

WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION BILL 2015

Second Reading

Resumed from 13 August.

MR T.K. WALDRON (Wagin) [4.32 pm]: I rise to speak to the Western Australian Health Promotion Foundation Bill 2015. I am not going to go into a lot of detail on the bill, but I would just like to make some general comments and say at the start that I support the bill and the proposed changes in the bill.

I congratulate Healthway for what it has achieved over time. We can go way back, over many years, and we can see that it has achieved a hell of a lot, and I congratulate it for that. I have been involved with Healthway since probably the late 1980s, early 1990s, particularly when I was a sports development officer, managing the WA Country Football League. We worked with Healthway and had a really close relationship. Obviously, as a parliamentarian and as a minister, I continued that close relationship.

I acknowledge the work it has done, but I also have some strong views. I think, along the way—over the past few years—Healthway lost a bit of its direction and focus, and I think that led us in the wrong direction, and I made that known. I actually made quite a few public addresses as Minister for Sport and Recreation about some of my concerns; not complete concerns, but in some areas. As someone who likes sport but who also has seen how Healthway can get its message through, I was concerned that Healthway actually went too far in some of its requirements and demands of sporting clubs, culture and arts groups and other community groups that were being funded by Healthway to carry Healthway's message.

I have always thought that one thing we have in Western Australia through our sporting clubs and our cultural and arts groups is a magnificent network that involves people across the community in delivering messages from within. I think if we get too strong with trying to drive people, we actually have the opposite effect, and early during my time as Minister for Sport and Recreation I said that I thought the direction in which Healthway was going ran the risk of throwing out the baby with the bathwater, and that the very groups that could drive change within the community for the improvement of our health were actually starting to feel threatened and were putting up their hands and walking away. I saw that as a really dangerous thing to happen.

I know from my own experiences in sport and involvement in country sporting clubs et cetera that over the years we have changed the culture a hell of a lot. The culture of alcohol in sport has changed a great deal; we still have a fair way to go, and I acknowledge that, but we need to have the confidence of people from the sporting clubs and culture and arts groups so that they can drive the message from within. One of the greatest examples I saw was when we had a partnership between Country Football and the Road Safety Council on wearing seatbelts in country Western Australia. Country football clubs got right behind that initiative and it was driven by the young people in the clubs, particularly a lot of the young girls who made their boyfriends put their seatbelts on et cetera. We still have issues out there; it did not solve the problem completely, but I know that without that program and the engagement of that huge network, we would have seen more deaths and injuries on our roads. That is a program that has worked well, and I think it can continue to work well with alcohol and tobacco in our sporting clubs and our arts and culture groups, which I also think do a wonderful job.

We often argue whether sport gets too much funding and whether arts and culture should get more funding; I think they both deliver similar outcomes and community benefits, and we must keep utilising them. I think that, with the change of direction the minister is taking with Healthway and its board, we will be able to get back to that, and actually get the good health messages out there. We will actually have people in the community driving the health message, which is where we really effect change.

Education is obviously the way to go with all these things, especially educating people with their peers and their own mates carrying that message. When they hear Billy, who might be a bit of a local hero, saying, "We're not going to drink tonight", or, "You're not going to drive because you've been drinking", or, "Hey, this behaviour's no good", or, "Hey, stay away from those drugs", the kids will listen to them more than they will listen to anyone, and I think that is the key for Healthway going forward.

Another thing I want to mention is the scourge of ice, which we have all heard about, and I want to congratulate the small community of Kulin, which is running a local forum. They have had a few problems in this area, and they are getting off their bums and running a local forum on ice. I do not want to tell Healthway how to run its own organisation, because there are experts who know a lot more than I do, and the minister is certainly very well credentialled to do that as well, but I would like to have a look at the ice epidemic, maybe through Healthway, because to me the ice epidemic is a health issue. Maybe we can repeat some of the success we had with tobacco particularly and the ways in which we have been able to change the drinking culture within sport and the community. If we were to go back 20 years, we would see the huge change that has occurred, and I think there is a role for Healthway to play in dealing with ice, through education. Hopefully Healthway can utilise that

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wonderful network of sporting and recreation clubs and that wonderful network of arts and culture groups that go right across the state at all levels; I think there is a great opportunity there. I just put that on the record as something that can at least be considered.

I have quite often heard the argument that we should ban all alcohol sponsorship in sport, and that there should be no involvement and no messaging et cetera. My fear about that is that we will just turn people away and they will look for other things; they will go outside the Healthway area and go to their local hotel or whatever, and we will actually go back to the bad old days. I think we still should involve Healthway, but we should not throw the message out. We should just change the message, and there are lots of different ways we can deliver a community message. That will be a challenge, I guess, for Healthway going forward, but I think it has a big role to play.

I do not want to add much more, other than to congratulate the minister on making these changes; I think it is good. I hope it refocuses Healthway, because I think it needs to refocus; there is no doubt in my mind about that. As a member of Parliament and outside this place, I have always been keen to work with Healthway and our sporting, arts and cultural groups to improve health outcomes for all Western Australians, and I ask that it also consider the program regarding ice.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [4.39 pm]: I appreciate the opportunity to speak to the Western Australian Health Promotion Foundation Bill 2015. The member for Wagin has raised some of the very pertinent issues associated with this difficult policy area. I first of all place my appreciation on the record to the chamber and the Minister for Health in particular. The Acting Speaker would be aware that this bill was brought on last Thursday; however, I was struck down with the most chronic of diseases, man flu, and was unable to be here. I am very appreciative of the opportunity to speak as the lead speaker for the opposition on this bill today. I would also like to place on record my appreciation to the members on this side who made their contributions last week. I thought the contribution from the member for Gosnells was particularly forceful and well presented. I noticed the Premier and the Minister for Health were particularly keen to participate in that contribution to the debate; it was obviously a debate that attracted some keen interest. It is a very important debate and it is one that we take very seriously on this side, because this is essentially about the future of public health in Western Australia. Although a range of issues have gone on around the contemporary debate on this matter, this argument is about a very important approach to public health in this state—and it is one that we believe is very important.

In the lead up to this bill we have seen some particularly distasteful attacks upon public health advocates—members of the Healthway board, who have worked tirelessly over many years for the good health of Western Australia. The work that they have done, particularly as members of Healthway, has placed the reputation of the Western Australian government on an international footing, almost above all else in relation to the importance of public health campaigns that Healthway was responsible for undertaking. We believe that this bill is essentially an attack upon their approach to public health. In the past we enjoyed bipartisan support in this place with tobacco, because over many years of debate, both sides came to the decision that tobacco and tobacco advertising in sport was very bad for the community's public health. Initially these sorts of measures were opposed by the Liberal Party in Western Australia, but it too came to the party. I want to acknowledge the role of Hon Peter Foss in terms of the Tobacco Products Control Act 2006, and the contribution that he made on that particular debate.

This is about the real public health debate. It is not just about tobacco anymore. This is about the incidence of and the patterns of behaviour around alcohol consumption. It is around obesity and the impact that obesity has upon the health of people in our community. We are of the view that not only should someone be able to access healthcare as they need according to their health needs, but also that people should enjoy quality health throughout their lives so that they do not spend it living sicker lives, whilst other members of the community enjoy much more fruitful and better health and well-being simply because they are not from a disadvantaged background. We understand that if we are to make an improvement with alcohol, tobacco and obesity, it will take a lot of work. It takes intervention in the marketplace and it takes opportunities to make sure that people are changing behaviour and changing the way that people's behaviours are influenced. That is essentially the role that Healthway undertook when it was going about with its various campaigns in tobacco, alcohol, and what might be described as junk food, but is really obesity. It is that deliberate intervention in the marketplace that I believe members on the other side of this place find so offensive, and why they are so uncomfortable with the direction that Healthway was taking. I believe it is because Healthway actually has to intervene in the marketing process of these products to people in the community and that those who have entrepreneurship, enterprise and laissez-faire market-oriented principles find that sort of approach so offensive.

For this Minister for Health, public health is a real blind spot. He has made some great contributions in Aboriginal health and he has built some good hospitals, but one of the great weaknesses of his time as

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Minister for Health is in public health, where he has been almost completely silent around the issue of alcohol. We have seen this government limp slowly towards introducing alcohol reform. We have not heard boo from him regarding the crisis of ice and methamphetamines. We have seen almost a complete absence of this minister from the tobacco debate. In particular, the 2011 “Review of the WA *Tobacco Product Control Act 2006*” recommended a number of ways forward that were left completely untouched. The only advances in tobacco reform in this Parliament under this government were those introduced by the former member for Alfred Cove the honourable Janet Woollard with support from us. We have seen absolutely no progress from this minister on tobacco reform. I might remind the minister that at a pre-election forum to health stakeholders assembled in Floreat, he made six very distinct, strong promises in relation to tobacco. He said he would be strengthening and enforcing point-of-sale legislation, including an end to price boards; he would oversee strong enforcement of legislation prohibiting sales to minors; he would adequately fund mass media campaigns; he would ban all remaining forms of tobacco advertising and promotion; he would be increasing support to address smoking disadvantaged communities and groups; and he would be phasing a reduction of tobacco licenses—all commitments that have been fundamentally avoided or left untouched.

Who can forget that one of the minister’s first acts as the Minister for Health was to reintroduce junk food into hospital canteens? What a great message that sends to people of the community and the people working in our health institutions. Of course, now the minister’s inaction around tanning beds is almost legendary as we remain the only jurisdiction in Australia in which tanning beds have yet to be outlawed. We will not introduce a ban on tanning beds until 2016 when all other states have already taken the necessary action. The reason that he has not done so is that he has come under pressure from the Liberal Party. The Liberal Party does not want him to intervene in the tanning bed market because it is the Liberal Party that regards that sort of behaviour in the name of public health as unsavoury and unnecessary. This is the nub of the problem of this legislation.

The downfall of Healthway did not happen in the early months of 2015. It did not even happen in the months of 2014 when the Public Sector Commissioner was undertaking his review. The downfall of Healthway occurred in the 1990s and early 2000s when it was redefining the debate around public health. Healthway knew that it was not good enough to simply sit around and replace tobacco advertising in sport and culture, but that it had a role as a health promotion advocacy forum to continue to spread good public health debate and good public health messages through the legislation that it was charged to act under. Over this period we saw an expansion of the Healthway scope to take in issues around alcohol and around obesity and inactivity amongst kids, and the proliferation of junk food—all of which took the place of tobacco in our sporting and cultural lives. It relentlessly forced the issues around junk food promotion and alcohol promotion in the sporting domain. Although Healthway wanted to support sporting organisations, it did not make sense to have a small placard in the corner of a sporting field talking about five serves of vegetables and two of fruits. It did not make sense if all the pervasive advertising flooding that sporting field was the very antithesis of that message. Healthway had little choice but to go down the path that it took, which was to actually stand up to this proliferation of junk food and alcohol advertising in our community and actually say the only way to get its message through was to utilise and leverage the sponsorship dollars so that it was not completely drowned out by the big-spending corporations that promote sport. I am reminded of an incident in which Healthway was sponsoring the Perth Wildcats and at the same time it enjoyed advertising from Coca-Cola. Although there was a meek health message in the sporting venue, Coca-Cola was forcing its message down every space of that sports field. Coca-Cola was being pushed at every outlet at that sports field. It is not surprising that people who were charged with safeguarding the public health messages in our community took the view that they had to do more and that they had to act further.

I note the Premier’s comments in this place in recent years around the proliferation of promotion of sports betting. I support his ambivalence around that issue and the wellbeing that it is producing for sport in Western Australia and how it is distorting what sport was for in the first place. I think the Premier is right: if we have these sports-betting organisations forcing messages around live odds into the minds of men and women and girls and boys who are going to the sport, it is doing damage to those people and that should not be what sport is about. As the member for Wagin said, sport is supposed to be about bringing the community together in a healthy way, not bringing the community together to be force-fed a rich diet of alcohol and junk food advertising. We have already won the debate on tobacco; we have moved on. Healthway was doing a fantastic job in trying to stamp out the influence of alcohol and junk food in our sporting culture. But in doing so, Healthway earned itself some very rich enemies with very deep pockets, very long memories and very long strategic aims to bring down the organisation. Healthway was earning itself some very big enemies by doing what it could to improve public health in Western Australia. I know some of these enemies. For a period I was the shadow Minister for Sport and Recreation. As the shadow Minister for Sport and Recreation and the shadow Minister for Health, two very conflicting representations were made to me from sporting groups worried about threats to their alcohol advertising and junk food advertising. In the same way that there were worries about tobacco advertising in the 1970s, they were now worried about the lucrative flow of dollars related to

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alcohol and junk food. Representatives came to me concerned about that aspect of their work. Obviously as the shadow Minister for Health I had concerns about the way alcohol and junk food was starting to proliferate in promotions and being force-fed to the sporting public.

In the context of the greater scope of Healthway's work, one can understand that there is increasing tension with Healthway's external and internal stakeholders. From time to time we saw aspects of that tension blow out. In June 2011, Mr Mike Allenby resigned from the board of Healthway. Mr Mike Allenby was the WA Sports Federation chairperson and the nominee from the WA Sports Federation to Healthway. He stood down from what he believed was a culture of "bullying and isolation" because he thought that the policy direction that Healthway was taking was contrary to the interests of the people he represented on the Healthway board. He particularly talked about Healthway's sponsorship policy when he said that it—

... will generally not support groups sponsored by companies with "unhealthy brands or messages".

He went on to say —

"I do not support many of the Healthway processes and behaviours and have been unsuccessful in having those reviewed/changed as a board member," ...

"I have attempted to improve the performance of Healthway from within but have been overwhelmed by the numbers of the 'public health' faction."

Here we see writ large that the problems of Healthway were in part because of the strong stance that the public health advocates on that board were taking and the feathers they were ruffling in the sporting area. Mr Allenby's frustrations about wanting to have that continuous flow of promotion of alcohol and junk food advertising in sport were palpable in terms of what he was trying to fight. Mr Allenby would have been forgiven for thinking that the review of the Tobacco Products Control Act in 2011, which was a statutory review—a regular review that has to take place under the act—would have alleviated some of his concerns. The report was handed down in August 2011. It talks in some length about its consultation with the work of Healthway and the consultation with its stakeholders about the direction that it was taking. It proposed a range of scenarios around the future direction of the organisation and what form it might take. It put a range of options to stakeholders about the future of Healthway. It made suggestions about the composition of the board and about the way the board goes about making decisions. It made suggestions about the division, for instance, between different areas that Healthway funded. It is fair to say that the report is inconclusive about those things. This report is a great depiction of the conflicts in our community about the issues in the debate. It is a great example of how there are different stakeholders pushing against Healthway and the direction that it was taking, and others cheering it on and wanting it to continue its path of success.

I commend this report to those who are interested in this debate. It is a great exposition of the problems that confronted the organisation at that point. Tellingly, the report's final summary and analysis states in part —

In regard to the proposed amendments for changes to existing funding caveats and the composition of the Healthway Board; there is clearly no consensus on these issues. A large number of views were expressed about Healthway's strategic priorities and policies which may warrant further discussion between Healthway and its stakeholders.

In short, this report states that there is a lack of leadership in this public health debate and that it requires intervention because the stakeholders cannot make a decision. In the face of this yawning gap of leadership, where was the Minister for Health? Where was the Minister for Health's contribution to this debate? This was in August 2011. In 2012, 2013 and 2014, we continued to see a complete lack of leadership by this minister on the emerging problems of Healthway.

As I said, there were tensions on the board. Mr Allenby's problems with the board spilled out into the public domain. There were tensions about the way that Healthway operated. Healthway was under specific attack from organisations such as the Australian Hotels Association and big tobacco. They came after Healthway, after taking the opportunity of this review, to make sure that they had their say about what they believed was the direction that the organisation was taking—a more political direction, as they described it. Where was the minister? The minister's abject lack of interest in these sorts of difficult issues and in the public debate itself is really at the crux of the crisis facing this organisation. If the minister had taken note of the report, he would have seen that he had to act then, but he did not. He allowed it to drag along. He allowed these tensions to continue to simmer. He allowed the public health advocates to continue to operate strongly in this area, believing that they had the full support of the minister in this process. Clearly, they were mistaken, as we have seen by his actions now. Where was the minister in steadying the ship and making sure that the Tobacco Products Control Act was updated to make sure that we moved forward?

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We have the context of these ongoing simmering tensions breaking out occasionally. In late 2013, we had the next crisis point, and that was an announcement by Healthway of a major sponsorship deal with the Western Australian Cricket Association. It was a great deal. It was a terrific outcome. Remember, in the past, there were issues with the Benson and Hedges Cup, and cricketing fields were adorned with tobacco advertising. We managed to get that out, but Carlton and United Breweries, Victoria Bitter and all the junk food advertisers took its place. We had the triumph of Healthway, scoring the sponsorship deal of all time with a major sporting code. It was a major sponsorship deal that shoehorned these rotten sponsorship companies out of the sporting arena. It managed to score a great sponsorship opportunity. This sponsorship deal was noticed around the world. Unfortunately, it was also noticed in the Premier's office. We know that the Department of the Premier and Cabinet Media Office was particularly perturbed about this announcement. It was a good announcement. We all understood it was a good announcement. It was a groundbreaking announcement, but of course there was no minister handing out the cheque. That was the point at which the Premier's office had had enough. It had had enough of this organisation handing out cheques in the name of this thing called good public health and it wanted part of the action. We know that in late 2013, Dixie Marshall, the head of the Department of the Premier and Cabinet Media Office, met with the CEO of Healthway, David Malone, without the knowledge of the Healthway board, because Dixie Marshall wanted to explore opportunities for the government to be more involved in the announcement of Healthway initiatives. In particular, my understanding is that the wording the government used was —

Ms Marshall was keen to learn more about Healthway and to explore opportunities for the State government to have more involvement in announcing Healthway initiatives or sponsorships. Ms Marshall felt there was scope to increase the reach and impact of Healthway announcements to better promote the good work Healthway is doing.

We know this was the case because that was in the board minutes of December 2013. This was an attempt by the government to make sure that it was handing out the cheques. It wanted to be involved in this process. We know that Dixie Marshall contacted Healthway in November and December 2013. We know from other documents that, throughout the early months of 2014, Ms Marshall continued to want to liaise with the board and the CEO of Healthway to talk about ways in which they could better align the government's media message with Healthway. When I say "better align", I mean it wanted to get in on the action.

It was of course explained to Ms Marshall that that was an appropriate part of Healthway's operations and that section 71(5) of the Tobacco Products Control Act demands that members of Parliament not be involved or associated with the handing out of these grants. Annoyed that the legislation prevented the government from doing this, Ms Marshall apparently demanded that legal opinion be sought on how to get around section 71 of the act. In her view, the section was ambiguous and there must be some way around it. It is my understanding that when that legal advice was not forthcoming to Ms Marshall, she contacted the Minister for Health's office in 2014 to request it to get this advice from the State Solicitor.

Ms Marshall and Mr Malone met throughout the early months of 2014. In July 2014, this is noted in Healthway's finance, risk and audit committee meeting minutes. Mr Malone was even asked to do a presentation to the Department of the Premier and Cabinet and a number of senior advisers in the media area to explain to them this particular part of the act and why it would prevent a member of Parliament from being involved in handing out the cheques. It seems that, unperturbed, the Premier's office pressed on.

At the same time that this was going on, the other part of the anti-public health lobby was working hard. Carlton and United Breweries wrote to the Premier in October 2014, seeking the Premier's indulgence to change the Tobacco Products Control Act and the way that Healthway functioned. It called for things such as direct ministerial accountability, and, tick; that was put in the new legislation. It called for an independent board appointed by the minister. Good lord; the minister fulfilled that wish as well! The third point that Carlton and United Breweries asked of the Premier was a regular audit and review of activities and governance, and, tick; the minister was well and truly on board with that particular part of the legislation as well. Of course, it wanted the new legislation to limit the role of Healthway to grants funding and educational campaigns. They did not want this new Healthway under the new act that they envisaged to crowd out private investment. They also wanted it to be directed at and to focus on reducing misuse, not consumption, of alcohol. Therefore, it is very pleasing to see this great alignment that is occurring between big alcohol companies and—from what I can gather from the words of the member for Gosnells in his speech—big junk food companies, and what the so-called Minister for Health is proposing under this particular legislation.

In addition, there were representations from the Australian Taxpayers' Alliance. Its approach to this new legislation was—surprise, surprise—remarkably similar to the one that the minister is now proposing; so, we had this confluence of events occurring. On one side of the debate we had the Premier's media office baying and wanting to get the Premier in on the action of handing out cheques, and, on the other side, we had big alcohol and junk food companies, and a whacky organisation known as the Australian Taxpayers' Alliance, demanding

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changes to the legislation. We also had a government that was poised and ready for the opportunity. The opportunity came in the form of the Public Sector Commissioner. That was the opportunity for the Premier to jump. Mr Wauchope's report into what is described as the abuse of hospitality was the opportunity that the Premier was waiting for. Of course, we now know, through the correspondence from the former chair of Healthway, Dr Rosanna Capolingua, that there was one person who was holding her hand throughout 2014 in relation to the work that the Public Sector Commissioner was doing with Healthway. That was the Minister for Health. We know that there was one person who was fully informed about what was going on at Healthway and about the responsible measures that the chair of Healthway, Dr Rosanna Capolingua, was taking to ensure that things were put on an even keel. We know that there was one minister who was up to his neck in these changes to the legislation, and that this minister was readily sidelined and happy to allow the Premier to run roughshod over his key organisation that is supposed to safeguard public health in this state.

