PUBLIC HEALTH BILL 2014
PUBLIC HEALTH (CONSEQUENTIAL PROVISIONS) BILL 2014

Second Reading — Cognate Debate

Resumed from 12 May.

MR P. PAPALIA (Warnbro) [12.06 pm]: It is my pleasure to rise to address the Public Health Bill 2014, and to also refer to the Public Health (Consequential Provisions) Bill 2014. At the outset, I would like to place on the record my acknowledgment of the efforts of the Minister for Health in introducing this legislation. I refer to the minister's second reading speech, in which he pointed out the fact —

> The Health Act 1911 —

Which is the act that we are amending in this bill —

> was passed more than a century ago and it has been extensively amended in an ad hoc fashion on more than 100 occasions. The framework and content of the Health Act 1911 was itself substantially drawn from the Health Act 1898 and The Public Health Act 1886, the latter of which was the first stand-alone public health legislation in Western Australia.

The DEPUTY SPEAKER: Order, members! Sorry, member for Warnbro. There are just too many conversations happening in the house at the moment. Thank you; it is difficult to hear.

Mr P. PAPALIA: So, congratulations, minister. That is no small thing. I do not congratulate the minister very frequently, so I am making sure that he is aware that I am doing so on *Hansard*. Congratulations; that is no small thing, minister. The substantial tome that is the piece of legislation that he has introduced is naturally a consequence of the significance of these changes.

What I want to do—the minister probably will not be surprised by this—is focus my contribution on part 6 of the bill. The minister in his second reading speech also stated —

> Another important innovation for the long-term promotion and protection of public health is public health assessments, which are provided by part 6 of the bill. The implementation of public health assessments achieves a range of commitments made by the state, including those flowing from the hazardous waste fire at Bellevue and lead pollution in Esperance. Public health assessments will ensure that public health risks are identified and considered in conjunction with existing approval processes in a streamlined and efficient manner.

Again, I congratulate the minister on incorporating into this legislation the response to the report of the Education and Health Standing Committee titled "Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area". As I said, I do not think the minister will be surprised that I want to focus on the components of this legislation that refer to the recommendations of the Esperance lead inquiry and the recommendations of the standing committee. As the minister knows, he and I sat on that committee and we were intimately involved in inquiring into the serious lead contamination that occurred in Esperance that led to the inquiry. During the earlier part of the first term of the Barnett government it was a favourite subject of the Premier, who frequently referred to the Esperance lead contamination as the worst public health disaster in Western Australia's history. He did that until I spoke the word "Wittenoom" in the chamber, when he stopped referring to it as the worst public health disaster in Western Australia's history and was more reticent about referring to it. The point I want to make about the inquiry specifically and the experience in Esperance in relation to this legislation is that that inquiry was a wonderful example of Parliament working. An inquiry was held that was chaired by a senior opposition member. The then Labor Party government chair stood himself aside due to a potential conflict of interest before the inquiry got underway. The now health minister became the chair of the inquiry. It comprised an equal number of members from both parties and included the then member for Roe, now the member for Eyre, as the local member. It therefore gave a good, strong local voice to the community and to the opposition. It was an excellent inquiry in all aspects. It got to the heart of the matter and was driven only by finding the facts. There was a degree of politicising, but I have to say that criticism of the government by opposition members on the committee was supported by the government members on the committee. I confirm that. There was no shrinking from a willingness to criticise government activity, particularly departmental activity, and even ministerial responsibility when it was found wanting. Actually, it was not found wanting; it was mostly departmental responsibility. I think that inquiry was a perfect example of how committees can work and provide positive results.

The minister claims in his second reading speech that the legislation incorporates key recommendations of that committee's findings. I have some concerns about that, and that is why I want to address a couple of those matters. I look forward to consideration in detail to go into whether I have found a gap or whether the minister has incorporated the recommendations that I have not been able to find. It is a large piece of legislation.

Dr K.D. Hames: I'm happy to go through it because I am taking the health department's word for it.

Mr P. PAPALIA: Yes. The committee made some key recommendations that I think should be reflected in this legislation, but I cannot see evidence of that. The key recommendation that I draw the attention of the house to is recommendation 5, in chapter 4 of the report, which states —

> The Committee recommends that section 30 of the *Port Authorities Act 1999* (WA) be amended to include a specific function that a port authority be required to ensure that public health is not adversely impacted by its conduct.

I cannot find the Port Authorities Act, to which the inquiry refers, listed as one of the consequential acts to be amended. I think that recommendation is one of the committee's key recommendations, and there were a lot of recommendations—the report amounts to a huge tome of 447 pages. One of the very early recommendations of that inquiry was to change the Port Authorities Act 1999. It may already have been changed, but there may be another way in which this legislation incorporates that recommendation and achieves the objective. I wanted to raise that as a concern as potentially not reflecting the findings of the standing committee inquiry into the Esperance lead contamination issue.

Another recommendation of that inquiry as it relates to this legislation is recommendation 9, which reads —

> The Committee recommends that the Department of Health review the adequacy of existing legislative provisions available to the Department to respond to public health emergencies in light of its experiences in responding to lead pollution in the Esperance area. Its findings should be reported to the Minister for Health, with a view to initiating legislative amendment processes if required.

Contrary to the last recommendation, I think this one may have been incorporated into the Public Health (Consequential Provisions) Bill. I will not be surprised if the minister is able to tell me that that inquiry was done and that the government has incorporated powers into this legislation that address the concerns in that recommendation.

Recommendation 10, like recommendation 5 on the ports legislation, is another one that I cannot find reference to in the consequential provisions bill. It reads —

> The Committee recommends that there be a legislative requirement for the Department of Health to conduct a health impact assessment as part of the Environmental Assessment Process.

If that recommendation has been incorporated into the Public Health Bill, I would expect to see some reference to environmental legislation in the consequential provisions bill. I do not, but that does not mean that recommendation has not been addressed; nonetheless, it is a concern I have and I ask that the minister look to addressing it to confirm that that recommendation of the standing committee that conducted the Esperance lead inquiry has been incorporated into the consequential provisions bill.

