiary legislation to which subsection (4) applies,

As currently drafted, clause 305 prevents regulations from adopting other WA subsidiary legislation by reference, as is in force from time to time. The advice I have is that unnecessary restrictions shall be removed, given that all WA subsidiary legislation is required to be made publicly available under section 41 of the Interpretation Act.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 306 to 322 put and passed.

Title put and passed.