In a letter from the Minister for Health to Mr Wauchope in February 2015, in reference to Mr Wauchope's letter to the Premier in February 2015, the minister says to Mr Wauchope that he has already prepared —

... a proposal for Cabinet to change the structure of the Healthway Board that is consistent with the recommendations of your second report.

Therefore, we need to get an indication from the Deputy Premier; Minister for Health about what he knew prior to the Public Sector Commissioner's report and what work was going on in the background while this investigation was going on. Why did the minister say in response to the Public Sector Commissioner's report into the alleged abuse of hospitality that the government was bringing about this new legislation, when he has already been working on that legislation? From that point of view, the minister cannot have it both ways. He cannot say that he is responding to a crisis in Healthway brought about by the Public Sector Commissioner's report, and at the same time say he has already been working on these changes. The minister cannot say that these changes have been brought in because of the alleged abuse of hospitality and also say that he is already well and truly engaged in the process of this new legislation.

It is clear from this process that the Deputy Premier and the Premier were involved in a process of tickling the tummies of big alcohol and junk food companies, which had been coming to see them throughout 2014. They were not only working on legislation that undermines the very health advocates upon which they rely, but also undertaking that work in a veil of secrecy behind the very backs of those advocates. On the one hand, the minister is saying he is going to punish Healthway for this alleged abuse of hospitality, and on the other hand he is saying he already has their number and is already actively engaged with big alcohol and junk food advertisers to undermine Healthway.

Dr K.D. Hames: Not true.

Mr R.H. COOK: Then why is the minister's legislation almost word for word what Carlton and United Breweries wanted? Why do we have this rather clever process where the minister has this alleged abuse of hospitality, and, out of his feigned outrage about this alleged abuse of hospitality, he brings about this legislation?

Let us look at this so-called abuse of hospitality. We now understand that Healthway, far from being the great abuser of hospitality tickets for its sponsoring co-partners, was absolute small fry. As we have seen through subsequent questions in Parliament, other agencies were up to their necks in this stuff. Where was the minister's outrage about their abuse? In particular, where was the minister's outrage about the so-called abuse by the other agency under the minister's control—Tourism Western Australia—of more than 6 200 ticketed events? Where was the minister's feigned outrage at that point? Let us talk about the Public Sector Commissioner's so-called inquiry into this. We now know, through the great job of Rob Donovan, that the Public Sector Commissioner's report is absolutely flawed. On the one hand, the Public Sector Commissioner says that, for instance, 36 per cent of the tickets were unaccounted for, but, at the same time, 21 per cent of that 36 per cent of tickets were actually not used. Those details are in the report, but they are surprisingly forgotten in the executive summary, or the summary of findings. In particular, the Public Sector Commissioner found that the executive director attended 25 events with VIP tickets over a four-year period, or an average of six events a year. That is not particularly excessive. Over the same period, he used 32 VIP tickets for family and friends.

The report goes on to say that on 25 of those occasions, he took his wife. That means that of this grossly excessive abuse of tickets—as the Premier has labelled Healthway in this particular instance—over all those years, the executive director used 25 of those 32 tickets to take his wife to those events. This is not the stuff of gross excessiveness. This is the stuff of political opportunism. Where was the Minister for Health when all this was going on? Where was the Minister for Health when it came to standing up for his internationally renowned health advocacy organisation? He was missing in action. He was sidelined because of the political opportunism that the Premier thought he had in attacking Healthway. He was sidelined by the Premier, who attacked the

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reputation of the board members and the staff, and of the chair of Healthway, Dr Rosanna Capolingua, in particular. In the face of all the other abuse that was going on in other agencies, we heard absolute silence from the minister.

As we know, there was no gross excessiveness in the issues surrounding this matter. As we know, we have a Public Sector Commission report which, quite frankly, was found wanting and which, I might add, I understand is now the subject of a complaint to the Ombudsman. The Public Sector Commissioner sought to respond to Professor Rob Donovan's criticisms of his report in a manner that Professor Donovan thought was, quite frankly, untrue. We have the Public Sector Commissioner—I cannot believe that this would be the case—almost complicit in what is essentially a political stitch-up of Healthway.

Dr K.D. Hames: Without him able to be here to defend himself—he's an independent Public Sector Commissioner—I don't think it's appropriate for you to attack his integrity like this. I really don't. Why don't you go and have a meeting with him and discuss it with him?

The DEPUTY SPEAKER: Order, members!

Mr R.H. COOK: I might have a meeting with him. I might take up that opportunity later. Of course the minister's legislation would have already slid through, with the disinterested support of his colleagues. In the meantime, the fact is that he has tabled a report in this place that is inaccurate. This report has been used and abused by the minister and his colleague the Premier to wreck the reputations of the staff and board of Healthway. The minister should be ashamed of himself. He calls himself a Minister for Health, yet he has used and abused his office to attack Healthway and to attack the reputations of the people at Healthway. Is this what he thinks a Minister for Health is about? Is this the reason he got into this place—to dismantle a world-renowned institution that promotes public health? He has done a great job doing the work of big alcohol companies and big junk food advertisers. I understand from the member for Cannington that the minister accepted funding from a big tobacco company in 2013. How much was it, member for Cannington?

Mr W.J. Johnston: It was \$45 000.

Mr R.H. COOK: He accepted \$45 000 and he calls himself a Minister for Health. In 2013 he was in cahoots with organisations that peddled products that essentially kill people.

Dr K.D. Hames interjected.

The DEPUTY SPEAKER: Order, Minister for Health! The member for Kwinana has the floor.

Mr R.H. COOK: I will take this interjection. Since 2013, has the minister accepted further funding from big tobacco companies?

Dr K.D. Hames: I have never accepted any funding from big tobacco companies.

Mr R.H. COOK: Has the political party that the minister is a part of accepted more money from big tobacco companies?

Dr K.D. Hames: I have no idea.

The DEPUTY SPEAKER: Member for Kwinana, if you are going to ask a question, and you have said you will accept the answer, you should listen to it rather than shout over the top. We just want one voice at a time please for Hansard.

Mr R.H. COOK: We have this Minister for Health, whom we know had an abject disinterest in public health in the first place, hence his complete lack of stewardship of the Tobacco Products Control Act. We know that he has been sidelined by a Premier who has cooked up and essentially done a job on the staff and board members of Healthway, yet we see a minister who is prepared to sit by and watch this happen. I know there are no ribbons to cut on an organisation such as Healthway. Working in public health is really hard because one does not win friends. It seldom comes together with a clean media release. It is hard work. We know of this minister's indifference to hard work.

Dr K.D. Hames: How can you seriously say that?

Mr R.H. COOK: I can seriously say that because we have a report on the Tobacco Products Control Act 2011 that the minister has not touched. That was his opportunity to stop the crisis in our public health debate. Now we come to this point, which is not the fault of the hardworking staff and board members of Healthway, as the Premier would have us believe, but simply because we have a cooked-up political ploy to nobble the very organisation that is the champion of public health in this state. I think it has been nobbled. There are very serious questions around this issue. We know, for instance, that in this legislation, the minister has removed the independence of the board. Ironically, in supporting the independence of the board, we are supporting a section of the act that was inserted by Hon Peter Foss because he was the one who insisted it be there in the first place.

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I do not know what the relationship between the Premier and Hon Peter Foss is but clearly they did not see eye to eye on this particular matter. I guess those who hang around longer in political life eventually get their revenge. We also know that under this legislation, the minister may give directions with respect to the conduct of the board. From that point of view, we understand that there is a further erosion of the independence of the Healthway board. In particular, we know that the minister may veto expenditure by the board under this new legislation and that is what Carlton and United Breweries wanted. This is what the Australian Taxpayers' Alliance wanted. I suspect this is what Coca-Cola Amatil wanted when it met with the minister, according to the member for Gosnells.

Dr K.D. Hames: In 2011.

Mr R.H. COOK: It was 2011, was it not, so it was a bit early? I understand that the campaign to nobble Healthway that the minister and the Premier are now championing met its zenith in 2014. I understand that in 2014 it was all action stations—all arms to the barricades—making sure that they took down this organisation that was doing such a good job for public health in this state. I understand that 2014 was the year that the minister worked so closely with big alcohol and junk food companies to ensure that he nobbled this organisation. I know that the Minister for Health will ultimately be successful and they will thank him. Perhaps big tobacco companies will increase their donation to the Liberal Party this year as a result of the hard work of the minister and the Premier. I hope that the minister is proud when that money eventually comes into the government's bank account.

He should be ashamed of himself for this legislation. We understand that there was plenty of time for the minister to act on this stuff and he did not. He should be ashamed of himself because of the moves by the government media office that we know took place when they were so appalled by the WACA advertising. The minister should be ashamed of himself for the conduct of his side and his rank political use of the issues around the alleged hospitality ticket abuse. He should be ashamed of himself for the way the Public Sector Commissioner was positioned and the way his report was used for the minister's own political purposes to nobble this organisation and health advocates in Western Australia everywhere. He should be ashamed of himself for being part of a government that produced such a faulty Public Sector Commission report. He should be ashamed of himself for his subsequent inaction over his own agencies and the abuse that we now know was on a far greater level than Healthway's so-called abuse of hospitality tickets, and the minister did nothing. The minister should be ashamed of himself for the way that he has now brought this legislation to this place as some sort of lame duck Minister for Health unable to stop a Premier salivating at the bit wanting to get hold of these Healthway dollars, wanting to ensure that the ministers hand out the money and wanting to ensure that the ministers are seen to be doing this stuff in the name of their own political careers rather than in the name of public health.

The member for Vasse is sitting at the back of the chamber. Her political opportunism in the Vasse by-election was a great example of how this government wants to abuse the Healthway dollar process; it handed out a \$2 million cheque in the Vasse campaign. That is what we will see in the future. That is what the government has in mind under this legislation. The former member for Vasse resigned on 3 September—this is really important because this is the way the government wants to abuse the process under Healthway—and, strangely enough, out of the blue, Lotterywest approved a grant application front and centre in the Vasse electorate. On 18 September the writs were issued for the Vasse by-election and then on 7 October up popped the Liberal candidate for Vasse, Elizabeth Mettam, to hand out the cheque; she is now the member for Vasse. I do not blame the member for doing that; it was a great political opportunity for her and for the government, but it was an abuse of the process.

The government has said that it likes the way Lotterywest operates, because it gives it opportunities—it elbowed the Nationals out of the way in the middle of a by-election! That is all right, member for Wagin, it did not go unnoticed. This bill will give the government an opportunity to roll in political campaigns and to make political gain out of a public health issue. Hon Peter Foss always thought that should be avoided, and when the legislators looked at the Tobacco Products Control Act, they thought it would be a bipartisan public health advocacy act of Parliament that was about doing things for the sake of good health and not doing things for the sake of good government.

Madam Deputy Speaker, guess what this bill does. It creates a series of questions that we believe should be answered in the context of this debate. Why is it that the government has suddenly popped up out of an acrimonious political debate with big alcohol and junk food promoters with a piece of legislation that almost mirrors what those organisations want? Why was the minister working hand-in-hand with the Public Sector Commissioner and the chair of Healthway, when at the last minute Healthway was wrong-footed by adverse findings of the Public Sector Commission? In the words of Dr Rosanna Capolingua, Healthway was very much wrong-footed by the Public Sector Commission.

Mr T.K. Waldron: Can I ask a question?

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Mr R.H. COOK: No, I have only six minutes, so I really need to press on; however, if I can, I will pause before making my concluding remarks.

Why is it that the Public Sector Commission report is in dispute? Why have staff been silenced in this whole thing and cannot now defend themselves in the face of these accusations? Why did the minister see fit, almost out of the blue, to sack the entire board of Healthway when he knew at the time that legislation was about to be brought in that would have remedied it and that the Public Sector Commissioner and the board of Healthway had already been working with the Minister for Health over a long period to remedy the problems that the Premier said he now needed to act on? Why do we have all these unanswered questions?

This is something that requires further investigation and this legislation should be closely examined. All the health stakeholders I have spoken to said they did not know this legislation was coming or what the legislation looked like because they were not consulted. If the minister was working on this in 2014, why did he not talk to the health stakeholders about the very organisation about which they cared so deeply? Surely, if the minister was undertaking this process in a carefully considered way, as he seemed to indicate to the Public Sector Commissioner in his letter of 16 February, he would have mentioned it, even in passing, to members of the board of Healthway and to other stakeholders—the Cancer Council WA, the WA Health Promotion Foundation, the Australian Medical Association, and the Chamber of Arts and Culture Western Australia. None of them knew this legislation was coming. They did not know what was in the legislation. Why the secrecy, and why do we have the minister so keen to nobble the independence of the organisation? When we remove the hysteria that the Premier whipped up around the so-called hospitality rorts, we know it was small fry in the scheme of things and was not a grossly excessive abuse, as the Premier said. If that is the case, why did we have a state of hysteria that saw the entire board needing to be spilled? We had one of the board members, Gary Geelhoed, the Chief Medical Officer, being pursued by the government while he was in South America to send in his resignation.

The lengths to which this government went to target each of the board members to harass them out of office, in addition to the hysteria whipped up by the Department of the Premier and Cabinet Media Office—we know the shady role it has played in this—raises more questions than answers, and we very much look forward to the minister answering these questions: Why did the minister bring this piece of legislation to Parliament? He says he has been working on this since 2014, so why does he have amendments on the notice paper already around the fundamental issue of a veto over what the new board does and says? That does not sound like legislation that he has been working on for a long time. Has he been working on it in secrecy for a long time? That does not sound right. No; we know what is going on here. We have a public health advocacy board that was tasteless from the government's perspective. The government wanted political opportunities, its own measures, its own mechanisms and its own allies in the big alcohol and junk food industries to nobble the organisation. This bill leaves more questions than answers. We should look into this and come up with answers that shine a light on this very unsavoury situation.

I have said before that the Premier should apologise to the staff and the board members of Healthway and, in particular, the executive director and chairperson, for his role in this. The Premier has wrecked careers and reputations, simply for the task that the government set itself of nobbling an internationally renowned organisation. I do not say, member for Wagin, that there were not problems in the way Healthway communicated and worked with stakeholders. The points the member for Wagin made about bringing people with him were very informed, and I agree with the sentiments, but at the back of all this is rank political sabotage, and that is why the opposition will continue to oppose this legislation.

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [5.38 pm]: I rise to support, and I am pleased to support, the Western Australian Health Promotion Foundation Bill 2015, because I think that very important areas need to be addressed. I was one of those people who were very pleased with the formation of the Western Australian Health Promotion Foundation when it was first established. Many members in this place know that I go back a long way in the sporting industry, and the WA Health Promotion Foundation was a very important part of the process. I certainly believe it was important and at the start a very good relationship existed between many of the organisations that the foundation worked for and with, and the same with the community organisations that worked with Healthway.

The object of the bill reads —

The object of this Act is to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

I am going to use the word “encourage” many times throughout this very brief contribution to the debate on this bill because I believe that is where a major part of the problems have occurred, and that has caused disengagement, which I think is a real problem.

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There is no doubt that the original Healthway message was very clear: it was a strong health message to stop smoking. I am very proud that I live in Western Australia, where there has been significant and great change in reducing the incidence of smoking. Then, of course, the messages went on to include the SunSmart message; once again, I was involved in a sport in which that was very, very relevant, and it certainly has improved the health of the community in Western Australia. There were also the responsible alcohol and five fruit and veg messages, and over the years a number of other messages have come in, and I think that is very relevant because it is the Western Australian Health Promotion Foundation. The messages have certainly increased in number, and that is not a problem because, once again, there are a number of messages that need to come across. However, what started to occur was that the health messages became combined so it did not have one health message, but might have had two health messages to deal with. In a larger organisation, that probably can be managed, but in a smaller organisation it can become quite difficult. At the same time, it was not just two health messages, but often became a multitude of health messages, and that made things quite difficult.

I will provide members with some examples, a couple of which have already been used today. What has occurred in our society over a number of years is that one company might become more diverse and take on other products that may also actually be healthy. Let us take, for example, a water drink; that sponsorship might have been about a water drink that an organisation had, but then Healthway would come in and say, "Sorry; you have to get rid of that sponsorship because the major company behind that water product is Coca-Cola". That can present difficulties for a sporting or arts organisation, because in the Perth market there is not necessarily a great suite of sponsors that people can actually call on fairly quickly. Those were the sorts of things that started to come into play, and that is where the disengagement started. Even though the Health Promotion Foundation was probably accurate and the brand of water was actually owned by that company, it could not be worked through, and those are the things that started to cause that disengagement.

Let us face it, one of the ways Healthway really wanted to get its messages out was through grassroots clubs, and that was really valuable initially. But the onus that it put on many of those clubs reduced their ability to support a local business—often the local liquor store, which provided some alcohol to the club. They could not advertise the local liquor store or do a lot of other things, even including in the club canteen. I am sure members are aware that I am very strong on health promotion and things like that, but I know what it is like working in a small club, and the club canteen is the heart and soul of the club. I am not talking about fast-food companies; I am talking about club canteens that could not sell certain things, and that actually made it very difficult for local clubs. That resulted in disengagement, and it certainly was not an encouragement. It became a case of, "You do this or you get nothing." I guess, in the end, a number of smaller organisations actually found that it was easier to say, "I'm not going to apply for it. I'm not going to go there." We lost the opportunity to encourage health promotion, and from my point of view that has been a quite disappointing result.

I understand that some potential sponsors in the sporting and arts fields have been driven out of those areas altogether. They no longer consider it worth their time going into those areas, and that is a loss. Members who have done sponsorship work will have gone through the suite of sponsors they can call on and will know that they cannot double up here or do certain things, because the Perth market is not that big. If we could have worked together, I think we might have had a better outcome. I understand—I cannot verify this—that some sports were told to not apply for funds, and I also understand that many arts organisations chose not to apply for funds.

The process also became very difficult, even for large organisations, and almost impossible for smaller organisations. I know they have to be accountable, and I will vouch for accountability, but if the paperwork and the reporting processes become too onerous and if the time frame between lodging an application and finding out about its success or otherwise is too long, we will lose the opportunity and the ability to use the Health Promotion Foundation as a means of encouraging healthy lifestyles for Western Australians.

Mr P.B. Watson: Why has it taken you such a long time to change your mind about Healthway?

Ms A.R. MITCHELL: Member, I am not taking any interjections; I think there are a few members opposite who wish to speak.

Mr P.B. Watson: I'm not allowed to!

Ms A.R. MITCHELL: Okay! The dilemma is that organisations became totally disengaged from the process and from the foundation, and the health messages were lost as a result of what was going on. As I said, I am actually a very strong advocate of promoting health and of using sport and the arts to do so, because they are natural vehicles that can achieve wonderful outcomes. If we do not have those vehicles, we do not have a message, and we have to have them working together. That is why I am quite pleased that we can revisit this and get things back on track. I certainly hope we will be able to work with some areas, because I think there are some areas that still need to be firmed up. The representation on the foundation from the sport sector—listed in

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clause 11(2); the arts sector is also represented—has to have not only knowledge of health, but also practical experience in health. One of the things that seems to have occurred over the last few years is that it became very academic and very bureaucratic, without any relevant practical experience in the field. Even though it is a health promotion organisation, the minister must make sure that the representation of the foundation comprises people from an academic background, but we also need people with relevant experience, particularly at the local level and even at a larger level. I am sure the arts community would agree with me on that.

I would also like to make that recommendation at a committee level; I am not sure how the committees are going to work as they once did. Clause 27(2) is about committees. Having relevant experience is certainly also a significant part of what is required in analysing the application process of committee membership, and how it can work best. Market intelligence is invaluable and, I believe, absolutely essential. We want the Health Promotion Foundation to be very relevant to the community. I think it has lost its relevance; let us get it back, and let us encourage healthy lifestyles for people in Western Australia through the Health Promotion Foundation.

MS L.L. BAKER (Maylands) [5.48 pm]: I rise to speak on the Western Australian Health Promotion Foundation Bill 2015. Healthway is an integral part of our community, and I have huge admiration for the original legislation, which was first debated, I think, back in 1990. In 2005, Hon Jim McGinty read the second reading speech for the legislation that would become the Tobacco Products Control Act 2006. This is an amazing organisation that has had a remarkably productive history, and I think we owe a huge amount to the work of Healthway and to the individuals involved in its original creation. It has done some amazing work.

My sport has benefited from it. I remember writing applications for many years for the State Equestrian Centre to sponsor dressage and other competitions. I remembered, with great glee, putting bags of “2 and 5” around the outside of the equestrian complex when the horses were all on deck to compete. The 2 and 5 is, of course, two fruits and five vegetables. There were lots of bags of carrots available. A couple of very enthusiastic horses ended up partaking in the 2 and 5 and cleaning up some of Healthway’s promotional material, much to everyone’s glee!