Last night I heard contributions from the member for West Swan and others, but the member for West Swan was, I thought, constrained a little —

Ms L.L. Baker: That's unusual.

Mr P. PAPALIA: — by the house, not by herself. Seldom is she constrained by her own contribution. She was prevented, I think, from pursuing a really interesting line of inquiry that relates to this recommendation from the Education and Health Standing Committee that conducted the lead inquiry. If a key recommendation was that environmental legislation should be changed if necessary or that there should be a legislative requirement on the Department of Health to conduct a health impact assessment as part of an environmental assessment process, it could be argued that an environmental assessment process might be required for approving something like a chicken farm, an egg-producing facility or a meat-producing poultry farm. We could argue that one of the key issues that the Esperance lead inquiry found was that the then Department of Environment and Conservation was not exercising its responsibilities appropriately and that the committee recommended that it be compelled to do so through legislative change. One would think that where the public health legislation focuses on public health issues, that is the perfect vehicle; it is the correct vehicle. We should be able to determine that a requirement dictated by the public health legislation is for a health assessment as part of an environmental assessment process. From a quick scan of the consequential provisions bill, I do not see evidence of that, but that does not mean it is not in that bill. I would like the minister to address that.

Part 6 of the bill is good to a certain extent. The minister has lauded in his second reading speech that public health assessments are an important innovation for long-term promotion in the protection of public health. The creation of this process is very good. I will ask a lot of questions in consideration in detail because we do not know what the regulations will be. The effectiveness of the public health assessments will be dictated to a certain degree by the regulations and how they are applied to assessable proposals. The proposed legislation states —

assessable proposal means a proposal that the regulations provide is an assessable proposal;

One of these public health assessments is applied to an assessable proposal, but we do not know what that is yet because that will be in the regulations! As is often the case, we are operating a little in the dark. Does that enable departments, via this legislation, to avoid responsibility? Does that offer them the opportunity to avoid applying this potentially rigorous process to a proposal in advance of the proposal going ahead? I know there is a free get-out-of-jail card, but is this another one? The regulations might easily enable ministers to do what the member for West Swan identified they are doing right now—that is, duckshoving responsibility from one ministerial office to another.

We see a public health issue: a poultry farm now residing within a residential area. It may once have been in an urban area but it is not any more. It now resides smack bang —

Dr G.G. Jacobs interjected.

Mr P. PAPALIA: It may have been a rural area, but it is not now. It is now smack bang in a residential area. We see these issues arise as the metropolitan area expands; here is one of them. The poultry farm is now surrounded by houses or in close proximity to urban areas. That is a public health issue. As the member for West Swan very clearly articulated, she will seek advice or assistance from different ministers' offices on behalf of concerned residents who are suffering from this public health threat. She will be told it is not a health problem; it is a local government problem. The Minister for Local Government will say it is not actually a local government problem; it is an environmental problem. The Minister for Environment will then say it is not his problem either, by the way; go back to Health. The poor people living next to a public health threat will be incapable of addressing it because no-one wants to take responsibility. That may be intentional, or it may be a consequence of incompetence, or it may be just the Swiss cheese model—all the holes lining up and no-one getting to take responsibility. Maybe they do not know about it; I do not know. Actually, that claim cannot be made now because —

Mr M.P. Murray: In one case I know, the council then opted out and did not want anything to do with it.

Mr P. PAPALIA: And they have the opportunity. It is very difficult for a council. The legislation potentially gives them some assistance—I commend the Minister for Health for drafting it—if it is applied in this manner. Clause 50, "Chief Health Officer may require public health assessments of assessable proposals", might be applied to a proposal when the parameters around an approved process have changed. Last night, the member for West Swan talked about a poultry farm that began with authority to have 150 000 chooks. Actually, it never got authority, as I recall. I may be wrong, but I do not think the farm ever got authority, but it had 150 000 chooks on-site. Through a number of processes at local government level, I understand the criteria were changed so that the farm was restricted to fewer chooks.

Dr K.D. Hames: Back to the original number, which was 25 000.

Mr P. PAPALIA: It was 24 000 or something. I will be interested to see whether the minister's advisers can provide an answer to this question: does the changing of the criteria and the authority under which they are operating, for a proposal like this—there are many different types, but this particular one—enable the Chief Health Officer to come into play and demand from the proponent a public health assessment of what is essentially a new proposal?

Dr K.D. Hames: He was seeking an increase and was told that in effect no, he could not have an increase.

Mr P. PAPALIA: Yes, but in the course of seeking the increase it was determined that he had actually exceeded what had already been approved.

Dr K.D. Hames: That is a prosecutable matter, presumably, in its own right.

Mr P. PAPALIA: One would think so, but no-one seems to want to prosecute these matters.

[Member's time extended.]

Mr P. PAPALIA: The greatest hope in that case would appear to lie with federal authorities, as opposed to state authorities, with respect to deceiving the consumer over whether it is a health breach, a breach of local government guidelines, a breach under the Department of Agriculture and Food or a breach of environmental practices. It does not look as though any of those departments at a state level will pursue that matter. However, there may be some hope with regard to allegedly deceiving consumers about the eggs that the farm produced. I am interested to see whether that is the case. I am very interested in what the minister may be able to enlighten us about the regulations and how these public health assessments will be applied.

Clause 53, "Minister may request Chief Health Officer to conduct inquiry into other proposals", states —

(1) If the Minister considers that a proposal that is not an assessable proposal —

So, not even whatever the regulations will say is an assessable proposal, but other proposals —

would be likely, if implemented, to have a significant effect on public health, the Minister may request the Chief Health Officer to conduct an inquiry under Part 14 into the proposal.

(2) The Chief Health Officer must comply with a request under subsection (1).

That is great because it is an indication that we are looking towards preventive measures. I am reasonably comfortable. I think the Esperance lead inquiry was a good indication that we can respond when there is a problem. Unfortunately, everything seems to be weighted towards response and very little towards prevention. This bill gives the minister and the Chief Health Officer the power to conduct health assessments for assessable proposals, whatever they are deemed to be in the future. That is a good thing. The real test will be how the legislation is applied. The Minister for Health chaired that inquiry. Having witnessed the consequences of a failure in a system that did not have adequate assessments in advance of the proposal going ahead, I thought that the Minister for Health personally would see this bill as an opportunity to shift government activity more towards preventive measures rather than responsive and reactive measures. That would be a good thing. As I say, I commend the minister for that part of the bill. Unfortunately, future unseen regulations provide an opportunity for government to avoid that responsibility. I hope that that will not be the case.