I differ substantially from the member for Kingsley’s assessment of what went wrong at Healthway. This comes from my understanding of what happened. I was not on the inside so I am not completely convinced that I know the letter of every detail, but I have done a bit of research and I have listened to the debates in this house. I think the government has taken a sledgehammer to fix something that could have been fixed by making sure that the management and leadership in the organisation was on track and making sure that some of the government’s issues within Healthway, as it was structured, were correct. The government has thrown the baby out with the bathwater. I have gone back to read the debates that occurred in 1990. The Minister for Health probably read some of them in anticipation as well. The second reading of the Tobacco Bill occurred in 1990. I came across a number of comments from the then opposition, which would have been the Liberal Party of the day. Mr Bradshaw contributed to the second reading debate on 4 July 1990. I will quote Mr Bradshaw when discussing the Liberal Party’s concerns about what might happen with funding that was put into this kind of foundation —

The next section concerns the Health Promotion Foundation, and though the intent may be quite good I am concerned that the foundation might be regarded as a slush fund. I would hate to see the situation come about where, for political purposes, the Government will hand out cheques to sporting bodies which it may wish to win over for a coming election or for any other reason.

That does resonate a bit, does it not?

Mr R.H. Cook: It is insightful!

Ms L.L. BAKER: That was out of the mouths of the opposition of the day, which was, of course, the Liberal Party.

Those of us who remember Dr Turnbull, the member for Collie, would remember her fondly. Her contribution to this debate back in 1990 included the following comments —

We have heard how the Victorian Health Promotion Foundation is building up a large sum of money. It has been said that this is because it has a good administrator and that it is husbanding its funds well. It has also been said that the foundation is purposely accumulating money in order to have a large fund to draw on in a pre-election year. We do not want to presume that pre-election pork-barrelling will be the action of this Government, but we feel that all moneys should be disbursed within the one year;

This amendment, as it was being put on the day, would ensure that happened.

In response, Mr Minson said —

The Opposition is not too concerned about whether it is two, three or six months, but a time frame must be specified for the distribution of funds, which will prevent the accumulation of large reserves.

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I will mention other issues in a minute. I thought that the comments about pork-barrelling, which occurred several times during the Liberal Party's debate when this was first put before the house in 1990, were very interesting because it also reflects the concerns this opposition has about changes that may erode the independence of this organisation.

Looking at the original debates around membership, it was very clear that membership of this organisation was meant to be 11 people from organisations representing health, sports, the arts and local government, and specified worthy organisations such as the Australian Medical Association, the WA Sports Federation, the WA Sports Council, the WA Association of Professional Performing Arts, the Australian Council on Smoking and Health, and the WA Municipal Association, and the chief executives of the Department of Health, the Ministry of Sport and Recreation, the Ministry of the Arts and the Bureau of Youth Affairs. Of the foundation's 11 members, representatives from outside government would outnumber those from within government. Does the minister remember that the first appointment was Harry Sorensen? He is a very dear friend of mine. I understand that he was the head of the very first board of this foundation.

Changing the legislation in order to reduce the independence of Healthway is not a good thing. The concern in the community is that the Minister for Health has a bit of a track record on this. I refer to the role of the Commissioner for Children and Young People. I know and understand that no government particularly likes independent commissioners, and I understand that the opposition would have opinions about independent commissioners. The position of WA children's commissioner has been vacant for over two years because the government simply has not moved to appoint one. It has put an acting commissioner into that role. She is a public servant. To me, or any person outside these walls, that would be a complete conflict of interest. It is shameful that the government has allowed that to happen and it is to the detriment of children in this state.

A great concern with this legislative change is that the government is again eroding the independence of an organisation. My colleague the shadow Minister for Health described the journey with Dixie Marshall and others. He also described the conflict with Carlton and United Breweries. If it is not something that the government has used as a background, it is certainly publicly very obvious that the wishes of big alcohol corporations are very closely aligned to the drafting of this bill. If it is not the government's intention to do that—I have heard the minister say it is not his intention to do that—that is a very great misfortune.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr C.J. Barnett interjected.

The DEPUTY SPEAKER: Premier, the member for Maylands has the call.

Ms L.L. BAKER: I understand that Peter Foss was most concerned about the independence of this board.

I will end my speech with a few other things I want to put on the record. Although the focus on smoking has shifted, Healthway had incredible success in delivering a reduction in the number of smokers in WA that could have been carried forward into other areas, such as alcohol. There is substantial concern in the community about the Western Australian and Australian drinking patterns. Eighty per cent of the alcohol consumed by young people aged 14 to 24 is consumed in ways that puts their health, and the health of others, at risk of acute harm. By 14 years of age, 80 per cent of WA school students have used alcohol. Of the 16 to 17-year-old WA school students who reported drinking in the past week of this survey I am referring to, 43 per cent reported that one of the main reasons they did it was to get drunk. I do not have time to go on this afternoon because the opposition has committed to keep this short. I could go on and talk in great detail about the current threat that we are experiencing in our community because of excessive alcohol abuse.

Members know that I have been fighting the big destination liquor outlets that continue to mushroom in the most remarkable places around this state. I will continue to fight them. I have great respect for Malcolm McCusker and his wife, Tonya McCusker, who have made a remarkable philanthropic contribution to fund the McCusker Centre for Action on Alcohol and Youth. The work they are doing was driven home to me in a letter I received today about the disappointment that the McCusker Centre has in the Western Australian government.

Sitting suspended from 6.00 to 7.00 pm

Ms L.L. BAKER: I would like to conclude my comments by putting on the record a letter that I received on 12 August from the McCusker Centre for Action on Alcohol and Youth about its disappointment with the Western Australian government's failure to introduce legislation to ban the secondary supply of alcohol to minors, which was meant to be introduced this week.

Dr K.D. Hames: It was.

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Ms L.L. BAKER: It was?

Dr K.D. Hames: It was on the news tonight.

Ms L.L. BAKER: I blinked! Very good. Was it introduced into the house?

[Quorum formed.]

Ms L.L. BAKER: Thank you very much, Mr Acting Speaker (Mr I.C. Blayney). I am much reassured by the presence of my parliamentary colleagues.

Mr R.H. Cook: Who are now fleeing the chamber!

Ms L.L. BAKER: Those on the other side of the house are disappearing. During that brief interruption I was informed that the Minister for Racing and Gaming actually presented the bill on secondary supply in the upper house today. I am absolutely sure that the McCuskers will be delighted with that, as will Samantha McKenzie, who has been a strong advocate for that legislation. I congratulate her and the McCusker centre on the work they have done.

Just before I sit down, I advise the minister that there are three issues that I particularly want him to address in the consideration in detail stage. My concern is that the movement of this foundation into the public sector regime has the capacity to let it be treated like any other public sector agency, so I need some reassurance on a number of things. My first concern is with the efficiency dividends that apply across the sector. I would be very sad if Healthway, or this new iteration of Healthway, were suddenly subjected to the sort of funding cuts that public sector agencies have been subjected to by not just this government but also many governments in the past. If that were to occur, it would be absolutely retrograde for this organisation. I know the minister would not want that. I hope that some assurance will be easily given that Healthway will be quarantined from the impact of those kinds of budget cuts and measures; they do not impact now and they should not impact in the future.

Secondly, I talked earlier in my speech about the granting of funds. Concern was expressed by many members on the Liberal Party side when the debate around the tobacco bill was originally held back in 1990 about what happens if this body collects funds and does not distribute them and whether there would be some compulsion for the organisation to give out a certain percentage of its funding over time. I have already read into *Hansard* that that was an issue that the minister's side, when in opposition, debated heavily when this legislation was first considered. I would like some assurance on that. The final thing that concerns me is that when a government agency is in receipt of consolidated revenue funds, at the completion of a budget year funding that has not been spent is quite often subject to return to the consolidated account or goes back into the central revenue fund of government. That cannot happen with this foundation; it would be completely counterintuitive. As far as I can see from my experience in the charitable and non-government sector, the independence of Healthway is, in many respects, being cut on a number of levels. Hopefully some of the changes might be improvements, but the thing that worries me most is the effect of Healthway being treated as a government agency and coming under the various legislative regimes that exist for agencies that are part of government. Will it be exempt from cuts to its budget? How will the money that is in Healthway be disposed of within the appropriate period, be it six months or 12 months, and not held over as a slush fund for a pre-election campaign? Finally, will the agency be forced to return money to the consolidated account if it has underspent funds? With those comments on the record, I look forward to the consideration in detail stage. I understand that the opposition will not be supporting the bill as it stands.

DR K.D. HAMES (Dawesville — Minister for Health) [7.06 pm] — in reply: I thank members for their contributions to the debate on the Western Australian Health Promotion Foundation Bill 2015, although I have to say that some members developed plots and themes that are far beyond my ability to work out where they get these things from. There is the saying about the web they weave when they wish to deceive.

I will just talk about Healthway itself and put on the record that this government is enormously supportive of Healthway—not just what it has been doing recently but also what it has done since its creation. Healthway provides funds particularly to smaller and grassroots organisations in the fields of health, sport and the arts, and has in many cases been the bedrock on which those organisations have been able to build and survive through tough times over the years. Sponsorship is hard to get, particularly for little groups and grassroots organisations providing sporting and arts activities. While Healthway's job is to provide promotion in those areas, without that funding many of those smaller organisations just would not exist. That creates the opportunity for Healthway to put out the health message to all those different groups. It provides an entrance to those organisations in the same way that sponsorship from any organisation provides that entrance. In this case, it has been an opportunity to put out that health message.

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In my second reading speech on this bill I quoted the second reading speech of the Tobacco Control Bill. As the member for Maylands said, the bill was debated largely in 1990 but was introduced in 1989. I will quote once again former Minister for Health Hon Keith Wilson. When talking about Healthway he said —

It will fund activities related to the promotion of good health; it will offer alternative sources of funds to sporting and artistic activities currently sponsored by tobacco companies;

As we know, we have moved on from tobacco companies particularly to alcohol and fast-food outlets. He continued —

it will sponsor a wide range of sporting, recreational, and artistic activities which provide an opportunity to advance important health promotion campaigns; it will provide funds for encouragement of healthy lifestyles in the community, and support activities involving participation in healthy pursuits through grants and sponsorship; it will assist community organisations to promote good health ...

That is what Healthway has been doing since it was created in 1990, what it continues to do, and what it will continue to do in the future, hence why I read that into my second reading speech. All the people who are putting forward the notion that this change in legislation will be the death of Healthway as we know it could not be further from the truth. This is about continuing the great work that Healthway has done. Look at the messages that are out in the community; I have challenged a few people on this issue before. If anybody is asked whether they think McDonald's is good for them or whether they think eating it every day will make them healthy, they will say, no, they clearly do not. Do people think excess alcohol is good for them? No, they do not. Do people think that lack of exercise is good for them? No, they do not. Do they think that a good diet is good for them? Yes, they do. Those messages have got out to the community over the years. Even though people do not always follow those messages and often eat things that are not appropriate, they know when they are doing it. They know that it is not good for their health and they know it is the wrong thing to do. A lot of the direction that has resulted with many people now on health-related diets and looking for different diets that will make them healthier, or looking to do more exercise and more physical activity, has been generated by the great work that has been done by Healthway in particular, but also other state and federal health organisations, to promote that message of good health.

Members, particularly the shadow Minister for Health, have raised issues about what went wrong and how we failed to do anything. We did not fail to do anything. Firstly, the review of the Tobacco Products Control Act 2006 recommended changes that were required to Healthway. A lot of those recommendations were about putting more health-related people on the board. The difficulty was very clear: the requirements of the legislation pitted a group of people who were totally focused on the health message and how to get that health message out against a group of people representing other organisations who had an interest in making sure that their organisations continued to get funding, and particularly that that funding flowed through at the grassroots level. Those groups on the Healthway board became increasingly conflicted and increasingly had difficulty with each other. The changes that we made in 2011, which I made in consultation with Dr Capolingua, the Healthway chair at the time, were that a couple of board members had reached the end of their time—one had resigned and one had reached the end of their time—so we replaced them with two new members. The previous members had been partially involved in those conflicts and it was hoped that by putting alternative members in there, perhaps with views that could be a bit more moderated, we could get that team working together better than they had in the past. However, that proved not to be the case and meetings in the boardroom became increasingly vitriolic.

I had many conversations with Dr Capolingua as chair, particularly as issues evolved and we moved forward over the last year, about what we could do to address that. I do not exactly remember when, but at least a year ago Dr Capolingua and I formed the view that we needed to change the board structure because it was not working well and we needed to put in people who were not representative of a particular interest group. We looked at the size of the board and we looked at the current Lotterywest board as an example, and other boards. I formed the view, with Dr Capolingua, that seven to nine members was the appropriate number and that we should appoint people who had experience in and knowledge about health, the arts and sport, but not people who came from any particular representative organisation, as was required on that board. When the shadow minister talked about us working on those things in advance and what we were working on, that is what we were working on; it was not about the final structure we have now that mimics the Lotteries Commission Act. I will get onto why we did that at the end. That was what we were working on. We planned, in advance of all those issues and the Public Sector Commissioner investigation, to restructure the board along those lines. When I said that the department was already working on it, that is what I meant. It was not working on the Lotteries Commission component; it was working on changing the structure of the board. I asked the Department of Health to prepare legislation for me to take to cabinet that did just that—it changed the composition of the board.

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Then issues of a different nature developed within Healthway. I do not want to go too much into “he said, she said”, but there clearly became a conflict between the chair and the director of Healthway. Allegations were made and issues were raised. The chair discussed with me her concerns about some of the operations that were occurring, which were managed under the responsibility of her chief executive. After discussions with me, we formed the view together that the best way to deal with this was to refer that issue for investigation to the Public Sector Commissioner. At the request of Dr Capolingua as chair—she stated that publicly a few times, and I do not think that has been adequately recognised, although it was recognised in the apology—an inquiry was initiated that subsequently found there were some minor issues with her as chair. The shadow minister got up to defend them both. I can tell him that there are severely conflicting points of view between the two, as I am sure he knows.

Mr R.H. Cook: I think you took advantage of that.

Dr K.D. HAMES: The member says that, but —

Mr R.H. Cook: I did; just then.

Dr K.D. HAMES: I know. All I am trying to tell the shadow minister is he defends both the chair and the director. I think that if he asked either one—certainly, if he asked Dr Capolingua—he would find that she disagrees with some of the views that he put forward about staff within the system.

Mr R.H. Cook: I am not trying to curry favour with Dr Capolingua.

Dr K.D. HAMES: I know the member is not; nor am I.

Mr R.H. Cook: I am trying to criticise what I think is your exploitation of the difficulties within the organisation.

Dr K.D. HAMES: I will get to all of those things; the shadow minister is wrong but he needs to give me a chance to respond to them. I am making the point that there is a view within the system that it was not being managed properly. The commission’s report found that although the board members did not know some of the issues that were occurring within sponsorship and attendance at events within Healthway, they should have known. Some members who talked to me afterwards, particularly in the case of Professor Parker, had been there for only a very short time after those things occurred and did not actually attend any events. There are other people within that system who attended very few events as well. I do not want to get into who was right and who was wrong because the person I am likely to blame is not able to defend himself, so I do not want to go down that path. Nevertheless, there were issues within sponsorship.

The shadow minister talked about issues that subsequently came out about Tourism WA. The report put up Tourism WA as an example of a board with a very strong structure and a very clear policy. Whether or not the shadow minister agrees with it, it clearly defined who could do what, where they should do it and how they should do it, and Tourism WA followed those rules. There were no rules in Healthway. Various things happened that were significantly inappropriate in some people’s view. I am a big supporter of board members going to events and functions. I would be very disappointed if my board members in Tourism WA, for example, did not go to functions because they need to be there to see how those things operate. They need to be there to make sure that there are mechanisms in place. Perhaps if Healthway board members had been at more events, they might have seen some of the things that were claimed to be going on. Subsequently, Professor Donovan did his assessment of the Public Sector Commissioner report. I might add, that was done without him knowing many of the internal facts around that sponsorship process and how it worked, but I presented that letter to the Public Sector Commissioner, who reviewed the report that had been done by his officer and discussed it at length. The Public Sector Commissioner totally refutes the claims made by Professor Donovan. I will not get into that.

Mr R.H. Cook: Do you think we need to get the Public Sector Commissioner or perhaps the Corruption and Crime Commission to look into that?

Dr K.D. HAMES: If the committee does that, it will give him the opportunity to defend himself. The Public Sector Commissioner is independent of government and he did an independent review.

Mr R.H. Cook: Please, please. Don’t be that naive.

Dr K.D. HAMES: If the member for Kwinana is suggesting that the Public Sector Commissioner is in any way under the influence of government, he is wrong.

Mr R.H. Cook: They’re your words not mine.

Dr K.D. HAMES: I challenge the member to go outside and say that rather than say it in the coward’s castle of Parliament, because I totally refute that.

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The independent commissioner provided a report that clearly said to government that although the Healthway board did not know what was happening, it should have known. I agree with that. I think that the board members themselves will look back in retrospect and say, “How did we not know those things were going on? We should have.” Subsequently, Dr Capolingua was vilified by the media.

Mr R.H. Cook: By the Premier.

Dr K.D. HAMES: No, not by the Premier. If the member goes through all the Premier’s comments, he will see that the Premier did not vilify Dr Capolingua. He said that the Healthway board had acted in a way that allowed what the commissioner reported as seriously inappropriate behaviour in the area of ticket management to occur without its knowledge. That was in the Public Sector Commissioner’s report; they were the Premier’s comments; and they were certainly my comments. The clear fact that Dr Capolingua took *The West Australian* to court—she did not take the government or the Premier to court; she took the media to court—and won and was given an apology speaks volumes for what the media did in attacking Dr Capolingua like that. To my mind, she certainly did not deserve what was said about her, and that has proved to be correct by her successful action. I have to say I was very pleased to read that retraction in the media. We worked through those issues with Dr Capolingua.

I note the time shows that I have 30 minutes left. I presume I have 60 minutes and I doubt that I have spoken for 30 minutes already because I started at seven o’clock.

The ACTING SPEAKER (Mr I.M. Britza): It is 45 minutes.

Dr K.D. HAMES: Thank you. He gets an hour; how does that work?

Mr R.H. Cook: You get two bites of the cherry.

Dr K.D. HAMES: I want to briefly speak about the direction of Healthway. Dr Capolingua and I had numerous conversations about it, and I was supportive of the direction it was taking. We found that Healthway was putting up sponsorship for organisations and, as the shadow minister said, wanted to get rid of the organisations that were sponsoring fast food and the consumption of large quantities of alcohol. It was very successful in doing that but there were circumstances in which Healthway was not getting traction. The Western Australian Cricket Association was a good example of how Healthway was not getting traction and was not able to get in and get across its messages as it would have liked or it was in competition with other producers. There would be a Healthway message on one hand and a drink-more-beer message on the other hand. My comment to Dr Capolingua was that when Healthway got rid of tobacco sponsorship, it replaced it. It did not say, “You can have \$500 000 but you have to get rid of the \$1 million sponsorship from a different organisation”; it put in \$1 million to, in effect, buy that space. I said that that was the way it has to be done. Healthway had to look at the structure and that is what it did. Subsequently, it was successful at places such as the WACA and, I think, also at rugby games.

I did not understand, and I do not think the board fully understood, that Healthway was buying the package that had been bought by, say, Coca-Cola Amatil or one of those companies and in that package came a corporate box with drinks, food and attendances. Healthway bought the whole package. Interestingly, the Department of Sport and Recreation, when it did similar things, bought a package and said that it did not need all that sponsorship. That is not to say that having a corporate box is not sometimes right. As we know, Tourism WA occupies a corporate box at the Hopman Cup. It is not necessarily wrong to do that, but it was the way in which it was being done—with no controls, no accountability and no list of who was attending. On many occasions, allegedly, people who were family and friends were filling up those boxes.

Mr C.J. Tallentire interjected.

Dr K.D. HAMES: The member for Gosnells may recall that he did not take any interjections from me.

Mr C.J. Tallentire: The complaints from big alcohol and junk food companies were that they were not able to get any space because Healthway bought out the whole advertising space. Surely that’s a good thing.

Dr K.D. HAMES: I understand. It was something I encouraged Healthway to do in certain areas but not with the sponsorship package.

Mr C.J. Tallentire: That was a tiny bit of it.

Dr K.D. HAMES: It was not a tiny bit of it; it was a large component of what was provided to someone who buys a corporate sponsorship package. The organisation gets its advertising, but it also gets its corporate box and tickets and people go along to those events all the time. It is the management of that that led to the undoing of the operations and management of Healthway.

Mr C.J. Tallentire interjected.

The ACTING SPEAKER: Member for Gosnells!

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Dr K.D. HAMES: For the member for Gosnells, I want to get to the allegations because if ever I have heard anything more fanciful in my life!—I have: a former member for Balcatta, Mr Kobelke, wove many tales of subterfuge and untoward actions by various people in the government—I just want to say that they are totally wrong. The member brought up the issue of me trying to encourage Healthway to sponsor Coke Zero in Aboriginal communities. I guess that tells us a little about part of the problem in Healthway. A meeting was held in 2011 with two Healthway officers present; four years later, the minutes of that meeting and the interpretation of that meeting were read out by the member for Gosnells. Who within an organisation that is supposed to be there for the benefit of the community would leak to the member for Gosnells minutes from a meeting of three years ago? It beggars belief that someone would retain minutes for that long, let alone leak them to the opposition! I am fairly sure that what the member said about half those things was accurate. I think it was the interpretation of them by the member that was not accurate. Healthway refused to attend that meeting to start with because it did not want to meet Coca-Cola Amatil. I said that I needed someone there because I had just been into Aboriginal communities in the Kimberley, particularly Broome, and seen Aboriginal people walking down the street with bottles of Coke in their hands and in some of the smaller communities I had seen kids with a pie and a Coke for breakfast at eight o'clock in the morning. I was and still am deeply concerned that in a community that suffers from such a high level of diabetes, no action was being taken to reduce the consumption of Coke. I think each can of Coke contains 15 or 16 teaspoons of sugar. I wanted Healthway to have discussions with Amatil and talk about how, through active support, it could get Amatil to change the behaviour of people in those Aboriginal communities. I wanted Amatil to work together with Healthway to find a way to get kids to drink Coke Zero, which is at least better than Coke. Amatil also sponsors water, but trying to get kids to drink water is not a great —

Mr R.H. Cook: Doesn't that defeat the purpose?

Dr K.D. HAMES: I presume Amatil makes the same amount of money from Coke Zero as it does from Coke. It would not change its business but it would assist in the health of Aboriginal communities so that they are not consuming so much alcohol. It seems a logical thing. I did not instruct Healthway to do anything. I asked it to at least have discussions with Amatil to see whether Amatil was interested in that issue. That would have required Amatil to come back to Healthway. I do not know whether that even happened. I have no idea what happened after that meeting. It was just a comment I made at that meeting. It is not right to assume from that, four years down the track, I am changing the legislation because I am under the influence of Amatil. I have not checked, but I am fairly certain that I have not met with Amatil since—and that was in 2011. I am certainly not under the influence of tobacco companies, because I refuse to meet them at any time. I have not met them in the last seven years that I have been a minister. I do not recall meeting any of those other big companies. I have met people from McDonald's, but that has been to do with Ronald McDonald House. Even then, I am a bit reluctant to be involved because of that linkage. There is no way that I will be influenced in an outcome. The fact is that Amatil wrote a letter to the Premier that ended up being the same as what I was promoting, but I was promoting those things before. I have been promoting those things for a long time—that is, how we wanted to change the structure and to change alcohol —

Mr C.J. Tallentire: They said you were socially engineering those things.

Dr K.D. HAMES: The member heard what the Premier said earlier. He was asked for a meeting. He read out the letter. It was either in that letter or subsequent to that letter that a meeting was requested with the Premier, and he refused to do it. The Premier has made it quite clear that he has not been under the influence of food or other promotion —

Mr C.J. Tallentire: But you're doing what they asked.

Dr K.D. HAMES: That is irrelevant.

Mr R.H. Cook: It is extraordinarily coincidental, isn't it?

Dr K.D. HAMES: It is coincidental—just because there is an alignment.

Mr R.H. Cook interjected.

Dr K.D. HAMES: The member for Kwinana can scoff all he likes, but the fact is, firstly, there is no evidence of wrongdoing, and, secondly, the member can search through any committee he likes and he will find no evidence of wrongdoing, because there is no wrongdoing. There has been no influence on this government by those organisations relating to Healthway. The opposition has done its freedom of information checks and it has everything that is on the record, so I defy the opposition to find anything that suggests any inappropriate action on the part of this government.

What is in the legislation? What does it do? Members opposite are trying to paint this bill as the end of life as we know it for Healthway. I reiterate what I said in the second reading speech: this is about promoting good health,

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and doing so in partnership with sports, culture and health, particularly continuing its focus on research. I heard members talk about research and the suggestion that this is the end of any research. Those things will continue. While the changes that we put in place mimic the Lotteries Commission Act in terms of what ministers can and cannot do, there is no opportunity whatsoever within the act for me to direct Healthway to make a decision to support or sponsor any group whatsoever. It contains no power for me to give any direction, be it through Parliament or through direct action, on how it distributes the funds. There is a requirement in the act for the distribution of funds to be done in a certain percentage, but all of those things were in the original act. The government made a decision that because it was previously in the Tobacco Act it felt it was no longer appropriate for it to stay in the Tobacco Act. The same applies to the Lotteries Commission; it could be on its own. The total component of the original act was taken out and made into a separate act. In a moment I will get to the only changes that we have made. As I say, those funds will now be distributed according to the previous distribution to do the things as decided by the board that will be appointed by this government.

I can veto decisions; that is my only power. That is the same power that the Premier has under the Lotteries Commission Act. The opposition asked why it is there as an amendment. I admit that it is our fault in the Department of Health: the advice was that it needed to contain what was in the Lotteries Commission Act. It had one section, but that provision was missed. It should have been there and it was not, so that is why we have had to put that there as an amendment; otherwise, it is the same.

In all the years that we have been in government, not once has the Premier vetoed a decision by the Lotteries Commission in its distribution of funds—not once. I anticipate that that will be the case. I intend to have a very good board that makes decisions in the best interests of the community in the promotion of good health in this state. I can see no reason for me to veto those decisions, but, as per the Lotteries Commission Act, the ability remains. Why would we want to do that? Why is that the case? It is because it is government money. This is taxpayers' money for which the government is responsible, and it is our responsibility to have good oversight to ensure that those funds do not go to inappropriate places. That is why that provision is in the Lotteries Commission Act. That is why we put that provision into this bill as well.

Opposition members talked about what the previous Liberal Party put forward for the Tobacco Act. That happened because that money was gained from tax revenues coming out of people buying cigarettes. It was money that came from an alternative source. This money comes from government coffers, from consolidated revenue, straight into a department, and whilst it is at arm's length from government, I as the minister and we as the government are ultimately responsible for the distribution of those taxpayers' funds. I think it is totally appropriate that we have some oversight of where those funds go, because before the act provided that there would be no involvement at all—and that was interpreted in different ways. The way I interpret it is that I could not even be involved in any of those decisions, even to know what they were, where they were going and what they were doing. This way I will have oversight of those decisions. I cannot tell Healthway where to put funding, but I can veto funding.

Mr R.H. Cook: If you do not and you don't anticipate using it, why do you need it?

Dr K.D. HAMES: It is because it is government money; it is taxpayers' money—in the same way that I have to have oversight over Tourism WA money. Those funds are managed and are the responsibility of government, and if anything goes wrong, as the minister, I am the one who would answer to those things, as we have seen in the past.

Mr R.H. Cook: Do you feel that things have gone wrong in the past?

Dr K.D. HAMES: Not specifically in the area of funding. I have not disagreed with any funding. I have to say I disagreed with the funding being withdrawn from *Carmen*. I do not think that was appropriate and I have had discussions with the chair about that. However, I am not in any position to give directions or advice on the withdrawal of funding; I can only veto the approval of funding if I believe that it is not in the best interests of the public and the taxpayer.

Opposition members went on in some detail about Lotteries Commission funding and the political distribution of Lotteries Commission funding. The member for Mirrabooka read out some of those. I have never looked at the distribution of Lotteries Commission money, but I totally and categorically reject that there has been any interference by government into the direction of those funds. In fact, the chief executive officer of the Lotteries Commission would be appalled to learn that people were suggesting that in her time as chair of that organisation she might have made any application for funding that was done for political purposes. I did however note that my electorate was at the lower end of Lotteries Commission funding.

I turn now to the issue of presenting Lotteries Commission cheques. I understand what members are talking about. The member for Warnbro made some good comments about what happens in politics and how it tends to be that members of the government of the day present cheques. That is true, but those on the other side who have

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been here a long time and those who have been in government know that it is members of government of the day who normally present Lotteries Commission cheques. I well recall many occasions when we were in opposition, when government ministers or members—upper house members in particular—would present cheques in my electorate. As all members here will know, the reality is that local members and local community groups love to have a member of Parliament come to their organisation to present a cheque. It gives enormous credibility and credence to and recognition of the work they do. This is not about members influencing the commission regarding cheques that are given. What normally happens is that instead of the cheque just arriving, the organisations have a function to which they invite people. It is a big deal because it reinforces for that community group where it is going and what it is doing and the fact that government, or Healthway at least, recognises what it is doing as an organisation. The community group members really want their member of Parliament or a minister in particular to come along and present a cheque to their organisation.

It may be true that when the opposition is in government, members opposite will do the same. I have to say that it is a bit of tit for tat. We saw you guys doing it; we do the same and you do the same. It goes backwards and forwards. It is generally the view that it is money for which the government has responsibility, and although the decision is totally independent of government, it is normally government members who present the cheques to those organisations. That is a fact of political life, but it does not mean that there is any political involvement in making the decision about where the funds go. They go where they go; they go where the board decides they should go and that is appropriate.

I will finish by talking about the opposition's attacks on the Public Sector Commission report.

Mr R.H. Cook: What about your attacks on the chair of Healthway?

Dr K.D. HAMES: I do not recall any attacks by me on the chair of Healthway. I am very strongly supportive —

Mr R.H. Cook interjected.

The ACTING SPEAKER Member for Kwinana!

Mr R.H. Cook interjected.

The ACTING SPEAKER: Member for Kwinana, I call you for the first time.

Mr R.H. Cook interjected.

The ACTING SPEAKER: Member for Kwinana, I am on my feet. I call you for the second time.

Mr C.J. Barnett: It went to the CCC.

Dr K.D. HAMES: Yes, Mr Acting Speaker, I point out that the matter was referred to the Corruption and Crime Commission and it had nothing to do —

Mr C.J. Barnett: The commissioner referred it to the CCC.

Dr K.D. HAMES: It was referred to the CCC.

Mr R.H. Cook interjected.

Dr K.D. HAMES: I can tell the member for Kwinana that it was nothing to do —

Mr R.H. Cook interjected

The ACTING SPEAKER: Order, member for Kwinana!

Dr K.D. HAMES: This is impossible, Mr Acting Speaker. I do not think those comments referred to the chair.

Mr P. Papalia: Come on!

Dr K.D. HAMES: I am confident that they did not refer to the chair. Those issues related to other people within Healthway, not the chair, and the chair is fully aware of that because I personally told her so. The Labor Party —

Mr R.H. Cook interjected.

The ACTING SPEAKER: Member for Kwinana, you are on two calls.

Dr K.D. HAMES: I reiterate that Healthway is a very strong organisation that does enormous work within the community. It will continue to do so in exactly the same way by focusing on the health of the community. It will particularly focus on grassroots communities, as it always has, and follow the directions laid down by the then Minister for Health, Keith Wilson, in 1989—that is, promoting the good health of the community. I commend the bill to the house.

Division

Extract from Hansard
[ASSEMBLY — Tuesday, 18 August 2015]
p5473b-5517a

Mr Terry Waldron; Mr Roger Cook; Ms Andrea Mitchell; Ms Lisa Baker; Dr Kim Hames; Ms Janine Freeman;
Mr Chris Tallentire; Deputy Speaker; Mr Bill Johnston

Question put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the ayes, with the following result —

Ayes (33)

Mr P. Abetz	Mr J.H.D. Day	Mr A.P. Jacob	Mr D.C. Nalder
Mr F.A. Alban	Ms W.M. Duncan	Dr G.G. Jacobs	Mr J. Norberger
Mr C.J. Barnett	Ms E. Evangel	Mr S.K. L'Estrange	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr R.S. Love	Mr M.H. Taylor
Mr I.M. Britza	Mrs G.J. Godfrey	Ms L. Mettam	Mr T.K. Waldron
Mr G.M. Castrilli	Mr B.J. Grylls	Mr P.T. Miles	Mr A. Krsticevic (<i>Teller</i>)
Mr V.A. Catania	Dr K.D. Hames	Ms A.R. Mitchell	
Mr M.J. Cowper	Mrs L.M. Harvey	Mr N.W. Morton	
Ms M.J. Davies	Mr C.D. Hatton	Dr M.D. Nahan	

Noes (18)

Ms L.L. Baker	Mr F.M. Logan	Mr J.R. Quigley	Mr P.C. Tinley
Dr A.D. Buti	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Mr D.A. Templeman (<i>Teller</i>)
Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	
Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire	

Pairs

Mr W.R. Marmion	Mr D.J. Kelly
Mr R.F. Johnson	Mr B.S. Wyatt
Mr J.E. McGrath	Mr W.J. Johnston

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr R.H. COOK: Clause 1 is a good opportunity to ask about the whole concept of what we mean by “promotion”, which has been a significant part of the debate. We are striking afresh with a new organisation called the Western Australian Health Promotion Foundation, and absolutely central to this debate has been the issue of how one describes “promotion”. In this context we are obviously talking about the promotion of good health.

The ACTING SPEAKER: Members, the conversations are too loud. If you want to have them, you can leave the chamber.

Mr R.H. COOK: One of the issues about which we are most concerned is what people regard as health promotion or what Carlton and United Breweries might describe as “crowding out”; that is, that that should not be part of the future Healthway. We know the minister is in lockstep with big alcohol companies in relation to the Western Australian Health Promotion Foundation Bill 2015, so obviously we are very concerned to have a very early understanding about what the minister means by “promotion”. Does that mean simply talking about health, or does it mean also not bad health?

Dr K.D. HAMES: That is actually not an unreasonable question, surprisingly.

Mr R.H. Cook: What do you mean “surprisingly”?

Dr K.D. HAMES: The member for Kwinana is here to make trouble, but in fact it is not a trouble because it is a very important issue. Firstly, I refer the member, as I did during my reply to the second reading debate, to the words of Hon Keith Wilson on what promotion is about. He stated —

It will fund activities related to the promotion of good health; it will offer alternative sources of funds to sporting and artistic activities ...

I will not read all of it out; I read it out not five minutes ago. Healthway will be required to do a number of things—largely things it has been doing already. We want it to particularly focus on some grassroots things—on making sure that the grassroots organisations, whether they are arts or sports, get strong support to make sure

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Mr Chris Tallentire; Deputy Speaker; Mr Bill Johnston

that they are able to do the things they do and encourage children to have active lives. The responsibility is to try to get out a health message, so that is making sure that people understand all those things said before about the health message. Then we get to the crux of the member's question, which is: what about the conflict between fast-food outlets and alcohol, and the health message? It will be up to the board to decide how it does that, without any possibility of direction from me. The discussions I had with —

The ACTING SPEAKER: Minister, I apologise. Members, if you want to have your conversations, have them outside the chamber; I invite you to leave. It is very discouraging. I am trying to hear the minister clearly, and the rabble is just too much.

Dr K.D. HAMES: And distracting as well.

The ACTING SPEAKER: Yes; thank you, minister. It was a good question; it deserves a good answer.

Dr K.D. HAMES: That balance will be difficult. Some of the conversations I had with Dr Capolingua while she was chair were about trying to get that good balance, and there are different areas. One area that was somewhat controversial was the Grapes and Gallops Festival. In my view, wine companies are not there to try to get people to drink lots more red wine; it is competition between companies. I saw no issue with Healthway sponsoring Grapes and Gallops because it gave it the opportunity to get out and promote its health message. It is much more difficult to do that with an event such as the cricket when Kentucky Fried Chicken has people with chicken legs in their trouser pocket; I thought that was a dreadful message to be promoting. I am very supportive of Healthway aggressively trying to take those sorts of things out.

In the area of beer, it is somewhat more difficult. I was encouraging Healthway to try to make sure it discouraged companies from promoting “drink more beer; here, have jugs at the end”, but still allowing those organisations to have serving rights, which I do not think is unreasonable. So there is sponsorship, and there can be signage to try to encourage people to change habits; rather than having full-strength beer, get them to have mid-strength beer. So it is not necessarily one or the other, and not necessarily throwing huge dollars at trying to get rid of one, but trying to get a balance. That is what Healthway was largely doing. Most of the sponsorships it was providing to football clubs were on the proviso that a company could advertise its beer—it would try to get the company to advertise mid-strength rather than full-strength—and just have serving rights with no promotional activities on the ground that encourage people to drink more beer. I think that was a sensible direction, and that is one I hope the board will continue to take. At the end of the day, the board has to make the decision as to whether it goes for the big buyer or makes sure it stays within a structure so that it has an opportunity to get that health message out. As we heard from the member for Kingsley, sometimes we were finding those little organisations were not even getting Healthway sponsorship anymore because the rules were too difficult. There were arguments about how accurate it was, but the member for South Perth was talking about a bowling club that had a fundraising event, the local liquor store provided alcohol for that function at a discount rate, the club put the sponsors on the sheet and it was told that it would not get Healthway funding anymore unless it removed the name of that company. I think that is a bit extreme, but at the end of the day the board has to decide exactly where that message needs to be pitched.

Mr R.H. COOK: If the minister is of the view that Healthway did not get that balance right, from that perspective does the minister think that is part of the reason we are now looking at fresh legislation?

Dr K.D. HAMES: No, that is totally coincidental, but the new board will need to work out the balance. I think the previous group largely got the balance right. I think government probably had a bit of concern about huge levels of funding for some organisations—well over \$1 million—which meant there was a lot less funding available for some of the smaller groups. I would personally prefer the new board to still sponsor those big organisations to get rid of, as much as it can, alternative sponsorship, but without the sponsorship package that includes corporate hospitality to reduce the costs of that, and put those funds generated by those savings back into grassroots sport, arts, culture, research and whatever else.

Mr R.H. COOK: I return momentarily to the quote the Minister for Health referred to because it is very important in this overall debate. Of course, the minister was quoting Hon Keith Wilson. As then minister, Hon Keith Wilson was arguing about the replacement of tobacco advertising that had, at that point, become illegal. Hon Keith Wilson was obviously making an observation around alternative forms of funding for sport. What we are talking about here in terms of the further scope under which Healthway is functioning is substitute funding; that is, it cannot be said on the one hand “drink more beer”, and then on the other hand “alcohol and sport do not mix”. That is the bedrock upon which Healthway has been politically founded. With its sponsorship of the Western Australian Cricket Association, Healthway said that alcohol and sport do not mix. That was the objection from sponsors such as Carlton and United Breweries because it saw that as actually substituting its funding, not providing an alternative. By virtue of its promotion, it was saying that that was actually excluding it from the space. The very

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strong point Carlton and United Breweries was making was that that was not promotion; it was policy. This is a crucial point. It is very pleasing to hear the minister say that he agrees with that approach, but I want the minister to say very clearly that it will be okay under the Western Australian Health Promotion Foundation—that is “promotion”—and will include what Carlton and United Breweries and other big alcohol companies have told this government is actually policy. I seek further clarification from the minister about the concept of what promotion is, and whether it includes going to other sporting organisations and saying that we are going to actively promote a message that says do not drink alcohol because alcohol and sport do not mix.

Dr K.D. HAMES: I will put a rhetorical question. How does the Healthway board recognise government policy and then act on government policy in its decision-making process? I put it to the member that the only way to do that is through the second reading speech and my comments because nowhere does the legislation contain the opportunity for me to create a government policy and tell the board that that is the policy it will follow. In the same way, Hon Keith Wilson had no influence on how the Healthway board operated when he created it, because he had no legislative power to give direction to that board, so it would have made those decisions independently of the then Labor government. We have been through the legislation, and there is nothing in it that gives me the opportunity to say that the policy of the government is this, that or something else, and there is a requirement for the Healthway board to follow it, because I am not allowed to do that. I am clearly not allowed to direct the board. Creating a government policy is creating a direction. All I can do is veto and make it clear in debates such as this the direction in which I would like the Healthway board to go. The member has given me a great opportunity to do that, so now it is recorded in *Hansard*.

Mr R.H. COOK: It is recorded, but not unequivocally. I reiterate that Hon Keith Wilson was simply in the process of filling a gap created by the outlawing of tobacco advertising. We do not outlaw alcohol advertising, so it is a very different playing field from the one Hon Keith Wilson was involved in. This is a great opportunity for the minister to clarify what he believes the concept of promotion to be, and that he accepts the argument that promotion includes the process of excluding alcohol and other products from the sponsorship process—that is, directly refuting the claim from Carlton and United that that is actually policy as opposed to promotion.

The ACTING SPEAKER (Mr P. Abetz): Before the minister gets up to speak, I remind the minister that we are discussing clause 1, the short title of the bill, and the purpose of that is not to allow a general debate on the whole bill—the whole issue—so I remind members of that. I will allow the minister to respond.

Mr R.H. COOK: I thank you for that guidance, Mr Acting Speaker, because what we are trying to do in the context of the title of the bill is to define this term “promotion”.

Dr K.D. HAMES: I am glad that you have brought the debate back to the objects of the bill, Mr Acting Speaker, but it has been a good opportunity. I think the member is inviting me to direct the Healthway board.

Mr R.H. Cook: No, on the contrary.

Dr K.D. HAMES: Yes, he is, and I will explain why I think that. I am prepared to make those statements, but I am saying to the member that he is suggesting that, by saying that this is what I believe should happen, I can make the board of Healthway take that as some sort of direction on how it should behave. I put it to the member that it will be up to the board to make that decision, not the government. As I said before to Dr Capolingua, I encouraged the board to do that as an option—not to do it all the time, but to do it sometimes when there is a major issue with an extremely aggressive company promoting its product. The opportunity is available to the board to do that, but, as I have said, my preference is that the board temper that with consideration of how much funds Healthway has and the other demands in the system when deciding whether it will go for the throat or try to find a balance.

Mr R.H. COOK: I want to assure the minister that I am not asking him to direct Healthway to act in a particular way. I am asking whether it is the minister’s view that promotion includes those activities.

Dr K.D. Hames: Sometimes you seem to suggest that it will make a difference if I say those things. Why should it make a difference?

Mr R.H. COOK: It makes a very big difference, because the background to this debate —

Dr K.D. Hames: Not if Healthway is not obliged in any way to take any notice of what I say.

Mr R.H. COOK: No, but I am asking the minister—yes or no—whether it provides the opportunity, if Healthway chose to take it, to continue in the manner that we have described; that is, to be able to remove unhealthy promotions from a particular sponsorship package in the manner that Carlton and United says is policy, not promotion.