Speaking of avoiding responsibility, I will now address division 2. I know other members have done that, so I am not raising anything particularly new. Before I do that, I will revert. On another matter beyond chooks and poultry and the health risks associated with that particular endeavour, there is another area of endeavour that I think this bill can be applied to. It is an indication of how widespread health risk can be and the diversity of the potential for those risks to arise from different endeavours. When I was shadow Minister for Agriculture and Food, I was introduced to the wonders and the frightening world of horseflies.

Ms L.L. Baker: Careful!

Mr P. PAPALIA: Stable flies, sorry; not horseflies. They have been known to bite horses.

Ms L.L. Baker: They come from chook farms!

Mr P. PAPALIA: I know a little about this. I attended a few public meetings.

Ms L.L. Baker: I have swatted a few of them!

Mr P. PAPALIA: Here is another example of agricultural activity that was previously outside the metropolitan area—outside urban, built-up areas—that has been approved and is now being encroached upon by urban expansion and represents a potential health risk. Stable flies are notorious breeders. At one stage they were breeding on different types of manure. Some key sites around the metropolitan area were identified as being poultry farms, but that was dealt with. The Department of Agriculture and Food Western Australia acted. It moved to ensure that poultry farmers were much more compliant in dealing with waste. Then, when local residents in a number of areas—the Shire of Gingin and the City of Swan in particular, but also a number of others—noted that there was still a significant problem with stable flies, some research was undertaken that determined rotting vegetable matter was the source of the vast majority of stable flies. Market gardens that were previously outside the metropolitan area were now surrounded or encroached upon by urban expansion. When market gardeners dump large volumes of waste products, such as vegetables that they do not intend to take to market, it becomes a breeding ground for stable flies and the source of a serious public health risk. I went to a public meeting in the electorate of Moore. Neither the people nor their dogs could go out of their houses. It was an appalling situation and I would say that that is a serious public health risk. The bites from these things can fester on animals and create all manner of negative consequences for animals and people living in that environment. That should be considered a public health risk and it is a consequence of the expansion of the metropolitan area. A lot of development was taking place in that area, which was not going on at the time when the farms were first established, but over time the farms came into closer proximity to housing. That demonstrates that it is not just the member for West Swan, in conjunction with the member for Maylands and others, who is valiantly fighting on behalf of their constituents who are suffering a public health problem caused by poultry that is not being dealt with. There are also other sources, and there may be still others that we have not even identified yet. I suggest that possibly orchards spraying with potentially toxic chemicals, now in close proximity to housing that was not there in the past, may again represent a public health risk.

All manner of potential fields of endeavour may be subject to this bill if it is employed as I hope it will be. If a proposal comes before either the Minister for Environment, the Environmental Protection Authority or the Minister for Health that has potential to generate a public health risk—this is what we need to find out—I hope that the substantial powers that we will now have would be employed and a public health assessment carried out as a component of the approval process in advance of a problem becoming evident and before anyone has to suffer the consequences of what happened in Esperance. I hope the provisions in this bill are applied before an activity such as the export of lead or some other substance gets to the point at which we must react and that the

powers conferred on both the Chief Health Officer and the minister by this bill will apply as part of those approval processes. This would prevent all the negative consequences and the cost to the proponent.

A good thing about this bill is that it imposes on the proponent the cost of conducting a health assessment, and that is right. An individual, a company or any structure that wants to engage in a process that is potentially a threat to public health, should be compelled to pay for carrying out that health assessment and providing it to the Chief Health Officer and, through that person, to the minister to enable a proper assessment. That is a good thing about this legislation and I am hopeful—I seek assurances from the minister—that that is what is intended by the regulations that will be employed. The regulations should not be seen as a means of avoiding that responsibility of imposing that obligation and task on proponents. We must remember that in the Esperance lead inquiry we were dealing with a mining company. I know that there is sensitivity in Western Australia towards imposing hurdles or demands upon mining proponents but this is a reasonable and appropriate obligation that can be applied to any proponent, be it mining or anything else. The negative consequences are far too terrible to contemplate and are far more difficult and expensive to address than preventing the problem in the first place. The whole emphasis of this bill upon preventive medicine is a good thing. The idea that we are moving towards prevention rather than responding afterwards is a great thing. That is a key element of the bill and, as I said before, I commend the minister for this.

I am concerned about division 2 of part 16, because I know that other members have argued that it is almost a get-out-of-jail-free card; it is a way of avoiding responsibility if the minister so desires. Clause 256 is headed "Minister may exempt Crown or Crown authority from certain provisions". Clause 256(2) reads —

> An exemption cannot exempt the Crown or a Crown authority from the application of any of the following —
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> (a) Part 8, which relates to notifiable infectious diseases and related conditions;
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> (b) Part 10, which relates to serious public health incident powers;
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> (c) Part 11, which relates to public health emergencies;
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> (d) Part 14, which relates to inquiries;
>
> (e) Part 15, which relates to powers of entry, inspection and seizure;
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> (f) Part 17, which relates to liability, evidentiary and procedural matters;
>
> (g) Part 18, which relates to miscellaneous matters.

I am not sure about miscellaneous matters, but it could be argued that all the other provisions apply after the act, incident or problem, whereas the main emphasis I would like to see, through part 6, is on health assessments. That is a wonderful initiative that responds to the Esperance lead inquiry, as long as the regulations are employed in an appropriate fashion.

DR G.G. JACOBS (Eyre) [12.37 pm]: I thank the house for the opportunity to speak to the Public Health Bill 2014 and the Public Health (Consequential Provisions) Bill 2014. I can assure the minister that I do not want to protract this process, but following the comments of the member for Warnbro, and noting the minister's presence on the Esperance lead inquiry, I want to make a few comments on that and on another important public health matter that needs some assessment, after 50 years of the same practice. I congratulate the Minister for Health on finally bringing the Public Health Bill 2014 to this house, and I look forward to the consideration in detail stage and discussing some of the non-contentious issues in this bill.