Dr K.D. Hames: I have already answered that.

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Mr R.H. COOK: There are two questions there. The minister should answer yes or no to question 1, and yes or no to question 2.

Dr K.D. Hames: I do not need to answer that. I answered it in my last statement.

The ACTING SPEAKER: Member for Kwinana, you have sat down, and the minister is not answering, so somebody else needs to get up if you wish to continue.

Mr R.H. COOK: That is not the case, Mr Acting Speaker. I have further lines of inquiry.

The ACTING SPEAKER: Sorry; you cannot continue.

Mr P. PAPALIA: I am intrigued as to where the Deputy Leader of the Opposition is going with this particular line of questioning, and I would like to hear some more.

Mr R.H. COOK: He did stand up, Mr Acting Speaker.

Dr K.D. Hames: No, I didn't.

Mr R.H. COOK: He stood up to say that he had nothing more to add, and then sat down.

Dr K.D. Hames: It is a pity I cannot get Hansard to read out what I said in the answer to the last question, because the member will find that his question was fully answered.

Mr R.H. COOK: The minister may or may not choose to eat his peas, but if he does choose to eat his peas, I will not reflect on his capacity to eat those peas.

Dr K.D. HAMES: If the member sits down, I will stand up and say what I said before. I have no power to direct the board. If the board chooses to go down that direction, there is nothing to stop it from doing so. I am not going to say that it should or should not, but if it chooses to follow that path of aggressively buying out—I said it in different words last time, but exactly the same thing—it has the capacity to do so.

Mr R.H. COOK: Yes or no—does the minister believe that that fits within the title of promotion and that it is not, as Carlton and United would have us believe, actually policy as distinct from health promotion?

Dr K.D. HAMES: The only policy that can exist in that space is the policy of Healthway.

Mr R.H. Cook interjected.

Dr K.D. HAMES: Listen to what I am saying. Government cannot create policy. Can the member tell me again what he wants me to say yes or no to, while I am on my feet?

Mr R.H. Cook: Is what Healthway does, which Carlton and United alleges is not promotion, policy campaigning and not promotion?

Dr K.D. HAMES: If it becomes the policy of Healthway to do aggressive take-outs, then it is within its capacity to do so. Clearly that is a yes.

Ms J.M. FREEMAN: I also note that the bill does not contain a definition for “health promotion”. I apologise that I did not hear the minister’s second reading response. Can the minister clarify for me whether health promotion, as I recall from studying years ago, is based on the definition established by the World Health Organization’s 1986 Ottawa Charter for Health Promotion, which called for increased control over the determinants of health and that health promotion actions be aimed at making these conditions favourable through advocacy for health and wellbeing? The conference pledged to counteract the pressure towards harmful products, resource depletion, unhealthy living conditions and environments and bad nutrition. On that basis, is that the definition that we are using through health promotions? In particular I refer to the capacity for a health promotion foundation to hold very true to the core principle of the 1986 Ottawa Charter for Health Promotion, which established the foundations for health promotion throughout the world—that it is the capacity for health promotions to counteract the pressures towards harmful products. The member for Kwinana was saying that the foundation’s funding would ensure the counteracting of harmful products such as tobacco previously, alcohol now and possibly sugary products and those sorts of things in the future, and that could have that as its core value in the definition of “health promotion”.

Dr K.D. HAMES: I did not get the full amount of advice. I am going to try to go with what was said. There is no specific definition of “promotion”. My advice is that it is a functional definition; it defines the functions of the foundation. The member will see under division 2, “Functions of Foundation”, the things that are designed. I know that the member wants to broaden that definition. She talked about sugar and other things, and certainly it is within the capacity of the foundation to do things along those lines. I remember the member for Mirrabooka, in her second reading contribution a while back, talking about unemployment and housing and the like as being

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a definition of poor health, and hence promotion of good health could be addressing issues to do with unemployment or poor housing. That is not the function of Healthway. It has never been the function of Healthway. The member's former government introduced the bill to establish Healthway all those years ago in 1989. That is why there are requirements in the previous act for the distribution of funds, which will be kept in this new act, between arts, health and sporting organisations. Those are therefore the functions of the organisation and that is the definition we use for "promotion".

Ms J.M. FREEMAN: It is somewhat of a concern to me that one of the principles of health promotion that we are taught when we do a postgraduate qualification in health and health promotion is that it is established on the World Health Organization Ottawa charter of 1986, which is about increasing control over those determinants and counteracting those pressures towards harmful products, and also unhealthy living conditions and public health issues, which I have raised before, such as unemployment and housing. The minister is now saying that this bill will limit that idea of health promotion. That is extraordinarily concerning to me. Is the minister saying that the bill limits the definition of health promotion? If so, it goes away from the basic principles of all the major organisations throughout the world that have based health promotion on this expanded definition since 1986 and that has driven a revolution in health and health promotion throughout the world. Will this bill narrow that, and will it narrow it purely for the purpose of a political outcome?

Dr K.D. HAMES: We are not narrowing anything. The functions of Healthway will remain exactly as they were under the member's government and exactly as they were in the previous acts. We are not changing functions at all. I never had the benefit of doing the course the member has done. If we had wanted to use an international definition of "promotion", we would have put that definition of "promotion" in the bill. But there are other forms of promotion from the broad scope that the member talks about. If we had done that, we would have needed to significantly change the act from the existing act to give Healthway the opportunity to spend funds outside those areas that were designated in the original act. We would probably have to provide additional funding to enable it to do so. We are not changing the direction of Healthway. The member for Mirrabooka's side of the house is opposing this legislation because she is of the view that we are changing it and now she wants us to change it significantly more. I do not know whether the shadow Minister for Health agrees with the member that we should significantly expand the operations of Healthway into areas that it is not in now. It is not our intention to do so.

Mr C.J. TALLENTIRE: The absence of a definition of the term "promotion" concerns me. My question, though, relates to the partnership arrangement that has existed between Healthway and various other organisations that have led to some very successful campaigns. To use some examples, Healthway was able to fund the Alcohol Think Again campaign, which I believe was a campaign developed by the Drug and Alcohol Office. Healthway did not create the LiveLighter campaign but was able to fund it. It was actually the creation of the WA Heart Foundation. We also had the Act-Belong-Commit campaign that Professor Donovan was involved in through an organisation called Mentally Healthy WA. There again is Healthway funding the works of another organisation. I am getting to my question now about whether or not Healthway supporting the activities of another organisation constitutes promotion. To give a further example, we had Make Smoking History, which was a very successful campaign. We all agree on that, but that was actually a campaign of the Cancer Council Western Australia. Healthway was therefore funding the works of the Cancer Council. Does that constitute promotion? The minister might want to suggest to me that we can look at this issue in greater detail when we get to clause 7 of the bill about the functions. Then we can cross-reference, of course, with what the functions were previously. I will be very interested to challenge the minister on a key clause that has been dropped from the Tobacco Products Control Act 2006. However, as a broad concept, what is the minister's position on the term "promotion" when it relates to Healthway supporting and funding programs that are actually the creation of other organisations?

Dr K.D. HAMES: I do not think the member was listening when I answered the last question. The functions of Healthway are not being changed. The member is talking about this issue in the title of the bill. Quite clearly he should be talking about it under clause 7.

Mr C.J. Tallentire: I am happy to do that.

Dr K.D. HAMES: He would be able to read, if he had got to that clause already, that it states that the functions of the foundation are to provide grants to organisations engaged in health promotion programs. That refers exactly to the list of campaigns by organisations that the member presented to us, and they have been enormously successful campaigns. I think the only difference is that instead of the recipients of the funding being on the board directing the funding, it will be the Healthway board itself that will be engaged with those organisations seeking funding, as they have in the past. We have had and continue to have the enormously successful promotion of programs, not just with Healthway but also with the Department of Health, particularly working with the Cancer Council, the Australian Council of Social Service and all those other organisations that

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have been involved in the promotion of good health in this state. Nothing will change. The member talked about a clause that we dropped out.

Mr C.J. Tallentire: We will get to it.

Dr K.D. HAMES: We will get to that when we get there. I suggest, Mr Acting Speaker, that we get off this clause, which is just about the name, and get onto the substance of the bill.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Terms used —

Mr R.H. COOK: This is an interesting clause, and at the risk of going off into very esoteric debate, I notice that it provides definitions for “racing” and “sporting”, and this becomes particularly pertinent in the context of clause 43, which lists the sorts of organisations that the new foundation will be able to fund. Amongst these organisations there are, obviously, sporting and racing organisations, but we also see that there are arts organisations. I am curious to know why we have seen fit to define “racing” and “sporting” under clause 3, but not to define “arts”. I am wondering whether the minister can provide some clarity around that. What is art!

Dr K.D. HAMES: I do not know; it starts with F!

As I have said to members previously, I do not know whether this side of the chamber, as the then opposition, questioned this component of the legislation when it was brought in in 1989, but it is the same clause and the same definition. This definition has been in place since 1989, and I am surprised that the member suddenly has a problem with it, but it does not seem to have been a problem in the past.

Mr R.H. COOK: I merely exercised my curiosity, minister, and I understand—since the minister is from that side of the house—that as far as he is concerned, doing what was good in the good old days is sufficient for what we do today.

Dr K.D. Hames: How do you define art?

Mr R.H. COOK: I put that challenge to the minister!

The minister seems to be setting up a theme, and from that point of view I want to allay his fears, I guess, in some respects. Although he was a bit frustrated in saying that this is just like the old legislation, we will not be satisfied with his references to the old legislation. There are two reasons for that. One is that we know the old legislation is under attack from organisations that are big funders of the Liberal Party, such as big tobacco and big alcohol. The second reason is that we now know the minister is changing other aspects of this legislation, so from that perspective, we want to see further safeguards, because the context of this debate is the attacks on the very organisation that the minister is now re-legislating for. We do not ask these questions flippantly and we do not think the minister is really resolving any issues by simply saying it is what we have always done, because we are in a new paradigm; we are in a situation in which the government has acquiesced to the baying of big alcohol in bringing this legislation forward. We are also in new territory because the minister is changing the framework of this organisation. I accept what he says when he says that he does not know what the definition of art is; I was simply asking why there was not a definition of “arts”, not that he define art. But I do not accept his argument that this is simply what we have done before. I am asking him to explain to us why “sporting” and “racing” are defined, but “arts” is not.

Dr K.D. HAMES: Contrary to the member’s point of view that just saying this is the same as what it was before is a bad argument, I actually think it is a very good argument. What we have tried to do is to not create great change. The opposition is already opposing it because of the changes we have made; what we wanted to do was to try to get the opposition’s support, even though there are areas that it does not support, by supporting the legislation as it was introduced by the Labor Party back in 1989. We wanted to make sure that we did not fiddle with clauses or parts of the legislation just to make changes; we tried to stick with something that has been tried and true for all these years. Contrary to the member’s argument that it is a bad thing to do, I think it is a good thing to do. There are two options for the opposition: it can move amendments to change those clauses in ways that it thinks are better, or it can vote against them.

Mr R.H. COOK: Just to clarify, does the minister want us to come up with a definition of “arts”?

Dr K.D. Hames: No.

Ms J.M. FREEMAN: I notice that the minister has not changed the definitions, although he is changing the legislation, with some sort of spurious idea that we are suddenly going to be okay about politicising health

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promotion because he did not change other aspects of the legislation. I note that the definition of “sporting” includes recreational and other such activities but does not include racing. I understand that part of the problem with that definition is that it sometimes precludes activities such as bridge, which was raised by the member for South Perth. Bridge clubs, which are enormous around WA, could be an extremely good avenue for the promotion of health. We all know that the next new health wave is that we have to stand more often and sit less often. The minister has probably noticed as he walks through some of his departments that everyone is now getting standing desks; that was the big purchase for many departments in the last financial year, as I understand it. Certainly ABC Studios now has standing desks.

Now that the minister is listening to me again and I do not have to talk inanely about standing desks —

Dr K.D. Hames: I was getting an answer to the questions you asked.

Ms J.M. FREEMAN: The member for South Perth is not here to correct me, but from my recollection, the definition of “sporting” includes recreational and other such activities but does not include racing, because “racing” has its own definition. My question is: does that include things such as bridge clubs, yoga organisations or dance clubs? It seems that the definitions are relatively limited.

Dr K.D. HAMES: There are two separate definitions because those things are individually referred to under clause 43, which makes provision for the areas in which money can be spent. They include sporting organisations, arts organisations, health organisations, community organisations, research organisations and racing organisations. Racing organisations are deliberately kept separate from sporting organisations because racing, under some definitions, could be called a sport, and what I gather Dr Wilson wanted to do was make sure that, in promoting sports, we did not just send off all the money into racing so that people who are actually playing sport did not get any funds. That is why they have a separate definition and that is why they are included in the funding distribution that we will see when we get to clause 43 at page 22.

Ms J.M. Freeman: Does it include bridge?

Dr K.D. HAMES: I have asked Dr Weeramanthri, who was on the Healthway board, and he said that it is not actually a sport; it is more like a craft and would probably fit under culture and arts, but for some of those difficult ones that are in the middle, the board will decide on where they should fit and how they will fit into the system. I do not think we want to have a list of every sport or activity and try to fit definitions to them. It is quite clearly better that that definition is left to the board to sort out.

Ms J.M. FREEMAN: I wonder whether the minister can ask his learned adviser whether there was anything that actually could not fit within those definitions and so could not be defined as a sport or a community activity. This is the opportunity to ensure we capture all organisations that could be used for health promotion. My understanding is that this was created to fill that void. Tobacco companies had used organisations to promote themselves; they had insidiously used community organisations, particularly sporting groups, to support a harmful product. In the move to counteract that harmful product, we used the tobacco tax. We cannot use that anymore, obviously. Victoria did it first and then Western Australia did it. It was done to replace the income that those groups were earning. The message basically was, “Don’t use that to promote your sporting club; we’ve got funds.” The aim was to increase the health of our community by not promoting a harmful product but by promoting a healthy lifestyle and how to control the determinants of health and all those things around health. Has any area been found to be lacking in the capacity to counteract that pressure of harmful products and to be able to promote a more healthy lifestyle so that there can be a favourable health outcome? Was anything missed by those definitions?

Dr K.D. HAMES: The recollection of Dr Weeramanthri is that no things came before the board seeking applications for funding that it was not able to find a place for. With whatever comes forward, the board goes back to the object of the act, which is the promotion of good health.

Mr C.J. TALLENTIRE: My question relates to the definition of “member”. I note that this is one area that has seen dramatic change. Under the Tobacco Products Control Act, the scope for the selection of members is quite wide and varied and depends on nominations from different bodies that have a strong interest in the whole health sector. Now, under this bill, it has been changed. Again, I am reading on, but I think it is relevant that we talk about this under clause 3. We are changing things such that a member is basically someone who is appointed by the minister or the Premier. Why are we not just saying in these definitions that a member of the foundation is appointed by the minister or the Premier?

Dr K.D. HAMES: This comes under clause 11 and I think that is the opportunity to debate it. This is just the definition of what a member is, not who appoints them, why they are there or how they get there. This is not the appropriate clause to debate that issue.

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Mr C.J. TALLENTIRE: A member is a person as defined in clause 11. If that person can only be someone appointed by the minister or the Premier, why not say that up-front? Surely the point of having a definition section in the legislation is to enable someone to quickly look and see what a member is. If we did this in clause 3, they would know that a member is someone appointed by the minister or the Premier. Why not say that up-front? Why will people have to refer to clause 11 to get the full explanation when we could quickly put that in here? That would be honest and up-front.

Clause put and passed.

Clause 4: Object of Act —

Mr R.H. COOK: As far as I can ascertain, this is one of the clauses that is new to the legislation. The object of the act is not, to the best of my knowledge, encompassed in the corresponding section of the Tobacco Products Control Act.

Dr K.D. Hames: Yes, it is section 3(b) of the act.

Mr R.H. COOK: So is it right at the front of the Tobacco Products Control Act?

Dr K.D. Hames: Yes.

Mr R.H. COOK: Excellent. I want to continue the discussion around the definition of “promotion”, because, again, this is what most gravely offended your friends in big tobacco and alcohol about the current operations of Healthway. What they were saying is that —

Mr A. Krsticevic: I didn’t know he had good friends in tobacco and alcohol.

Mr R.H. COOK: The member’s political party took donations from them as recently as 2013, so that sounds like a pretty good relationship to me.

Dr K.D. Hames: It could well have been for the federal election; I doubt it was for the state.

Mr R.H. COOK: It is the minister’s political party; it is certainly not mine.

The ACTING SPEAKER: Members, let us stay on the clause.

Mr R.H. COOK: As I said, your friends, who have been in close contact with you in the lead-up to the introduction of this legislation —

Dr K.D. Hames: No.

Mr R.H. COOK: They certainly have with the minister’s government. We have letters from them to the minister.

Dr K.D. Hames: It was a letter in 2013.

Mr R.H. COOK: What they want in that letter bears a remarkable similarity to what the government has coincidentally managed to come up with to present to this place.

Dr K.D. Hames: You have FOI-ed all correspondence and all communications from my office and nothing was there.

Mr R.H. COOK: I am familiar with the vagaries of the freedom of information process. Again, this might be embracing the naivety of the times in which the Tobacco Products Control Act was originally struck—that is, in the absence of tobacco, there stepping in was the Western Australian Health Promotion Foundation. However, we know it is not good enough to promote good health and to simply say that people must do good. We know that the other side of good health is that people must not undertake those activities that are bad. For instance, it is not good enough to say that a person should stay out of the sun; they also have to be told to not use a solarium. This is the policy crossroads that this government is at. This is an incredibly important aspect of it. I am indebted to the member for Mirrabooka for the definition she came up with earlier on health promotion.

Ms J.M. Freeman: You are always indebted to me.

Mr R.H. COOK: Indeed, member. That definition states that the promotional activity is to include the counteracting of the pressures towards harmful products. That is like the definition of “health”; it is not about simply the presence of good health but also the absence of bad health.

Dr K.D. Hames: But what the member for Mirrabooka is also suggesting is that we should include things like unemployment, habitat and all those things that we know contribute to poor health. If we were to support a definition like that, we would need to change other parts to change the spread of funding, because we would certainly have to take significant amounts away from sport, the arts and general health promotion if we were to fund those other components.

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Ms J.M. Freeman: They've been doing the research.

The ACTING SPEAKER: Through the Chair, thank you.

Mr R.H. COOK: I understand what the member for Mirrabooka is trying to say. At the nub of it is that it is simply not good enough to say that this is about promoting good health; it is also about counteracting bad health. In the context of this clause —

Ms J.M. FREEMAN: I am interested in hearing the rest.

Dr K.D. Hames: You've got 30 seconds left.

Mr R.H. COOK: Sorry; I thought the bell was telling me to sit down. In this context it is to promote and facilitate in Western Australia good health and activities —

The ACTING SPEAKER: Your time has expired.

Mr R.H. COOK: Now it has? That is not fair, surely.

Dr K.D. Hames: The other member got up. He should still have his full time.

The ACTING SPEAKER: Okay.

Mr R.H. COOK: This clause states —

... to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

As we have heard from this debate, that is not the problem. The problem is that Healthway, quite rightly, has said that it is also about the active discouragement of unhealthy lifestyles. That is the issue that your friends in big alcohol have taken such an objection to. The current act states —

The object of this Act is to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles.

To make sure that we step forward into the future with this new legislation, would we not include in the object of the act words to the effect —

... and activities that discourage unhealthy lifestyles.

Dr K.D. HAMES: I think the member is interpreting the words in one way and not looking at an alternative interpretation of the words. By looking at the words, "The object of this Act is to promote and facilitate ... good health", we can promote and facilitate good health by telling people things that are not healthy. To promote and facilitate good health includes the negative—the opposite—which is to discourage things that are bad for health. Similarly, the words "activities that encourage healthy lifestyles" do not just say that some activities are good for people. It is equally saying that certain activities or a lack of activity is bad for people. Hence there was the "Draw the line" campaign. It told people not to use a lift—as I have seen numerous members do in this place—rather than climb the stairs, which is what they should do. That was an excellent campaign, which was done under this definition very recently, because the people who worked at Healthway and on the Healthway board accepted a much broader definition that these words allow for.

Mr R.H. COOK: The minister and I are in furious agreement about the scope of this object. My concern, on behalf the minister and people everywhere who support good public health promotion, is that the sector is under attack. It is under attack from the minister's friends in big alcohol who object to his very definition of it. They say, "We don't mind if you come along and say that people should climb the stairs; everyone's happy for you to do that. Just don't you dare take away our right to force alcohol down people's throats while you're saying that perhaps they shouldn't drink too much."

Ms J.M. Freeman: Don't let us take away the lift.