Whether it be the Mental Health Bill or the Public Health Bill, what I have to say may be a slight criticism of people working in the health area. I have worked in health for many years, although not in a departmental capacity, and I have been able to observe health agencies at work, and it seems that they can never be brief. It might be said that health is a very big subject, and public health is a very big subject as well, but I note that there are things in this bill that are almost taken as givens. It seems that the agency and the advisers have no ability to embrace brevity. A whole part of the bill is devoted to defining the Chief Health Officer and is very prescriptive about the grounds on which the minister may remove a person from that position. The grounds are mental or physical incapacity, incompetence, neglect of duty, misconduct—there is a whole list. Surely there is a template, if you like—a given—in the way these matters are dealt with so that they do not have to be absolutely prescribed? The Public Health Bill 2014 goes through how the Chief Health Officer is to be appointed, their resignation and the vacation of office. Clause 13 states —

> (1) The Chief Health Officer may resign from that office by writing signed and given to the Minister.
>
> (2) The resignation takes effect on the later of —
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> (a) receipt by the Minister;

It concerns me that some of these areas of brevity are not achieved, and that is the point I make.

I have a couple of other issues that I would like to very briefly talk about. I know this is probably the wrong terminology, but I had the privilege, if you like, of being on a committee; we were obviously very disappointed as a community about the lead pollution event in Esperance. But when the member for Warnbro was speaking, it came back to me that one of the major deficiencies in the environmental impact assessment was that it did not incorporate a health impact assessment. There had been knowledge for many, many years about the impact of lead, particularly on children and how it is incorporated into their system, and the effects of lead particularly on young, developing brains. If we had had a health impact assessment in and around an environmental impact assessment, we may have prevented that unfortunate event. It is always easy in hindsight, but what was very surprising to the members of the committee was that although lead has been recognised for many, many years as a pollutant, it did not seem to occur to anybody that putting dusted lead on a railway carriage and transporting it from almost Wiluna to Esperance, then tipping it into a very small ship, as it turned out, with a very long drop of the product and creating a significant plume was potentially a major pollution disaster. The plume that was created dusted the town. There were 22 loadings—this occurred for 22 months—producing significant effects. The then government, to its credit, eventually acceded to an inquiry, and to its credit it appointed me to that committee. As the member for Warnbro has elucidated, the then chairman very responsibly stepped aside and the member for Dawesville took over the chairmanship—being a medical doctor, that was more than appropriate. I have to say to members that it was probably the best committee I have been on.

Mr R.H. Cook: Except your current one, of course!

Dr G.G. JACOBS: Of course! Except the one I am already on, but we have not finished the work of that one; we finished the work of the other one.

But I think everybody on that committee had one primary matter in their head, and that was the health and welfare of the community, particularly the children, as we were advised by experts that the main impact is on the developing child and the developing brain. That particular lead is very absorbable from contact with surfaces, and young children, particularly toddlers, are obviously very prone to getting it on their hands or ingesting it into their system. It was a very absorbable form of lead that affected them. Fortunately, not only did the then government recognise that and form a committee that ran the investigation and inquiry, but also the current government recognised that a major clean-up of the town needed to be done. That cost us around $25 million. However, the job, as you would know, Madam Deputy Speaker, has been done, and the Esperance community has moved on. But, member for Warnbro, it does highlight and make us and the community conscious of the responsibility mining companies have to ensure that the export of any product through a port is economically and commercially sustainable, as well as environmentally responsible. That is the way this town now looks at any product that comes through the port of Esperance.

Will there ever be the occurrence of lead exported through the port of Esperance in the future? That was an issue the community had to face, and of course after the realisation of this event, it was thought that the packaging of this product needed to be most efficient and that double-layer bags in sealed containers was the way to go. I often say that if it had been done that way from the very start—double packaging in sealed containers—we would be having lead exported through the port of Esperance today. But I do believe that the occurrence of that event has, if you like, spent the social licence. The social licence with the community has been spent, so if we tried to revisit that I think the community would find it very difficult to accept.

I would like to very briefly talk about the same part of the Public Health Bill 2014 that the member for Warnbro did. I would ask the minister to keep a very open mind on this, because I have had to develop an open mind on this issue. The issue of fluoridation of our public water system has been presented to me on a couple of occasions. I have long felt that the fluoridation of water has majorly reduced the incidence of dental caries and decay, particularly in developing teeth. It is probably one of the measures that have contributed to improving dental health and hygiene over the years. However, there has been a practice of adding fluoride to our public water system for nearly 50 years. The question I pose to the house is: could this practice possibly be reviewed and looked at in a public health assessment? I ask members to just have an open mind on this, because this is not necessarily a crackpot campaign to ban fluoride in public water systems because it gives people cancer or it causes morbidity and mortality in the community. I inform members that a study was conducted in two regions of the United Kingdom, the results of which appeared in the *New England Journal of Medicine*. It was an important study that looked at people who drank fluoridated water and also people who had no fluoride in the water in their area. After doing a prospective longitudinal study, the researchers found that the advent of hypothyroidism—an inactive thyroid—was a lot higher in the fluoridated group than in the non-fluoridated group. Some pathophysiology would suggest that there could be a logical connection for that because fluoride displaces iodine in the production of thyroxine, which is a thyroid hormone that controls our basal metabolic rate and enables us to get up in the morning because we are driven by a thyroid hormone that promotes wakefulness and activity.

Under part 6, "Public health assessments", "proposal" is defined as —

> a project, plan, programme, policy, operation, undertaking or development;

We have had all these years of taking fluoride and dosing the public water system, which is a volume-related thing. Not all of us get the same dose of fluoride because it depends on how much water we drink. I wonder whether that is relevant. In fact, is it still necessary? I am not proposing to go either way. As a doctor and a member of Parliament, from time to time people come to see me and say that this is a process of 50 years. Let us look at it. I know that a study has been done. I think the National Health and Medical Research Council did a review. I have not seen the results of that review. The question that I have for the minister and the Parliament is: could this practice of fluoridation be the subject of a public health assessment? Perhaps a public health assessment could look at a practice that, as I said, has been in operation for many years and determine whether delivering fluoride to teeth systemically today is really the best way of doing it because we know that there are many ways of topically providing fluoride to developing teeth. Obviously, there is fluoride in all the toothpastes and mouthwashes. Is it good health practice to dose water, assuming that everybody will get a dose? There are variable doses. Is it necessary to introduce fluoride systemically—that is, into the bloodstream—to develop good healthy teeth when we now have many topical ways of applying fluoride to developing teeth?

That is all I would like to comment on. I do not want to protract this process. I congratulate the minister for finally getting a public health bill to the Parliament. I would be very happy to be part of consideration in detail to look at some of the detail. I commend the bill to the house.

DR K.D. HAMES (Dawesville — Minister for Health) [12.53 pm] — in reply: I thank members for all their comments. I will just update the member for Eyre because I have not had a chance to talk to him. The opposition has declined referring this bill to a committee so consideration in detail will be undertaken in this chamber.

I am not sure whether I am unlucky or lucky sometimes. Am I lucky because I happen to be the minister who, after 20 years of trying to get a bill to this house, happens to be the one who brings it in and gets it through?

Dr A.D. Buti: You're lucky because you're on the old super.

Dr K.D. HAMES: Now the member is talking! The member should not forget that it was his leader who was responsible for it being dropped.

Mr D.A. Templeman: We'd be happy to bring it back again.

Dr K.D. HAMES: Under bipartisan arrangements, these things can always happen. These guys opposite have to put their hands up.

The DEPUTY SPEAKER: Order, members! Direct yourself to the bill, thank you, minister.

Dr K.D. HAMES: Alternatively, am I unlucky because I happen to still be here as minister after seven years and can look back on my time and say that even though it has been going for 20 years, seven years of those have been mine and why could I not get it up sooner? The member for Kwinana mentioned the tobacco legislation. I feel a bit the same now as I do about that legislation; I promised to do it four years ago now and it is still not in this place. I gather that people are working on it.

A lot of comments have been made by members opposite about the bill itself. A lot of that focus has been on the issue of binding the Crown. It is very important to remember that this bill is not just about binding the Crown; there are a huge range of other components to it that are critically important and that create a great step forward. I understand the negatives from those who wanted to bind the Crown. As members know, I was part of that group. This is not just about binding the Crown; there are so many other components, particularly the development of state health plans—the member for Kwinana spoke about those—and the local health plans. They will give us a great opportunity to move forward and for people to plan the development of their locality to address the health needs of the future. If these had been in place 20 or 30 years ago, we might not have had the issue of the chicken farm that we talked about and the school being located across the road from fast-food outlets and liquor stores. Those things would have been taken into account in working with departments of planning and local government planning. Local government planners, in putting their plans forward, would have said, "This is the area where the school needs not to be. It does not need to be in the area where we will have shops and development." It is hard to do those things 30 to 50 years out. How we retrospectively fit those in is a matter for local councils to decide now and for government departments to give licences for when making those decisions. As members know, the health department makes submissions on those things. It still makes submissions about the vision of fast-food outlets and liquor stores from children's schools and what those outlets and stores do in those areas. In the end, the Department of Racing, Gaming and Liquor makes those decisions but the Department of Health has input into that. It would be better if we could plan and work out where those things should be in advance.

Mr P. Papalia: Minister, would such a proposal that you have just referred to—say, a fast-food outlet near a school—be subject to part 6 relating to public health assessments?

Dr K.D. HAMES: I do not think so because it is referring to plans for the future.

Mr P. Papalia: That is a public —

Dr K.D. HAMES: Sure, but a local government may well put forward a local plan that states it does not want to have fast-food outlets near its schools.

Mr P. Papalia: The question would be whether your regulations, once they are drafted, would refer to such a situation.

Dr K.D. HAMES: That is something we can go through in consideration in detail. If I can just finish my second reading reply first, we can get into that.

Mr R.H. Cook: The other thing is: how much is too much? You might have three fast-food shops and say that the fourth is too many.

The DEPUTY SPEAKER: Order, members! The minister has indicated his desire to finish his second reading reply.

Dr K.D. HAMES: We have had that same discussion around cigarette outlets—how many should there be and should they be restricted or whatever? We need to think about planning those things for the future. It is not just about planning for health; it is about planning things around obesity and ensuring that in planning local areas, we have enough play areas for kids, walkways, cycleways and other opportunities. The member for Armadale was talking about the issues of what people eat and what they do and wanting to be healthy. A lot of it relates to parental pressure or family pressure and what kids eat and do. The member provided some very good information on the reasons people play sport et cetera.

Getting back to the issue of binding the Crown, I want to make a few points clear. Remember that this is a brand-new bill that covers lots of other issues outside binding the Crown. Regarding the issue of binding the Crown, the difference is that before there was nothing in the legislation—there was no binding of the Crown. In the past, local governments were exempt. I think Halls Creek is a good example; its local government tried to prosecute the Department of Aboriginal Affairs for housing on Aboriginal Lands Trust land—I was the Minister for Housing—that really were suitable for demolition. There were no powers for that local government to be able to do that. The change in this bill creates a situation under which the Crown is bound, and then comes the exemption. The exemption is one that I, as minister, can create and put within certain parameters. It may be true in the end that if those things are not done, I have no power to prosecute, but to give an example, a local government or a local community might go to the council and an environmental health officer might say that the building is not fit for occupation because of something such as a sewerage problem. The instruction would go to the department responsible for managing that, so the Department of Housing, to fix that sewerage problem. If the department chose not to do that, it would need to seek exemption from me. Quite clearly, there is no way I would give it an exemption from fixing that sewerage problem; however, if there were 1 000 houses across the community that it suddenly had to fix the sewerage for, I might say that the department could do it within a certain time—maybe a year or two. The problem with the quality of housing in some of the remote communities is due to a variety of reasons. Sometimes there have been issues of construction, with the people constructing the building not digging in the pipes adequately, which the member for Kwinana spoke about earlier, and the pipes being not far enough under the ground, so that they break when vehicles drive over them. Sometimes sewerage has not actually been connected to the toilet, so the pipes are there, the toilets are there, but never the twain shall meet and so of course sewage flows out. Those things happen over and again—inadequate construction, inadequate supervision—and it has not just been under one government but a whole series of governments.