Mr R.H. COOK: Do not make us take away the lift. This is fundamentally what it is about. We are all sitting around and I hope we agree upon these things, but we have had debates in this place about the appropriateness of Healthway squeezing out other sponsors, as the member for Wagin said, and the appropriateness of Healthway demanding that alcohol not be present in events that it sponsors because these organisations are saying that is Healthway overstepping the mark. That is what Carlton and United breweries find so offensive. That, I dare say, was the nub of the conversation that the minister had with Coca-Cola back in 2011. These companies want the minister to go out and say, "There, there, public; do good things", but Healthway, "Don't you dare interfere with our profits by telling people not to buy our products." In some respects, we concede the government's right to change the act, but in other respects we say that we want to fortify public health advocacy into the future by putting it beyond these companies that criticise the stance that Healthway has taken in the past. We want the minister stand up and say that this is exactly what the government thinks Healthway should do, which is for Healthway to not only

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encourage people to undertake activities that encourage a healthy lifestyle, but also actively discourage people from doing certain other things, because that is what this whole fuss has been about. That is where the *Carmen* and WACA controversies came from. It is not because Healthway says that people should pursue active and healthy lives; it is because Healthway also says, “You should stop smoking, you should stop drinking and you should not associate alcohol with sport.” That is what is so offensive to these other organisations and that is why they are attacking Healthway. Would it not be a great opportunity to put that beyond doubt and say that this is about not only encouraging healthy lifestyles, but also discouraging unhealthy lifestyles?

Dr K.D. HAMES: I want to get on the record once again that I seriously object to the allegations being made by the member about an influence that these organisations may have on me, as he suggested. I object to it and refute it. Although the government has no ability to direct the decisions that the Healthway board makes, neither do any of the organisations that the member named. The member can claim motives, directions and points of view for those organisations for as long as he likes, and they may well be true, but they do not have any influence on Healthway and neither does the government.

Mr R.H. COOK: I thank the minister for his guidance on that. I understand what he is saying. The minister is from the health sector. He is not about saying that it is a great idea to associate alcohol and sport. I get that; I understand that. I am not saying that he necessarily sits down at night twiddling his moustache looking for opportunities to do evil. But there is slipping and sliding with the relationship by saying, “We know we don’t want you to push Coke, but what about Coke Zero? Come on, work with us here; this is uncomfortable”, rather than just saying, “Look, we know what you are trying to do with your products and we know the impact your product has on the community, and we think it is bad.” I am not trying to impugn a motive for the minister’s rejection of my suggestions. I am trying to suggest that it would be a good thing to put this debate out of the reach of those who continue to want this debate to slip and slide so that people can keep alcohol’s foot in the door and can keep quietly pushing along junk food in the context of sport. Would it not be a good thing to put that to bed once and for all by saying very explicitly that this is “to promote and facilitate in Western Australia good health and activities which encourage healthy lifestyles and discourages unhealthy lifestyles”?

Ms J.M. FREEMAN: I note that the object of this bill has come from section 3(b) of the Western Australian Tobacco Products Control Act. That has simply been taken out of that act. This shows that the amendments to this legislation have been simply for a political purpose because all the government has done is take out the bits that it wants to control without looking at health promotion, the funding of health promotion and what the definition of that means. In some ways, the current Victorian Tobacco Act 1987 was the originator of our act. I say that because I note that the current Victorian act states —

The objects of the Foundation are —

- (a) to fund activity related to the promotion of good health, safety or the prevention and early detection of disease; and
- (b) to increase awareness of programs for promoting good health in the community through the sponsorship of sports, the arts and popular culture; and
- (c) to encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits; and
- (d) to fund research and development activities in support of these objects.

It seems to me that part of the difficulty, and what the member for Kwinana was outlining —

Dr K.D. Hames: They are all under the functions, member. All those things that you just talked about, although they might have them in the objects, we have them under the functions.

Ms J.M. FREEMAN: That may be the case.

Dr K.D. Hames: It is.

Ms J.M. FREEMAN: But we keep coming to Parliament and being given green bills on heritage, on occupational health and safety, on workplace safety and health promotion. We also have a slow-moving bill on public health that took many years to draft that has been left languishing because there is a political agenda in the health promotion space and because money is involved. It seems to me that simply taking the object from the Tobacco Control Act and putting it into this clause will not properly identify both aspects of what health promotion should be, as outlined by the member for Kwinana. I suppose the minister answered my question by interjection when he said that no consideration was given to anything other than taking the object out of the act because he thinks it is covered in other areas. I do not believe that is a particularly good way of doing it, but perhaps the minister wants to stand and put that instead of by way of interjection—that is, we think we did not need to do it because it is covered perfectly in other areas. The issue still remains, however, that health

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promotion should be about not only promoting healthy lifestyles, but also actively ensuring that a depletion of resources and public goods and issues that occur in our community do not also occur. As the member for Kwinana said, it is about not only promoting the good, but also challenging and pushing back towards those things in the community that are bad. It came from that, because it came from the Tobacco Control Act. We have all seen episodes of *Mad Men*—I did not watch very many of them—which captured an amazing time in which people actively advertised and created an industry around tobacco and advertising a product that is completely negative to people’s health. We need public policy, promotion and money to counteract that—to be able to push back against those really strong influences. My question to the minister is: why did he not spend more time ensuring that the objects of the bill properly and fully articulate what health promotion should be in 2015?

Mr R.H. COOK: Could the minister clarify whether he discussed with the chair of Healthway changes to the objects of the bill when drafting the bill?

Dr K.D. Hames: No. We did not discuss any specific detail of the act, other than the changes that we were going to make, which were all around the structure of the board. In the early stages of those discussions with Dr Capolingua, that was all that we were discussing.

Mr R.H. COOK: Was that the sum total of the consultation the minister had with Dr Capolingua—about the make-up?

Dr K.D. Hames: Of the board, yes.

Mr R.H. COOK: Was this discussed with any other board member or health stakeholder? Did the minister seek advice or input from others about updating other aspects of the bill?

Dr K.D. Hames: No.

Ms J.M. FREEMAN: I am extraordinarily interested in the line of inquiry from the member for Kwinana, as I would be very interested in the minister paying me some respect and answering my question about why he never consulted with anyone, particularly given that public health is such a wide and broad area and on which many people could have given good advice during the creation of this bill, and why no consultation was done around the objects of the proposed act.

Dr K.D. HAMES: The member for Kwinana asked whether I had been involved in any consultation. The answer is, no. The department consulted, and I have a list of the key stakeholders who were consulted. They include the Australian Council on Smoking and Health; the Australian Council for Health, Physical Education and Recreation; the Australian Medical Association; the chair of the Health Promotion Foundation; the Department for Child Protection and Family Support; the Department of Culture and the Arts; the Department of Sport and Recreation; the Department of the Premier and Cabinet; the Public Sector Commissioner—that was about the restructure and putting staff under the Public Sector Management Act—the Western Australian Local Government Association; and the WA Sports Federation. Those groups were consulted about the legislation.

Ms L.L. BAKER: I snuck up on the member for Kwinana. I am slightly changing the direction of questions and asking about encouraging healthy lifestyles. I am sure the minister can answer, but I have not seen any Healthway support historically for things such as horseracing, pacing, dog racing, motor car racing—any racing in which betting is involved. I am interested in what can happen. This is at the front of my mind at the moment because to have healthy lifestyles, we know about the relationship between gambling and mental health.

Dr K.D. Hames: We are talking about the object of the act, which comes under the functions of the board of Healthway.

Ms L.L. BAKER: Would you like me to wait for the functions to ask that?

The ACTING SPEAKER: That would be the more appropriate place to deal with it.

Mr R.H. COOK: Turning to the consultation process, am I to understand that the minister had no engagement with any of the health stakeholders over the changes to the act?

Dr K.D. HAMES: I am trying to think whether I did specifically, because all we were doing was leaving the act the same. The Department of Health was involved in the consultation. I think I received letters from some of those organisations that responded to requests. I certainly received a significant number of letters, either directly to me or copies of letters, from all those organisations around, firstly, what had happened with the Healthway situation, and, secondly, people wanting to support Healthway, and their views on what the act should do, what it should contain and the direction it could take. There were a large number of letters about that. Also submissions were made by directors general of departments. I particularly remember one from the director general of the Department of Sport and Recreation who made a strong submission, as did others. There were large numbers of submissions around that, but in terms of me personally talking to people, given that the changes being made were in certain areas, one is that

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there was no change in direction. The only change was the change to what was in the Lotteries Commission Act and how that operated, and that was a fairly simple change—and the changes to the members coming on under the Public Sector Management Act. I am aware the Department of Health consulted those staff members, but I do not believe that it was my job, given that the act was largely staying the same and given the direction was staying the same, to personally talk to those people who had already made submissions.

Mr R.H. COOK: Given the controversy that has surrounded this matter, given that the Premier essentially alluded to corrupt behaviour when he suggested that the contents of the Public Sector Commissioner report should be given to the Corruption and Crime Commission, given the extraordinary dismantling of people's public reputations around this, and given the obvious concern expressed by members of the board—one I remember from Mr Graham Brimage who wrote to the minister in very strong terms saying that he was bitterly disappointed to have to wear the odium derived from the findings of the recent Public Sector Commission investigation and so on—does it not strike the minister as extraordinary that he would not meet with at least some of the major stakeholders to assure them on what was going to happen in the future? I can assure the minister that they spoke to me in very strong terms about what they saw the minister doing, which was—if we are to take the minister at face value, which we obviously do not—nothing but tinkering at the edges. Why could the minister not have picked up the phone personally and spoken to any of these organisations about this? This is a substantial piece of legislation. I cannot believe that the minister would not have been personally involved in ascertaining the views of the stakeholders rather than simply sending public servants to draft legislation in the context of this policy storm. We know what the Australian Taxpayers' Alliance was alleging, we know what Carlton and United Breweries was alleging and we know what the Premier was alleging in his public commentary. Did the minister not think it appropriate at some point to sit down with these stakeholders to bring more minds to bear on this exercise?

Dr K.D. HAMES: There are two things. Firstly, the member put together a series of “givens” and then asked me to answer a question about them when a large number of those “givens” are just not true.

Mr R.H. Cook: Which ones?

Dr K.D. HAMES: The suggestion that the Premier referred this to the Corruption and Crime Commission is not true.

Mr R.H. Cook: No; he said that it should go to the CCC. I was quoting him.

Dr K.D. HAMES: I think he said that it did go to the CCC.

Mr R.H. Cook: So what was he implying by that?

Dr K.D. HAMES: He was not implying anything. The Public Sector Commissioner had already referred it to the CCC.

Mr C.J. Tallentire: No; the chair of Healthway did.

Dr K.D. HAMES: I am fairly confident that the Public Sector Commissioner referred it to the CCC. Those “givens” were not all correct.

Mr R.H. Cook: So there was no controversy.

The DEPUTY SPEAKER: Order, member for Kwinana!

Dr K.D. HAMES: I do not accept all those other “givens”.

The controversy was being fuelled by the opposition suggesting that we were doing this or that, that we were going to disband Healthway, that we were going to severely change the way it operated, and that we were going to stop it promoting those things. All those letters that I got were from misinformed parties, but I could not inform them at that stage that they were misinformed until the changes to the legislation were approved by cabinet. At the stage that those letters were written, a decision had not been made by cabinet about exactly what the outcome would be. That is something that I worked hard to achieve, and I achieved that by getting the legislation before the house. I was aware of all the concerns that people had, but the way to refute those concerns was to table in this house the legislation that is now before us. I think that if all those people who wrote about their worries about Healthway, their support from Healthway and their view that Healthway should continue to do the things it has done read the *Hansard* of what has happened in the house today or read the legislation, those fears would be allayed.

Mr R.H. COOK: The minister made the observation to the Public Sector Commissioner in his letter of 16 February that he was advanced in his discussions and in his drafting of the legislation.

Dr K.D. Hames: Can you read it back to me?

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Mr R.H. COOK: Obviously, this is one of the foibles of a new member of Parliament. When I finished my speech and I was asked for the documents for Hansard, I dutifully handed them over and of course now I do not have them to refer to.

The DEPUTY SPEAKER: We are talking about clause 4. I am sure you have the words of that clause, member for Kwinana.

Mr R.H. COOK: I will not make that mistake again. The minister said at the time that the commissioner wrote to him, which was on 2 February, that he had a proposal ready to go to cabinet.

Dr K.D. Hames: I think I said something along the lines of we had been having discussions for some time about the change, and I explained that in my second reading response.

Mr R.H. COOK: Surely by that stage the minister had already had a lengthy opportunity to discuss it with the stakeholders, and he would not go to cabinet without ascertaining the views of stakeholders prior to that. However, he is actually telling me that he was flying blind on this and that he had not engaged with the stakeholders at all. In that sense, it was a mystery to them, as it was a mystery to the Public Sector Commissioner.

The DEPUTY SPEAKER: Member for Kwinana, I am having difficulty seeing this as a discussion of clause 4 of the bill. It seems to be a general cross-examination. Can you please direct yourself to the objects of the legislation in clause 4.

Mr R.H. COOK: Thank you, Madam Deputy Speaker. The reason we moved to this line of inquiry is that I asked the minister whether he had discussed the objects of the legislation with the chair of Healthway. He said in his second reading response that he was working on the bill in consultation with the chair of Healthway, so this debate started on the basis of the consultation around this. The minister helpfully responded that he had had no consultation over this particular provision, so we are finishing off that aspect of the debate, which is about the level of consultation.

The DEPUTY SPEAKER: And I think that is what we should do. So direct your comments to clause 4, please, member for Kwinana.

Dr K.D. Hames: Did I consult about clause 4? The answer is that the department consulted all those people about the legislation. The clause was going to stay. Did anyone put forward the suggestion that the objects of the legislation should be changed, which would warrant me wanting to take a further interest in this clause? No, they did not.

Mr R.H. COOK: Was the minister asked whether there were other changes that he would be interested in making to the legislation—that is, did he want to broaden the definition of “promotion”—or were they simply consulted over the way that the board was made up?

Dr K.D. HAMES: The notes just stated that they were consulted over the proposed changes, but there is always an opportunity for those people to put forward a view on whether issues within the legislation can be changed. The fact is that I did not consult them about this clause; nevertheless, it remains as it is.

Mr C.J. TALLENTIRE: The minister read a list of bodies that were consulted about the bill. Did any of the bodies that were consulted have a person on the Healthway board?

Dr K.D. Hames: You heard the list that I read out. Quite a few of those had people on the board. ACOSH is on the board.

The DEPUTY SPEAKER: Let the member finish his question and then you can answer.

Dr K.D. Hames: It saves me standing.

The DEPUTY SPEAKER: I do not think you can bypass the rules.

Mr C.J. TALLENTIRE: The minister is saying that some of those bodies had a person on the board —

Dr K.D. Hames: Yes.

Mr C.J. TALLENTIRE: — but they saw fit to send in a separate submission.

Dr K.D. HAMES: They did not all send submissions. I did not read out the full list. Like the shadow minister, although I am not quite a new player, I have handed to Hansard my sheet with the list of those that responded. It was my adviser’s sheet, so it was the only one. I am happy to show that list to the member later. I think about five out of that list that I read out responded.

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Ms J.M. FREEMAN: When the minister consulted, did the consultation consist of a letter to them stating that the government is changing it and this is what it is changing and asking for a submission? This was the minister's adviser. The minister did not consult on any of the changes to the legislation with the people on that list, as we found out. When he consulted on the legislation, was it all done by correspondence or were there meetings? Were those changes put on a website? Were the submissions that were received in the consultation process made public or was it all just done in-house? If the consultations about the objects of the legislation were not made public, can the minister make them public now?

Dr K.D. Hames: It doesn't relate to the clause.

Mr C.J. TALLENTIRE: Just on the issue of the bodies that made a submission, were comments by the different bodies commented on in the media? Was there ever a media connection, perhaps, with the submissions made by the various bodies?

Dr K.D. Hames: You need to put the clause, Madam Deputy Speaker.

Ms J.M. FREEMAN: Did the department consult with the alcohol lobby or the soft drink lobby or any other lobby groups in addition to those areas that the minister read out?

Dr K.D. HAMES: No.

Mr C.J. TALLENTIRE: Was there a submission from the Australian Council for Health, Physical Education and Recreation WA? Was that one of the bodies that made a submission to the minister?

Dr K.D. Hames: It is not related to the clause. The answer is the same: it is not related to the clause.

Mr C.J. TALLENTIRE: Minister, with respect, I think I can say that we have previously discussed that the objects of the Western Australian Health Promotion Foundation Bill 2015 were canvassed with various stakeholder groups —

Dr K.D. Hames: The objects of the bill have not been changed, as I have said. This might relate to other clauses of the bill, but it does not relate to this particular clause. I am happy to answer those questions when we get to the relevant clause. All members opposite are anticipating things that are coming; I do not have to answer if it does not relate to the clause we are debating.

Mr C.J. TALLENTIRE: But more broadly, though, the objects were canvassed with stakeholder groups, and I am asking the minister about some of the groups that provided a submission. I put the question: was, for example —

Dr K.D. Hames: I say it again: the objects were not specifically put forward for consultation because there was no change.

Mr C.J. TALLENTIRE: But surely those bodies making submissions would have started their submissions —

Dr K.D. Hames: They could have if they wanted to.

Mr C.J. TALLENTIRE: — with some reflection on the objects of the act.

Dr K.D. Hames: They could have if they wanted, and, as I said earlier, they did not.

Mr C.J. TALLENTIRE: And the minister cannot tell me which bodies?

Dr K.D. Hames: I have told you why.

Mr C.J. TALLENTIRE: The minister has provided the list, and I am just asking whether a particular group made a submission. Is the minister not able to confirm that?

Dr K.D. Hames: We do not know.

Mr C.J. TALLENTIRE: Perhaps the minister's advisers have a further copy of that list?

Dr K.D. Hames: No, that is where that copy came from. We do not know.

The DEPUTY SPEAKER: Minister, are you providing an answer?

Dr K.D. Hames: No, I am sitting. I am interjecting.

Ms J.M. FREEMAN: I am quite interested in the line of questioning from the member for Gosnells. I am happy to continue to hear from the member for Gosnells.

Mr C.J. TALLENTIRE: I think it is important that we know the nature and the background of the bodies that made submissions, especially when there is a body that made a submission that also had a representative on the Healthway board. We need to know what is going on there. If there is any potential for there to be some sort of

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conflict or inconsistency between those bodies that made submissions and their position on the board, we need to know about that. The minister has said that he was unhappy with some of the activities around the hospitality arrangements and the issue of tickets and what have you, so surely this is a question that should be answered about the connection between those bodies that made submissions and the person who was actually involved in representing that body on the board.

Dr K.D. HAMES: We have found something that refers to the responses that came from different organisations: the Department of Culture and the Arts, the Chamber of Arts and Culture WA, the WA Sports Federation, the Department of Sport and Recreation, the Public Sector Commission and the WA branch of the Australian Council for Health, Physical Education and Recreation. They were the ones that responded. The last organisation was the one the member mentioned.

Mr C.J. Tallentire: Who was their representative, though?

Dr K.D. HAMES: I do not know the answer.

Mr C.J. Tallentire: You do not know who the representative was on the board?

The DEPUTY SPEAKER: Member for Gosnells, will you stand if you are asking a question; thank you.

Mr C.J. TALLENTIRE: Minister —

Dr K.D. Hames: Hang on; we are just finding out who was on the board. Professor Helen Parker was its representative on the board.

Mr C.J. TALLENTIRE: Is she connected to the journalist who did a lot of commentary on this issue when it was in the papers?

Dr K.D. Hames: No, sorry, we don't know.

Mr C.J. TALLENTIRE: The minister does not know? There was nothing declared or anything like that?

Dr K.D. Hames: Well, we don't appoint people according to who their relatives are and all that.

The DEPUTY SPEAKER: Minister, if you are responding, will you stand.

Dr K.D. HAMES: Yes. Certainly Derek Parker made a statement that his mother had been appointed to the board. She was one of those ones who was right near the end that had not attended; I think she had only attended one or two meetings. I think she may be the only Parker on the board.

Mr C.J. TALLENTIRE: So it is a matter of public record that one of the bodies making a submission was represented on the board by Professor Parker, who happens to be the mother of the person who was making some very negative commentary on Healthway in the media. Is that the case?

Dr K.D. Hames: I do not know that he was making very negative commentary. I don't think that's relevant to the objects of the act.

Mr C.J. TALLENTIRE: The body did make a submission —

Dr K.D. Hames: So what?

Mr C.J. TALLENTIRE: — and surely in making that submission it would have referred to the objects of the act.

Dr K.D. Hames: The objects of the act were not changed. I have given up on this, Madam Deputy Speaker; I am not answering.

Ms J.M. Freeman interjected.

The DEPUTY SPEAKER: Order, member for Mirrabooka. I do not think that is the way to go, minister. But we do need to get some discipline here. Member for Gosnells, when you have finished your question, sit and wait for the minister to respond. To have this continual backwards and forwards is difficult for Hansard, it is difficult for the minister and it is difficult for me.

Point of Order

Mr R.H. COOK: The member for Gosnells is making commentary on his feet, as is appropriate. The problem is that the minister refuses to get to his feet and is simply answering by way of interjection. Perhaps if we could direct the minister to —

The DEPUTY SPEAKER: Thank you, member for Kwinana, but I have asked the member for Gosnells to resume his seat while he waits for the minister to answer; he has not done that, and the minister has not then officially submitted an answer. So unless we actually do this properly, we are going to be here all night.

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Debate Resumed

Clause put and passed.

Clause 5: Foundation established —

Mr R.H. COOK: I wanted to take this opportunity to stay on my feet for a second to satisfy myself that this clause is exactly the same. Obviously, this clause bears a striking resemblance to section 59 of the current Tobacco Products Control Act. This is probably a legal question, but by virtue of scrapping one piece of legislation and starting another with a new board, will it be necessary for the WA Health Promotion Foundation and for the minister to approve a new trading name for the organisation pursuant to section 59(4) of the Tobacco Products Control Act?