I have seen other situations in which young kids have gone into a brand-new building ready for occupation and shoved toilet rolls down the toilet, broken the walls and smashed things in the building, so it is no longer fit for habitation. Of course, the government has to repair that. There are numerous cases of government-funded houses that have had significant damage done to them that has sometimes not been reported. One of the reasons the damage is not reported is that the occupant has a requirement to contribute financially to repairs and sometimes they do not want to, and progressively a house can become more and more degraded. There are all sorts of rules around that—to fix damage, to make people fund repairs, to upgrade houses—but across the length and breadth of the state, the total amount of housing, which is the critical area that would be the major cost, causes an enormous cost to government. The problem is that it is an un-estimated cost; it is very difficult to provide a total cost package of all those things now and in the future. However, these things happen all the time, hence the intervention from Treasury. I have blamed Treasury for blocking the provision in our original bill, which just stated that the Crown would be bound. The only other state that does that completely is New South Wales; all the others have various out provisions, and I will go through them in a minute. However, in some ways, particularly given the parlous state of our finances at the moment, Treasury is protecting us from ourselves. We would like to do something, but Treasury will say, “Hang on a minute; you’ve got no idea what this could cost you; you need to have an out clause so that you do not cause huge additional cost to the state you just can’t afford.” It is quite

clear at the moment, with the state of our finances, that we just cannot afford to spend multiples of millions of dollars—I suspect hundreds of millions of dollars—fixing things across the length and breadth of the state. That is why other states have done the same. Most other states have get-out policies and I will go through some of them. Before I do, I just note that it is a significant milestone that there is a provision in the bill about binding the Crown that was not in the previous legislation; that is a big step forward.

I will just read my notes. Although it is now unusual for the Crown to be required to comply with modern legislation, it is, however, still unusual for enforcement action to be authorised against the Crown. Only Victoria and New South Wales authorise the equivalent of enforcement orders to be issued by the Crown and only Victoria—sorry; I said New South Wales before—authorises the Crown to be prosecuted. Even New South Wales requires the Crown to be bound, but there cannot be prosecution if it does not, so we are not unusual in doing what we have done. There was discussion by members about the fact that part 16 of the bill provides a framework for the Crown to be exempted from compliance. There was always an intention to provide an exemption mechanism for the Crown, and I gather that was canvassed in detail in the 2005 discussion paper, and equivalent exemption mechanisms are available in public health legislation in the Northern Territory, Queensland, South Australia, Tasmania and Victoria. We are not alone in doing that; we are not the only state doing that. As much as we would like the Crown to do everything in the same way as everyone else, there are significant financial implications to that.

Part 16 of the bill provides a comprehensive and robust framework for exemptions. Conditions can be attached to exemptions that include the development of a compliance plan. All exemptions and compliance plans must be readily reviewed and made publicly available, which is another key aspect of this bill. I cannot just create an exemption; it must be publicly available. That will make sure that the exemptions are recognised as temporary measures and that the Crown is accountable for ensuring compliance prior to the end of the period of exemption. If the Crown does not, it is partly my responsibility. If the Department of Housing is given a plan by me—an exemption order—that lets it do something over 18 months and I find that after 18 months it has not done that, I have access to cabinet and the minister to show the exemption order I have given, say that the minister has not complied and ask what is to be done about that. I can suggest that although the excuse might be financial, it would be reasonably embarrassing for the minister involved for me to do that.

I will quickly go over some comments by other members. It was good to see support for the state and local plans. Under section 38 of the act, local governments are already required to provide annual reports to the Executive Director of Public Health. This bill will replace that requirement with public plans provided every five years. That was advocated for by local governments and I understand they are pretty keen to have that provision in the bill. As members know, some councils are already doing that, so I think it is a good step forward.

Quite a few members talked about issues such as alcohol, obesity and tobacco, particularly obesity being the next big thing beyond tobacco. I think everyone recognises that fact. I think the member for Armadale—it is hard to remember with so many members; I am sorry if I keep referring to the member for Armadale!—talked about obesity, the scourge it is becoming on our society and the increasing size of kids, particularly linking into socioeconomic areas. I think there is little doubt of that. I see the kids in my electorate and they are all pretty fit, healthy and skinny, but I have a coastal electorate with lots of sporting facilities and great capacity for the kids to go down to the beach and run and play—so outdoor opportunities for them. When I go to some other areas around town where those opportunities do not exist, there is no doubt that I see children who tend to be bigger.

Mr R.H. Cook: There is a socioeconomic dimension, isn't there?

Dr K.D. HAMES: There is, and to some degree there is an ethnic dimension as well. My father-in-law was Hungarian, and when I went to his place for dinner, I would have a huge pile of food on my plate and it was always "Eat up, eat up." There was this tradition of feeding the boy well and making sure that he was always eating.

Mr R.H. Cook: If you're going to be digging spuds all the next day, you could probably consume it.

Dr K.D. HAMES: That is right. Again, the member for Armadale made the point that although there is the bogeyman of fast food, and we know how bad that is for people—I mentioned that butter chicken has more fat than a hamburger—it is a matter of what people do and how much they do it. If people have a balanced diet and get a lot of exercise, having those additional fatty foods on occasion is not a big health deal; they burn those calories when they do stuff. The comments that have been made are right; that is hard work, so a lot of people are now looking at all these fad diets. In the television program *Shark Tank*, someone puts forward an idea to businesspeople.

Several members interjected.

Dr K.D. HAMES: It was on after a program that I like to watch. This young lady put forward an idea for natural goji fruit and wanted to market it. It was a good idea; it was nice, healthy stuff. But people are spending millions of dollars on vitamins. The exorbitant waste of money on vitamin tablets is unbelievable. As a general

practitioner, people would come to me and ask whether they should take vitamins for this or that, and I would say that they could if they wanted to but mostly they would just have expensive urine. Mostly people get the vitamins they need. If they are short of something—there are certain lifestyles that create a shortness of certain vitamins—that would be fine and their body would absorb those from the tablets. But the doses and variety they get, in my view, is pretty unwarranted. It is a health industry. People promote it and make millions of dollars doing that. The reality is that if people eat lots of fresh fruit and vegetables, have a good balanced diet and get regular exercise, that is about as good as they can do. They cannot do much better if they do all those things. We have to think about the things we demonise, but, at the same time, we have to promote good health.

A lot of people talked about preventive health and how we should put a lot more money into preventive health, particularly to tell people about the bad things they eat that they should not, the importance of exercise and all those preventive health measures. I challenge members to find one person in the community who thinks that a hamburger is good for them or who thinks that sitting on their bum and not exercising is good for them. I bet members that they will not find one person. I think the public health message that has been put out by both federal and state governments for a long time has trained people to know that if they eat too much fat and do not exercise regularly, it is not good for them. The public health messaging has been excellent in my view. I am sure that all members have seen the "grabbable gut" advertisement; I would be surprised if anyone has not. Those sorts of things send a message. If we asked someone whether smoking a cigarette was good for them, I bet we would not find too many who would say that. Our public messaging has been good; hence my comment about leading a horse to water but not making it drink. We tell people that these things are bad for them and we encourage them and provide them with opportunities, as the former Minister for Sport and Recreation did with the KidSport plan, which, as I said, got $5 million from the health department, but we cannot physically make them do those things. We can only provide enormous encouragement.

Dr A.D. Buti: But that program is working.

Dr K.D. HAMES: It is.

Dr A.D. Buti: But the message is not a good message if people aren't actually responding in a positive way to it.

Dr K.D. HAMES: No. When I said that we can lead them to water but we cannot make them drink, the member for Mirrabooka made the comment that if we walk them there, it will make them thirsty. That may be so, but we still cannot make them drink; as thirsty as they may be, some will still choose not to drink. They will still have that hamburger every day. They will still have snacks around the house. I discourage my family from having snacks around the house for between meals. People should not have potato chips in the cupboard and they should not have biscuits in the tin. They should have a bowl of fruit on the table instead. The trouble is that kids hate peeling fruit. I reckon that if there is a piece that is cut up, anybody will eat it when it is in front of them. In fact, I know that from lunchtime at my office. One of my staff always brings in fruit and cuts it up. When he is not there, I do not eat it; when he puts out a bit of apple or orange, I say, "Oh, yes, I wouldn't mind a bit of that" and I eat it. There are ways and means. One of the biggest problems with obesity is the total volume consumption given to people at meals. I see kids who tend to be obese whose families stack their plate high with food at every meal. I ask the kids who come to Parliament for lunch to show me how big their stomach is. It is only that big. When they cup their hands together and they look at the amount of food in front of them, I tell them that their stomach stretches. People can enjoy a good meal but the more —

Mr D.A. Templeman interjected.

Dr K.D. HAMES: That is why they want to go with the member instead.

The more that people stretch their stomach, the more it gets into the habit of being stretched. As it shrinks, the senses in the side of their stomach stimulate to make them feel hungry again, because that is the size it is used to being. That is why people have to reduce their intake for a fair while before they stop feeling hungry all the time; their stomach has to have time to shrink again.

Several members interjected.

Dr K.D. HAMES: No, we are not having lunch; I had breakfast this morning so I did not need to worry about lunch.

There were a couple of other things. The member for West Swan spoke about the chicken farms. I will read the notes from the health department, which state —

> I can advise that intensive chicken farming is unlikely to lead directly to a risk to humans from communicable disease. In the past, threats of influenza in Australia, arising from other species, have been well managed making use of Biosecurity legislation.
>
> The matters of public interest raised regarding manure storage —

That includes the reference to stable flies. I am glad that the member noted other sources of breeding of stable flies, because I was asked about that issue three or four years ago when we looked at what we could do about the chicken manure and they were largely breeding somewhere else. It continues —

> … would essentially be confined to fly breeding—and the existing and future legislation provides local Government with powers to resolve those matters. The new legislation provides for more substantial penalties.

As the member for West Swan said, it is up to local government and she has been unable to get local government to be of much assistance. That is how that matter went.

The member for Gosnells talked about authorised officers. The notes state —

> The Member for Gosnells expressed concern about the, "deletion of a reference to environmental health officers and a switch to the use of the term authorised officers". The Bill adopts the model that is utilised under the Food Act 2008, providing local government with the autonomy to designate authorised officers to implement the Bill. Persons with qualifications and experience in environmental health are given special recognition under the Bill, and are automatically recognised as persons who may be designated as authorised officers under the Bill. However, local governments may also designate other persons as authorised officers under the Bill if, having regard to guidelines issued by the Chief Health Officer, they have the appropriate qualifications and experience to perform the particular functions.

Mr C.J. Tallentire: Minister, just while you are on authorised officers, did your officers in their notes to you address the issue of responsibility being removed from the more direct line of accountability—that it is an authorised person who is not actually responsible to, for example, the local government?

Dr K.D. HAMES: I do not know that it is there, but my understanding of that is that there is an authorising body, which is the local government, that has responsibility for that. It is not government saying that it will contract out. That is the point that the member for Cannington made—we are contracting out. This is nothing about government contracting out services. We do not have that responsibility; it is in the hands of local government. There is nothing to stop local government from contracting out water testing of pools per se. Under the direction and management of the environmental health officer who is employed by the council, the local government would find people with the qualifications to do that testing, who would then report to that officer and through to the local government, as occurs now. The responsibility is under the local government's designation. It is more likely that a council will employ someone to do this, so that instead of having an environmental health officer, who is not always easy to find, to do the little stuff such as spot tests on swimming pools all around town, he can do the big stuff that an environmental officer does. The council could authorise a person, who under the guidelines must be suitably qualified to do that testing on the council's behalf, to report back to the council, not to government. It is a local government responsibility.