Dr K.D. HAMES: Clause 67 refers to the foundation continuing, so there is no need to renew that name.

Mr R.H. COOK: We may have to discuss this at clause 67, but in a general sense does that mean all the current approvals for the organisation remain standing or does the minister have to reignite those?

Dr K.D. HAMES: Again, clause 67 refers to the continuation of the foundation, and it states that all assets, rights, liabilities, agreements and remedies on or after transition day continue. Remember that in the meantime we have had an interim board that is largely the directors general of the different organisations. They have continued with the operation of Healthway and continued to make the decisions on behalf of Healthway, and all those decisions will continue with the new board as per clause 67.

Ms J.M. FREEMAN: The foundation is a body corporate. Does that mean it incorporates under corporations law in Western Australia, or is that incorporation part and parcel of us making it a body corporate? Is it seen as a trading or a non-trading corporation? Does it therefore have an official seal, and can it sue and be sued under its corporate name? If it was incorporated in its previous incarnation, does it have to reincorporate, or does that continue? How does that operate in terms of its corporation powers?

Dr K.D. HAMES: It does not need to be incorporated under corporations law. It is a body corporate and, as we said before, it continues from its previous incarnation. It does not need to reapply.

Ms J.M. FREEMAN: Does it have an official seal, and can it sue and be sued in its corporate name?

Dr K.D. HAMES: Clause 34 contains that information.

Ms J.M. FREEMAN: The minister directed me to clause 34, so I will take the opportunity to do that.

Dr K.D. HAMES: Or you could wait until we got to clause 34.

Ms J.M. FREEMAN: Absolutely. Clause 34 is about the common seal, but it does not answer my question about being able to be sued. I see that that clause deals with the execution of documents, and I thank the minister very much for his guidance in that respect. I greatly appreciate it.

Dr K.D. HAMES: Clause 5(3).

Ms J.M. FREEMAN: Clause 5(3) states —

Proceedings may be taken by or against the Foundation in its corporate name.

That refers to being sued or suing. Do those proceedings include that the foundation can lease, sell, dispose—all of the things that could normally be done by a body corporate?

Dr K.D. HAMES: I am not sure whether this answers the question, but under clause 8(2)(c), the organisation has the power to acquire, hold, deal with and dispose of real and personal property. Does that cover all of the things, while I am on my feet?

Ms J.M. Freeman: It doesn't say "lease"—that is the only thing it doesn't say.

Dr K.D. HAMES: "Deal" includes "lease".

Ms J.M. Freeman: Okay. While you are on your feet, can it be taken as a body corporate as part of the Crown—as part of the state government?

Dr K.D. HAMES: Under clause 6, "Status of Foundation", the foundation is the agent of the state and has the status, immunities and privileges of the state.

Clause put and passed.

Clause 6: Status of Foundation —

Mr R.H. COOK: I am curious about the status of the foundation. Can the minister clarify the impact of the foundation's status as a State Executive Service organisation under the Public Sector Management Act 1994?

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Dr K.D. HAMES: That was done as a recommendation of the Public Sector Commissioner. It means that all the staff become public servants. It is under the management of the Public Sector Commission, and it means that the chief executive, who was previously employed by the board, is now employed by the state.

Ms L.L. BAKER: This might be a difficult question, but I am sure the minister can answer it. I know that a trust is different from a foundation, but in order to clarify, when a trust is established by the government, it still counts on the government's bottom line. If, for example, we were to establish a Western Australian women's trust, and put \$10 million or \$100 million into it, that would still be counted as part of the government's assets, or what it has in hand. Is that the same for a foundation? If it is the same, will it be any different from the way that Healthway has existed in the past? Was Healthway's budget counted as part of the consolidated revenue fund effectively, or does this now bring it in and add it to the government's bottom line?

Dr K.D. HAMES: I am advised that this is a new clause, but it is a very common clause. My understanding is that those assets always come under the ownership of the state, even with Healthway being at arm's length from government. I know that Tourism WA comes under the state government in that way, and even the Water Corporation. One of the reasons our debt levels are so high is that the Water Corporation has a large debt. Those debt levels come under the assets and liabilities of the state.

Ms J.M. FREEMAN: The foundation establishing itself as an SES organisation under the Public Sector Management Act will mean that the director or the CEO is directly employed by the government and can either be a permanent public servant or enter into a contract as an SES, so they can take less money and have permanency in the public sector or take a greater amount of money and not have permanency and be on a fixed-term contract. Did the Public Sector Commissioner make that decision because the CEO is an employee of the commission, reports to the commissioner and, in their employment contract, has responsibilities towards the commissioner and not the board? Can the board provide only written direction, and in turn, does the director not have to report all things to the board, because they are not directly responsible to the board for their employment contract, which always comes under the Public Sector Management Act, and therefore, effectively his or her employment contract is with the Public Sector Commissioner? I suppose I want a bit more clarification about why we are setting up a foundation that we want to remain independent in promoting health in Western Australia and continue the functions and objects it previously had, and yet we are taking away its relationship with the person who serves it. We have taken away the company secretary role and simply made the board an advisory board to an agency that has a CEO who is directly employed by government and whose employment status and contract is subject to the Public Sector Commissioner. Why has the government decided to do that?

Dr K.D. HAMES: This just puts it in line with the vast majority of other government agencies. The Lotteries Commission and the director of Health come under the Public Sector Management Act and are appointed through that process. This just brings them into line. It gives more oversight over the activities, and that was seen to be one of the difficulties that occurred under the previous act.

Ms J.M. FREEMAN: The minister would be aware that it is in fact the relationship that the director of Health has. The minister would be aware that in the report titled "More than Bricks and Mortar: The report of the inquiry into the organisational response within the Department of Health to the challenges associated with commissioning the Fiona Stanley Hospital", one of the concerns of the Education and Health Standing Committee was that the director had knowledge given to him by subordinates that there was going to be a delay in the contract and in the delivery of IT services and therefore a delay in the operation of the hospital, but there was no responsibility on that director to necessarily tell the minister—or in this case it would be to tell the board—that there was an operational issue that could have quite a serious impact on the outcomes and operations of a project or a proposal. My concern is that this board will believe it has the capacity to operate and it will want to promote health and direct the organisation, but indeed it will not have any capacity for any influence on this particular officer. The officer could withhold information from the board if they do not believe it is in the interests of the organisation to provide the information to the board. Is that a concern to the minister, given what he knows?

Dr K.D. HAMES: I just do not accept that premise. That is like suggesting that the director for tourism would not report things to her board or the director of lotteries would not report to her board. It just does not happen. It is the responsibility of the director to fulfil the role of director in supporting and advising the board, and it is the board's responsibility to manage those things, so I just do not accept that as a premise.

Ms J.M. FREEMAN: The minister might not accept that as a premise but how do we ensure that it will not be the case, given that the minister is now establishing a board that will no longer have a direct relationship with the person and the director of the organisation that it is dealing with?

Dr K.D. HAMES: I refer the member to another clause on another page. Clause 35, "Chief executive officer", states —

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- (1) A chief executive officer ... is to be appointed under the Public Sector Management Act ...

It goes on —

- (2) The chief executive officer is to administer the day-to-day operations of the Foundation subject to the control of the Foundation.

It clearly states that the foundation is the responsible organisation to whom that chief executive officer reports.

Mr W.J. JOHNSTON: The minister will remember that in my contribution to the second reading debate I raised this issue when I read excerpts of the transcript of evidence from the report of the Economics and Industry Standing Committee into the Kimberley Ultramarathon that demonstrated that the executive of Tourism Western Australia provided inaccurate information to the board of Tourism WA. That was the example I gave in that second reading debate on this very issue, because if the public servants are the people doing the work and the board does not have power to direct, how can we end up with this situation? It is exactly what happened at Tourism WA. As far as I am aware, there has never been any disciplinary action or any action of accountability to the executive of Tourism WA for having provided false information or inaccurate information, if we want to be more generous, to Tourism WA's board. Are we not just leaving ourselves in the exact same position here with the same possibility and no capacity for the board to hold the executive to account? What is the purpose of the board if it cannot hold the executive to account? It does not make any sense. It is not a true board if it cannot hold the executive to account.

Dr K.D. HAMES: I believe the board can hold the executive to account. There are processes for any minister or members of a board who are dissatisfied with the performance of their chief executive officer to deal with those issues, in the same way that there is potential action to be taken with any public servant with performance issues. As I said, the bill states that the chief executive officer is subject to the control of the foundation. I contend that in the case the member referred to, any inaccurate information provided was not deliberate; nevertheless, it is up to the board to make that determination and take whatever action it sees, or saw, fit.

Mr R.H. COOK: With respect to the process, the minister alluded to the fact that this bill remedies a lot of the problems the board faced before, which I assume was in the period immediately prior to the introduction of this legislation. Can the minister perhaps tell us how things went so badly before and how the insertion of this new clause, which is about the State Emergency Service organisation under the Public Sector Management Act 1994, will make things different or improve the situation?

Dr K.D. HAMES: To answer that, I think the member needs to read the Public Sector Commissioner's findings about the issues at Healthway. Also there are issues to do with his performance and his relationship to the board that, as part of the agreement with the departing chief executive, are confidential. There is no doubt that there were issues between the chair and that particular member. I think the view of the Public Sector Commissioner was that some of those issues in the conflict that existed could have been much better resolved if the chief executive had been employed under the Public Sector Management Act with the normal requirements for a public officer in the performance of their duty.

Mr R.H. COOK: I think that was well answered. Can I ask the minister to provide a lay person's appreciation or description of how the new board will go about appointing a new CEO, and how that will differ from what it was before?

Dr K.D. HAMES: We have an interim chief executive who was appointed by the current board under the existing legislation. Under the new proposals, as for any chief executive, that position will be advertised. There will normally be a selection panel and a person will be recommended to me as the minister but appointed by the Public Sector Commissioner. That is how it will work.

Mr R.H. COOK: To clarify, the board will be making the decision about the employment and who they want to be the CEO.

Dr K.D. Hames: Now?

Mr R.H. COOK: No, under these changes. The board will make a decision about whom it will employ, and the Public Sector Commissioner will essentially process the forms.

Dr K.D. HAMES: No, the board does not make any decision. It is clearly consulted, as boards normally are, and then, as with Tourism WA, the decision is made through the government process. The board is consulted as part of that and it does a report on its existing chief executive and what it thinks of her, in that case, and then that appointment comes before government in the usual manner.

Mr R.H. COOK: How does that differ from what currently happens in terms of the employment?

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Dr K.D. HAMES: Currently the chief executive is appointed by the board, so the appointment is totally at arm's length from government or the Public Sector Commission. The board makes the choice about the chief executive and, as I say, we have an interim chief executive who is appointed by the current acting board.

Mr R.H. COOK: Just to clarify, minister, will the board have no role in the recruitment process? Will it be consulted, but essentially sidelined, by these provisions?

Dr K.D. HAMES: That is right.

Clause put and passed.

Clause 7: Functions —

Mr R.H. COOK: This is obviously an extensive clause and goes to an important part of the current debate. As the minister knows, his friends have made the accusation that Healthway is not —

Dr K.D. Hames: My friends have made no accusations that I know of.

Mr R.H. COOK: Sorry; the minister's friends in big alcohol have made the accusation that Healthway is not engaged in health promotion, but actually engaged in health politics. The example they give in great detail is the issue of Healthway providing funding to the Public Health Association of Western Australia, and the work that it does in training and building up the skills and capacities of its members to advocate for public health. The minister's friends in big alcohol have made this accusation a campaigning call to arms. The Australian Taxpayers' Alliance has also trumpeted this particular aspect of the Public Health Association's work. Can the minister clarify for us whether he believes these activities fall within the functions of the bill that is proposed?

Dr K.D. HAMES: I am not sure I have got the exact message, but I have been advised that it makes a submission, and has made submissions in the past, to the board. The board makes those decisions, as it will in the future, providing it fits within the act. Given that it has fitted within the act in the past, there is no reason why it should not fit within the act in the future, because the legislation in that area is not being changed.

Mr R.H. COOK: I am encouraged by the minister's comments because clearly what these organisations are alleging is that it is not consistent with the current act, so I just wanted to confirm that the minister believes that it is consistent with the current act and that it meets his definition of "health promotion".

Dr K.D. HAMES: My advice is, yes, if they are the same submissions that were made in the past. That depends on what submissions are made. If a submission is made that does not, in the view of the board, fit within the act, the board will make that decision. I will not be directing the board one way or another about those decisions.

Ms L.L. BAKER: I would like to go back to the situation that I started to describe. I am aware that we are entering an age when online gambling and the like is being promoted heavily. My assumption is that there will be an increase in the problems associated with gambling as a result. We need only look at any of the online betting institutions that promote so successfully to people the various sports that they can bet on, whether it is football, horseracing, pacing or greyhound racing and the like. If we accept that there will be an increase in problem gambling that has a direct and well-evidenced link to impacts on the mental health of individuals—and, often by extension, physical health as a result of mental stress—it could be argued by an organisation such as Healthway that problem gambling and the mental and physical issues that might result from it are, in fact, issues that run counter to a healthy lifestyle and do not support the healthy development of individuals. It might therefore choose to target gambling in the future; I do not think it targets gambling now, but it might choose to do so in the future, because it is an increasing problem in our society.

How will this new world of the Western Australian Health Promotion Foundation being brought into the Department of Health fare when the Department of Racing, Gaming and Liquor supports the racing and gaming industry, per se, and the associated gambling that is part of that industry? What if Healthway were to say, "You know what, we're not going to fund anything to do with horseracing or greyhound racing; we're not going to put any money into any of those events"? What if Healthway starts some research into the impact of gambling on horseracing and greyhound racing? I am just asking for an observation. Now that Healthway will be part of government and no longer a standalone organisation independent of government, where does it leave Healthway's capacity to put money into those industries? I do not know whether it has had "2 and 5" at the greyhound racing; it probably has. Healthway has it everywhere else. If Healthway is putting money into those sports, how do we draw the line if the government has an active role in promoting that industry while one of its agencies is simultaneously conducting research into not supporting that industry because of gambling? It was a very long-winded question; I do apologise.

Dr K.D. HAMES: The answer is both. Racing is clearly within the legislation and Healthway sponsors it. I think a decision was made by the board about a year or a year and a half ago to significantly reduce funding for racing and gaming because the view was that it was not getting value for money in terms of health promotion, but it is

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still done, and things such as the Grapes and Gallops Festival are still sponsored. On the other hand, Healthway also sponsors issues to do with problem gambling, and organisations have come forward with proposals to help address problem gambling, and those organisations have been funded as well. At the end of the day, it is up to the board to work out how it gets that mix right.

Ms L.L. BAKER: I thank the minister; that makes it pretty clear. Just to make it absolutely clear, the government is sponsoring an industry that is based on gambling. Now that Healthway will come more under the government, does the government have any problem with it doing things against an industry that is based on gambling?

Dr K.D. HAMES: The advice I am getting is that gambling is legal in this state.

Mr R.H. Cook: So is alcohol.

Dr K.D. HAMES: So it is. However, there are health issues with problem gambling. The organisation and the board can deal with health issues relating to problem gambling, but at the same time it is allowed to sponsor racing events. The purpose of sponsoring a racing event is not to sponsor the racing but to create an opportunity to get its message across. The message can be whatever the message at the time is, whether it is related to diet, activity, alcohol or whatever. The board needs to make the decisions about how it gets best value for money. It did make a decision some time ago that putting the money that it had been putting into the racing industry was not getting it the exposure it wanted and was somewhat in conflict with alcohol and the like and the things that sit around the racing industry. I was made aware of that decision some time ago. That was the change in focus of the board under Dr Capolingua; the board was changing its direction. The fact that I had no difficulty with it is irrelevant because I had no part to play, but that was the decision of the board.

Mr C.J. TALLENTIRE: When we compare the bill before us with the Tobacco Products Control Act it is clear that a provision is being deleted, being section 64(3), which reads —

In providing funds or grants under this Act, the Foundation may impose such conditions as it considers desirable to fulfil the purposes set out in section 3.

Section 3 of the act is the purposes or objects of the act. We have had a discussion about that. Why have we dropped that quite important point about the foundation having the capacity to impose conditions?

Dr K.D. HAMES: I am advised that Treasury advised in its comments on the legislation that subsection (3) was not required as this was just a housekeeping matter in terms of the legislation. As Treasury said, it was not needed because, in its view, the relevant conditions could be included in the grant documentation. Treasury's view was that it was not required in this bill. It was not anything that government had anything to do with; it was a comment by Treasury that was followed.

Mr R.H. COOK: Were the stakeholders consulted on the omission of this provision?

Dr K.D. HAMES: No, they were not; it was just a housekeeping thing in terms of drafting the legislation. The provision was not required because it has no specific purpose that is not already covered in the grant submissions to the board.

Mr C.J. TALLENTIRE: Is the minister saying that Treasury is the fount of all wisdom when it comes to conditions that Healthway or the future foundation might want to impose on a grant or funding arrangement that it will enter into?

Dr K.D. HAMES: The point has been made to me that it is the foundation that will decide the conditions. This is not a direction by Treasury or government on how something should or should not be done. The foundation will have the control of that and will provide the conditions. They can be made clear in the grant, so that provision was not required.

Mr R.H. COOK: In this context, this is taking out an explicit right of the organisation to provide grants under circumstances or conditions that it considers desirable. Will the inferred right that it has be subject to ministerial direction?

Dr K.D. HAMES: If we go to "Minister may give directions", the clause specifically says —

The Minister must not under subsection (1) direct the Foundation with respect to the provision of funds or grants ...

The act states —

In providing funds or grants under this Act, the Foundation may impose such conditions as it considers desirable ...

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Treasury says it is already able to do that because it determines funds and grants independently of me, as is clearly stated under part 5 of the bill.

Mr R.H. COOK: I appreciate that, minister. Obviously the minister retains the right to give direction to the foundation. If there is an explicit right for the foundation to do such things as it considers fit, and now that is just an inferred right, in general terms would it not be competent for a minister to make general directions about the nature of the grants that were given without —

Dr K.D. Hames: No, because I read out to you that it says I am not allowed to.

Mr R.H. COOK: The minister is not allowed to directly provide directions about the grants, but he can obviously provide directions to the foundation about the way it goes about its business and the carrying out of its functions. Under the current section dealing with “Minister may direct Foundation”, it states in part —

The Minister may give written directions to the Foundation with respect to the performance of its functions ...

This is explicitly about the performance of its functions. Under the current act there is an explicit right for the foundation to do as it sees fit. The minister is saying under the new act this is an inferred or an implicit right. However, the minister still maintains the right to direct the organisation in relation to how it carries out its functions. It would seem to me there is a need for the minister to clarify this point. I would have thought that because this is no longer an explicit right for the foundation that this is in danger of actually being captured by ministerial direction.

Dr K.D. HAMES: The advice from the solicitor is that that is not the case because it specifically states that I am not allowed to direct in relation to funds or grants. Although I am able to direct the board in some areas, that is not one of them.

Clause put and passed.

Clause 8: Powers —

Mr R.H. COOK: I am seeking the minister’s assurance and clarifying that this clause remains untouched by the ravages of years since it was first struck. In the context of the new relationship with the Public Sector Commissioner, are there any aspects of the foundation’s powers that need amendment or modification to reflect its new status?

Dr K.D. HAMES: Paragraph (d) under “Powers” is being removed for exactly the same reasons as before. Section 65 has been carried over to clause 8, except section 65(2)(d), as Treasury is of the view that this is better incorporated in a grant agreement instead of being legislated. Again, that is the requirement of the board.

Mr R.H. COOK: Was the board or any health stakeholder consulted about the admission of these particular clauses?

Dr K.D. HAMES: It is the same answer as before: these are just housekeeping issues that do not change the functions or the outcomes of the bill, so there was no need to consult on them.

Mr R.H. COOK: I want to assure the chamber that we believe the minister to be an honest man, but I can assure him equally that there are many people who do not think so.

Dr K.D. Hames: I have not met any of them.

Mr R.H. COOK: In bringing new legislation to this place, particularly in the context that he has run down their reputations in the media and has sought to create a crisis around issues to do with their administration, surely he would take the opportunity to explain all the changes he is making, rather than glibly say that this is what the Department of Treasury and Finance wants.

Dr K.D. HAMES: People may or may not trust me or the things that I say, but with me here is a highly respected person of medical background and a highly respected person of legal background, both of whom have advised me that these are minor issues that do not affect the bill. They made the decision around consultation, on who was consulted and on what specific things, and were of the view that these issues did not require consultation. I accept them and take them at their word.

Mr R.H. COOK: I also know other people who are highly respected medical people, and the minister hounded them while they were holidaying in South America and insisted that they resign from the board of Healthway. We respect people from those backgrounds; it is the minister and his Premier who have sought to sully their reputations, impugn dishonesty and essentially run down their public reputations, not the opposition. The opposition is not seeking to do likewise here. However, the opposition is prepared to accept the minister’s glib explanation that splattered throughout this bill are a bunch of clauses that he saw fit to amend or take out simply because another bureaucrat requested it. I ask: can the minister provide a list of the changes requested by

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Treasury and Finance, with their rationale, and explain to this place why the minister did not see fit to consult over these changes?