The last issue was about the powers of the minister under the bill. The member for Kwinana expressed concern that the role of the Minister for Health has been diminished in comparison with the role under the Health Act. He also noted that the role under the Public Health Bill 2014, as introduced into Parliament, has been reduced from the role that was proposed in the exposure draft of the bill that was released in 2008. The response provided to me is that there has been no substantive change to the role of the minister under the bill. Rather, the main change that has occurred is to the role of the chief executive officer and the Chief Health Officer. Initially it was proposed that the position of executive director public health would be abolished—Dr Weeramanthri, who is in the gallery, has that position—and that all executive functions under the bill would be exercised by the minister and the chief executive officer. Although that proposal was consistent with machinery of government principles, it was comprehensively rejected by the stakeholders, who wished to ensure that high-level and independent leadership and advocacy were available to protect, promote and improve public health. As a result, the bill, as introduced in Parliament, requires the minister to appoint a Chief Health Officer and for the majority of the executive functions under the bill to be performed by that officer. In effect, this continues the administrative model that has worked over the last 100 years and is consistent with the equivalent Public Health Act in the Australian Capital Territory, the Northern Territory, South Australia and Victoria. I think that covers most of the issues.

Mr C.J. Tallentire: Did the minister's notes cover the brevity of the explanatory memorandum that accompanies —

Dr K.D. HAMES: They did, and I have something here that I did not read out. The member for Gosnells made a number of comments about the Public Health (Consequential Provisions) Bill 2014. Without responding to each of his concerns, I will generally clarify that the purpose of the consequential bill is to make consequential changes to other legislation that arise by reason of this bill. It is not an opportunity to generally update or amend that other public health legislation. The member for Gosnells read out a clause about Asians, and I agree with the

member absolutely, but the consequential bill is not to fix other bills; it is to fix only the things that are affected by the Public Health Bill, and that bill, I gather, is not —

Mr C.J. Tallentire interjected.

Dr K.D. HAMES: The member for Gosnells expressed particular concern that provisions relating to the regulation of pesticides were being removed from the Health Act. The member for Gosnells will be reassured to know that this removal is to enable pesticides to be regulated under the new framework provided by the main bill. If the member for Gosnells has any ongoing concerns about the content of the consequential bill and requires further clarification, my advisers will be able to brief him on that bill. Alternatively, during consideration in detail the member will be able to get direct advice from my advisers in specific instances.

Mr C.J. Tallentire: As a general thing, why have we got an explanatory memorandum that does not explain why amendments have been made? It says, "This clause deletes" —

Dr K.D. HAMES: I heard the member make that comment and I do not have a response, but we will be able to clarify that later. That covers most of the comments made during the second reading debate. Any that I have missed can be dealt with during consideration in detail. As we have said, this bill has been an enormously long time coming, but hopefully people are happy with the outcome.

There is one last thing. The member for Warnbro talked about the Education and Health Standing Committee that conducted the lead inquiry. I think it was an extremely good quality committee, and all the members of it worked very well together. To that extent I have been lucky because I was on that committee and also the committee under the direction of Mr Larry Graham that lead to the shutting down of Wittenoom. They were both major public health issues, and I was a member of both those committees. The member for Warnbro referred to some recommendations in the report of the Education and Health Standing Committee. I will need to get advice from my advisers about that because they were not here at the time to hear those comments. For the information of Tarun Weeramanthri, while he is waiting in the gallery, I will refer to two of the recommendations in that report referred to by the member. Recommendation 5, in chapter 4 of the committee's report, states that the Ports Act should contain a specific reference that the port should not knowingly pollute the environment. That is what happened in Esperance. The Esperance Port Authority was found to be culpable for not having taken due precautions to prevent environmental pollution. I need to know whether that is in the bill, and if it is not, we need to do some quick consulting to see that it is.

The other matter is perhaps a little more difficult to deal with. It must be remembered that it arose out of an issue when Hon Jim McGinty was the minister responsible for health. When an environmental assessment project was being undertaken—it involved Magellan Metals and the development of that mine—there was no requirement for the Department of Health to do a health impact statement on that development. The then Department of Environment and Conservation was required to consult with the Department of Health, which it did in a very weak manner, but the Department of Health had no authority whatsoever to say that it believed that the approval created a potential issue for public health. One of the committee's recommendations was that it should be a requirement to do a health impact assessment as part of an environmental assessment project. That would need a fair bit of thinking about because it is already an extraordinarily prolonged and difficult process to get environmental approvals. I am not sure that our government would be keen on significantly curtailing that process, but for a project such as that it would have been enormously beneficial for the Department of Health to have had better input before the project got final approval. So two things need to be investigated.

I will now speak on fluoridation, member for Eyre. I am a big fan of fluoridation, but every time I get a letter from a group complaining about it, I go back to the health department and ask it to have another look and to double-check national reports and international studies to make sure that before I sign the letter and send it, it has looked at all the latest information. This has also been happening with Lyme disease. As members know, there is a huge campaign to have Lyme disease recognised. My health department people keep telling me that it is not here. The doctors doing the testing say that it is here. When that same blood is sent to an internationally reputable testing facility, it says no, it is not. My view is that the argument is yet to be determined. I talk to people who say that they went overseas and had blood tests and treatment for all these totally inexplicable symptoms that exactly match those of Lyme disease—they had never heard of the disease so they could not have imagined the symptoms—and now they are right back to how they were previously.

We know about the placebo effect. If I were to give patients a lolly tablet for a medical condition, 25 per cent of them would get better from that lolly tablet. The placebo effect is enormous, but there are an increasing number of views that suggest there is more to it than we might think at present. I am happy to keep the line that we have, because that is why we have a public health department and do studies. If Lyme disease is in Australia, it should be able to be proved. There should be a test that can be done by anybody to show that it is there. One laboratory should not get a positive test and another get a negative test—that does not make sense. It is a standard scientific

test. When we have a consistent test, I will believe that it exists. Again, it is an issue of public health that I think has a way to go.

That concludes my remarks. I commend the bill to the house.

Question put and passed.

Bill (Public Health Bill 2014) read a second time.

Leave denied to proceed forthwith to third reading.