Dr K.D. HAMES: I think we will find out whether there are others as we move through, but I am happy to provide the member with the piece of paper that contains Treasury's explanation, that has been supported by the Department of Health officials, to say why those two clauses were taken out, and the explanations for both are the same. I ask the attendant to pass that piece of paper to the member for Kwinana for his perusal.

Mr R.H. COOK: As the minister said, there is a reference on this piece of paper that Treasury is of the view that this is better incorporated in a grant of agreement instead of being legislated. I assume that the minister sought greater explanation than he is providing now to better understand the legislation that he is bringing to this place.

Dr K.D. Hames: It seems an extremely good argument to me and certainly my advisers are in agreement.

Mr R.H. COOK: The minister is easily pleased, particularly about legislation that we now know the minister drafted in secret without consulting the stakeholders, and that he created a crisis around the moment that he brought it to Parliament. We look at each of these changes in that context: first, that he did not consult the stakeholders; second, that he crafted this legislation in secret; and, third, that he concocted a public relations crisis around the whole thing to justify bringing the legislation into this place in the first place.

Dr K.D. Hames: I was bringing in the legislation.

Mr R.H. COOK: Now the minister wants us to accept a two-line explanation about how the organisation goes about carrying out its functions.

Dr K.D. Hames: Just read it; it makes sense.

Mr R.H. COOK: It states that Treasury is of the view that this is better incorporated in a grant agreement instead of being legislated.

Dr K.D. Hames: When the organisation develops a grant agreement with the organisation that has made an application for a grant, those components will be included as part of a requirement for the application—an agreement in the contract that would exist between the organisation and the applicant. It would still give the foundation full control over all those issues because they are the ones that approve the application.

Mr R.H. COOK: Does it not strike the minister odd that around the time of Healthway's very actions in making grants to organisations in such a manner that most infuriates big alcohol and big tobacco companies comes at the same time that the minister is saying that that power is now implied in the powers of the Western Australian Health Promotion Foundation rather than explicitly spelt out in detail in the legislation?

Dr K.D. HAMES: I think the member is grasping at straws and trying to find associations that do not exist. The Health Promotion Foundation reaches deals with the organisations, independently of government, not with the other sponsors, so it has no direct involvement with other sponsors such as the ones that the member is referring to. It deals with the organisation that is making the applications. It remains within the power of the foundation to include these quite simple matters in the requirements for applications. There is no taking away of those things; that now becomes the responsibility of the foundation.

Mr R.H. COOK: I agree with the minister. I know the arrangements are not with the sponsors, but it is the legal and ethical basis for those arrangements that the minister's friends in big alcohol companies are challenging.

Dr K.D. Hames: Not my friends.

Mr R.H. COOK: Why is the minister not buttressing this legislation with explicit powers to enable the foundation to make grants in matters that it sees fit rather than relying upon a now implied power that the organisation has? It might be legally neat, but is it not, politically, sending out some unusual messages in that the minister is now saying this power, which was explicitly in the hands of the foundation before, is now simply an implied power? By virtue of these changes, is the minister not putting the organisation at further risk of attack to make it more vulnerable?

Dr K.D. HAMES: The advice I get is that under clause 8, part 1, the foundation has all the powers it needs to perform its function, so it is implied in the total body of the legislation. This clause refers to acquire or incur any rights or liabilities and suffer all acts and things that body corporates may lawfully do and suffer. I do not see any great Machiavellian plot around that clause.

Mr R.H. COOK: Neither do I, minister. The minister has shown a slavish reliance on the 1989 wording despite the suggestion from anyone on this side that perhaps he wants to modify the act to capture a modern public health advocacy environment—yet he is saying that the government is getting rid of this provision because it has to be updated. It seems that the minister is having it both ways. On the one hand he is saying this is an opportunity to update the act, and on the other hand he is saying we have to stick slavishly to the old wording.

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On the one hand, it seems to me that slavishly sticking to the old wording about what health promotion looks like is like shackling a modern organisation to old ideas that existed when Hon Keith Wilson put this legislation together. On the other hand the minister is quite happy to glibly accept a two-line explanation from the Department of Treasury to update the legislation, which does not seem to be his stated goal for bringing this legislation into this place. I accept that the minister has clever advisers and I respect them greatly, but to the layperson it looks as though, on the one hand, he is shackling the organisation to old values and old ideas about health promotion, while, on the other hand, he is making it more vulnerable by taking away the old explicitly stated powers of the organisation.

Clause put and passed.

Clause 9: Delegation by Foundation —

Mr R.H. COOK: Because I was in full flight on the last clause, I seek the minister's assurance that he has not taken a flight of fancy and decided to update this provision, or is this part of his old-fashioned "it ain't broke so we didn't bother fixing it" approach in clause 9?

Dr K.D. HAMES: I was asked for clarification of some wording by Hansard, so I missed what the member said. Can he say it again?

Mr R.H. COOK: I want to get the minister's assurance or clarification about whether clause 9 is one of the other clauses that he has decided by a flight of fancy to update or whether this is part of his good old-fashioned "it ain't broke so we didn't bother fixing it" approach.

Dr K.D. HAMES: It is largely the same; there is just some updating of words. The reference to CEO and other staff members has been updated from the original section, but otherwise it is the same.

Mr R.H. COOK: Perhaps to expedite the rest of the debate, the minister could explain which clauses of the bill he is taking his schizophrenic approach to. If it is good old folksy minister, he could let us know that that is the case, or if it is modern legislative minister, he could give us the heads-up on that and we could short-circuit a lot of the debate.

Clause put and passed.

Clause 10: Term used: unable to act —

Mr C.J. TALLENTIRE: Clause 10(c) perhaps covers the reasons that someone would be unable to act. Illness and absence are obvious reasons, but I would have hoped to see in this clause a reference to a conflict of interest. I can see that clause 31(1) perhaps covers that, but why would the minister not keep together neatly in the legislation the various reasons that someone might be disqualified or unable to act?

Dr K.D. HAMES: It appears that we did not get the full question that the member asked, so could he repeat it?

Mr C.J. TALLENTIRE: Clause 10 refers to cases in which someone might be unable to act. I assume that this relates to the members of the foundation and possibly its staff. Illness and absence are reasons that someone would be unable to act, but I would think that there would be another reason that someone would be unable to act, and that would relate to them potentially having a conflict of interest. Perhaps they represent an organisation that is about to receive money from the foundation. I imagine that that would disqualify them. I am asking why all the various reasons for disqualification—I assume that disqualification is the same as being unable to act—would not be put together in clause 10.

Dr K.D. HAMES: The member will see that it refers in clause 10(c) to "the operation of section 31(1)". That deals with conflicts of interest and declarations and so on and so forth. Clause 30 deals with disclosure of material personal interest, and clause 31 deals with voting by interested member, and so on. That all relates back to this clause. We have to spread it out in some fashion, and that was the easiest way to do it.

Mr C.J. TALLENTIRE: As I have said, I saw that reference to clause 31(1), but why would we not group together in one discrete area all the reasons a person may be unable to act? Clause 10 states, in part —

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

It would perhaps have been logical to have grouped all those reasons together.

Dr K.D. HAMES: I did not draft it; the drafters drafted this. It was done in the same format as the original legislation. As I have said, there was no compelling need for government to change it. It is all there, and people can find it easily.

Ms L.L. BAKER: It states —

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

Are there any time limits on for how long a person is unable to act for a reason such as a conflict of interest, or because they are in hospital or something? It refers to a member who is unable to act. I know that a member is allowed to miss three meetings if they have stubbed their toe or something. I am wondering whether there are any provisions around that that I am not aware of.

Dr K.D. HAMES: The member needs to refer to clauses 16 and 17, which relate to the length of time for which a member may be absent. The member talked about a member who misses three consecutive meetings—that is, absence without leave. That does not relate to illness. There are other clauses, such as clause 16, that deal with that.

Ms J.M. FREEMAN: I also am wondering about the words “unable to act” and the question that the member for Gosnells raised, but I am happy if the minister wants me to wait until we talk about the operation of clause 31(1).

Under the Associations Incorporation Act, which will now cover not-for-profits in Western Australia as well, a number of responsibilities are placed on directors. Does that mean that the responsibilities under the Associations Incorporation Act will apply to the Western Australian Health Promotion Foundation as a body corporate? Will they have the same sorts of directors’ responsibilities? This relates to the operation of clause 31(1) in terms of the words “unable to act”. Often a person is unable to act under the corporations powers because they have a conflict of interest, or they have various other duties as a director. Because the Western Australian Health Promotion Foundation is a body corporate, will those duties apply to them in this area? Will that have an impact on the definition of “unable to act”?

Dr K.D. HAMES: This is covered under clause 31(1), and they are just required to operate under the requirements of this legislation.

Clause put and passed.

Clause 11: Foundation membership, presiding member —

Mr R.H. COOK: This is obviously a very important clause, because this is one of the major areas in which the government has made changes to the way Healthway is administered. This comes down to the issue of the source and the way that people are appointed to the board of the new organisation. In the past, Healthway was able to rely upon the different sectors within the community that Healthway operated in to put forward the names of people who were leaders in their field and who had the respect of those who were putting their name forward. From that point of view, we were guaranteed a level of quality and a standard of experience and standing in that particular sector. We are now moving to a whole new way of appointing the members of the board, and it will be at the whim of the minister. Clause 11 provides details of where the minister has sourced these members from, and there are three key areas the minister has to source people from. There must be someone who has knowledge of and experience of the arts, someone who has knowledge of and experience in health, and someone who has knowledge of and experience in sport. My question to the minister is: what constitutes knowledge of and experience in each of these areas; and how can the community be guaranteed that we will continue to see a high calibre of members appointed to the board of the new organisation?

Dr K.D. HAMES: This is like any of the boards that are within government that the government has responsibility for appointing. As we do for the Water Corporation or Tourism WA—for all those things—we will be going out for expressions of interest. People will put forward their expressions of interest and a list of members will be chosen and taken by me to cabinet. It is not in my best interests to have people who are not up to the job to do that because, as the member knows, I have no role in directing them, so I need people who have great knowledge in those areas and can act. The member for Kwinana, as a member of Parliament, will have visibility on who those members are and can feel free to criticise the choice of the government if he so wishes. He will be able to make the appointments if he ever becomes health minister. One of the responsibilities of government is to appoint those people in the normal course of events. I can assure the member that I will be appointing members of a high calibre, and we will need to wait to see who puts their name forward.

Mr R.H. COOK: I thank the minister for his answer. I guess part of my problem is that because the minister will not have direction of the board, it would be compelling, would it not, for a minister to appoint people who perhaps had more knowledge and experience in the views of the minister but with just a passing knowledge and experience of perhaps art, sport and health, but were actually experts in understanding what the minister would like to see happen? We used to have safeguards around these issues because we knew the organisations that were putting the names forward and we knew that those organisations would want the best people in that place because they wanted views presented in a robust way. Let us say we have a minister who is anxious that the board would act in a way that the minister would think inappropriate. Is there not a temptation to cut corners on the issue of knowledge of and experience in the arts, for instance, and rely more heavily upon someone that the

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minister might be more comfortable appointing to that board because he does not have the opportunity of directing the roles of the board?

Dr K.D. HAMES: That could apply to any board appointed by government. At the end of the day, the government appoints members. I have no interest in appointing members who do not have significant expertise in those areas. I remember a good example. I had very high qualified people on the board of the Water Corporation and the first thing the Labor government did when it came to government in 2001 was sack the whole lot of them and put in people of its own. Boards are appointed by government. There is public scrutiny around those appointments. I will be making sure I have a high-quality team. At the end of the day, I understand the point the member is making. People can make judgements on whether I have done that when they see the composition of the board.

Mr C.J. TALLENTIRE: Is it not the case that the existing structure provides for something that we could almost describe as being a creative tension in which the minister has no control over who is appointed? The various representative bodies put up people for appointment and the minister has to confirm their appointment. By enabling the group to be hand-picked by the minister and the Premier, who also has a role in this, it just means that there will be an inevitable stiltedness of political persuasions, perhaps. The various views of the groups will be of a particular mindset whereas what we currently have provides diversity. Sometimes that can cause tension. I concede that. Perhaps that is something that the Healthway board faced recently. We all know that there are benefits in having that diversity and we all talk about that. If we have a board with diversity, we know we have strength there because there will be debate and argument. If we have people of a similar mindset, we will have people nodding along with decisions and perhaps not interrogating the value of those decisions. Why does the minister see that this model—perhaps he would describe it as a more cohesive model—is a way of achieving a better outcome than the one in which he is guaranteed some sort of debate around decisions?

Dr K.D. HAMES: We do not necessarily want a different outcome. As I am sure the member will be aware from feedback he has had from others, the board had become severely limited in its capacity to operate by the disputes that were occurring by the various organisations within that board. That had been the case for some time. The shadow minister was having a go at me for not doing something about it sooner. We changed some board members to try to resolve those situations but I was being criticised. The problem was that we basically had two groups that had significantly different points of view. I do not regard that as competitive argument. In fact, some of the feedback we got from some people who were working within the department—I am sure this was not the case all the time—was that the atmosphere was toxic at times. We see this as a better way of operating and a better way of moving forward. A significant number of people on that board were still appointed by government. Some were on the board because of the organisations they represent. Of course there is nothing preventing government from being involved in trying to influence the appointment of those members but generally that is not the case. The chair was appointed by the minister on the recommendation of the Premier, and there were other members, including appointees by chief executives. Remember that we appoint chief executives. The capacity for influence by government on significant numbers of the previous board was there, although we never did any of those things. I am comfortable that this is in line with normal boards. It is in line with the Lotteries Commission Act. It is the standard way of appointing boards in this state, and I am confident that this board will do the job required of it.

Mr C.J. TALLENTIRE: I note that the number of board members is falling from 11 to seven. Will that not limit the scope of expertise and the range of backgrounds that we had on the board previously?

Dr K.D. HAMES: The Lotteries Commission has six members and, although that was based on the Lotteries Commission Act, I felt that seven was a more appropriate number. It gave me that one extra member to choose from, and is an uneven number, which is always good for a committee that may have a vote. I believe that seven is the right number. I have always been of the view that boards should have seven to nine members to be cohesive and well-functioning. More than that tends to result in too many people trying to have too much input, which often ends in conflict.

Mr R.H. COOK: This is a radical departure from the way in which board members were appointed previously, and it is part of the minister's campaign to politicise this organisation. Obviously, the minister could have done this in a range of ways. For instance, under the proposed legislation, clause 11(2)(a) states —

at least one must be a person who, in the opinion of the Minister, has knowledge of and experience in the arts;

The old legislation provided for one member to be appointed by the minister on the nomination of the body known as, for example, the WA Sports Federation, as a person having knowledge of or experience in one or more functions of the foundation. Did the minister consult with stakeholders about this aspect, and did he consider amendments such as providing for a board member to be appointed by the minister in consultation with,

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rather than on the nomination of a particular organisation, if it was an issue of not wanting to be railroaded by these organisations?

Dr K.D. HAMES: I am advised that all the bodies that we spoke of before were advised of the proposed changes to the structure of the board. I point out once again that—this is not necessarily the specific number—I remember talking to Dr Capolingua about having seven or nine members. Certainly this was something that was supported, in fact, even promoted by the chair of the board, because of the difficulty that she had experienced with the structure of the previous board and the problems that that was causing.

Mr R.H. COOK: Can the minister provide us with some feedback about what the other health stakeholders said about this clause?

Dr K.D. HAMES: As I said, letters were sent. I will correct something I said. I do not know whether they were specifically told the number of people who would be on the board or that it was changing from that representative structure to a board that would be appointed. A number of responses came back. The Department of Culture and the Arts expressed support for the proposed amendments, but encouraged the appointment of at least one member of the board who had an understanding of the contribution of the arts. Things such as that were incorporated into legislation and we agreed with most of those things. The Chamber of Arts and Culture talked about a voice with understanding in the arts sector. The WA Sports Federation talked about the dysfunctionality of the agency and about making sure that there were people on the board who had contemporary understanding of the importance of sports, arts and government sectors; it referred to an understanding of the structure of sport, and the management and delivery of all levels of sports. The Department of Sport and Recreation emphasised the importance of the independence of the foundation, contrasting the models with other boards such as Vicwest and Lotterywest. It stressed the importance of employing plenty of people with a thorough understanding of sport and recreation. The Public Sector Commissioner supported the proposal on changing where the members sat. The Western Australian branch of the Australian Council for Health, Physical Education and Recreation did not oppose the proposed changes to the board appointment and made several comments regarding the importance of the foundation's work and the expertise it considered appropriate to have represented on the board. That is a summary of the findings.

Mr R.H. COOK: In subclause (2)(d) did the minister or the drafters consider other areas of interest or expertise for inclusion, such as youth affairs?

Dr K.D. HAMES: The foundation will comprise seven members, so there are some limits. The chair will have a field of expertise; we want two with an arts background and two with a sports background, so that is five. With seven members, we want to make sure that people have got some expertise in other areas.

I am sure that if someone has expertise in youth and is a lawyer and a lover of the arts, we would have three things in one. We will be looking for people who have multiple areas of expertise to make sure we get a good mix of backgrounds on the board. As the member knows, lots of funding is provided to youth organisations, youth sport, youth art and youth culture, so we will be looking for people who have expertise in those areas, even if they are not listed. This clause does not stop me from appointing people who have expertise in other areas; it requires me, largely based on submissions that were put forward, to have at least one person in each of those areas. I will probably have more than one expert in some of those areas, particularly in health, because the foundation is about health promotion, research and a whole range of areas related to health, but I will make sure that those other organisations are well represented as well.

Mr R.H. COOK: Could the minister let us know how he drew up this list of areas of discipline he is relying on and were any others considered?

Dr K.D. HAMES: The first three were put forward because of the requirement to provide funding to those organisations. It was based partially on the Lotteries Commission Act and the Public Sector Commission, and the requirement for someone with a legal background was put in because it seemed like a good idea, and I think it is a good idea. I have always found extreme value in having someone with a legal background on a committee.

Ms J.M. FREEMAN: Mr Speaker —

Dr K.D. Hames: By the way, members, this is the last clause we will be doing, so once this is finished we will knock off.

Ms J.M. FREEMAN: That is a hint for me to sit down very quickly! Given that there will be seven members of the board who will have experience in various areas, given that the minister is trying to get that diversity of experience, knowledge and capacity and all those sorts of things, and given that the ASX has introduced targets for women on boards to ensure there is diversity, was any consideration given to the board members having, and does the minister want them to have, a contemporary understanding of the areas they will be dealing with? Was any consideration given to putting some targets—not quotas—into the legislation so that it would meet the

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contemporary expectation that boards would have a good and proper representation of both men and women? If no consideration was given to that, how will the minister ensure that in this contemporary board he is establishing there will be a good mix of men and women in this seven-member foundation board?

Dr K.D. HAMES: I would like to point out that the last two chairs of the board were female. Although we do not divulge what goes on in cabinet, I can tell the member that the form we put forward to cabinet about members of the board contains a section in which the number of men and women is clearly delineated. It is almost a constant issue to make sure that women are given an opportunity to serve on our board and the numbers are well represented, but we do not have targets and we choose on merit.

Mr R.H. COOK: I do not have a great deal of experience with subclause (4) about consultation by the Premier with the leader of each party in the Parliament. Can I clarify with the minister: is it a political party for the purposes of the meaning of the word, or is it in the meaning of the word for the purposes of Parliament? For instance, if there is a single member of a political party or an Independent, does that person need consultation, or is it only parties that are recognised under the standing orders of Parliament that will receive consultation?

Dr K.D. HAMES: I think it is the latter. Remember, the previous legislation stated that the Premier had to recommend a person, and had to consult with other parties—I am pretty sure it is “parties” under the definition of “parliamentary parties”, so that would involve the Liberal Party, the Labor Party, the Greens and the National Party. Then it would come to me as the minister and I would have to consult with them all over again. That seemed a pretty silly idea to me, so we have removed that, by the way, in case the member has not noticed.

Mr R.H. Cook: Yes.

Dr K.D. HAMES: Only the Premier has to consult the parties, but that is as per the previous requirement under the act with the same definitions.

Mr R.H. COOK: Does that mean that the minister at this particular time would consult with Hon Rick Mazza, who is the representative and therefore leader of a political party?

Dr K.D. Hames: I don’t know the answer to that. I didn’t stand up and I don’t know the answer.

Mr R.H. COOK: Should I just stay standing while the minister consults?

Dr K.D. Hames: You’re not allowed to stand up again.

Ms J.M. FREEMAN: I am very interested in the line of questioning that the member for Kwinana is prosecuting. I am particularly interested because what he is saying is obviously quite important to this debate and would also take into account whether the consultation is true consultation, whether just a letter is written or whether there is any capacity to disagree with the Premier over the choice. I would therefore enjoy the further contribution that the member for Kwinana has to make on this question.

Mr R.H. COOK: Mr Speaker —

Mr J.H.D. Day: You know how Brian Burke did it once in consultation with the opposition?

Mr R.H. COOK: No, what was that?

Mr J.H.D. Day: He discussed it on that side of the chamber and said, “This is what we are planning to do”, and then that was it.

Mr R.H. COOK: Indeed, that is why I am genuinely curious. I was also going to say—I do not want to detain the Parliament tonight any longer than is necessary, but I am quite interested to understand —

Dr K.D. Hames: I can say that what you need to do is pass this clause and we will let you know tomorrow if Hon Rick Mazza is listed as one to be consulted.

Mr R.H. COOK: You’re on.

Clause put and passed.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House).**