WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION BILL 2015

Consideration in Detail

Resumed from 20 August.

Clause 31: Voting by interested member —

Debate was adjourned after the clause had been partly considered.

Mr R.H. COOK: Clause 31 involves conflict-of-interest issues. That obviously has been the subject of great debate. The Australian Taxpayers' Alliance—that funny group—was making all kinds of accusations about the alleged conflict-of-interest issues on the Healthway board. Those accusations were obviously dealt with summarily and found to be quite untrue and unfounded. Obviously, it is important that conflict-of-interest issues, particularly for grant-making bodies and bodies entering into important contracts, are resolved effectively. I would like to seek from the minister some clarification on whether these conflicts-of-interest provisions are typical of a board or agency of this type, whether they reflect the operations of the current Healthway board; and, if not, what changes does the minister envisage?

Dr K.D. HAMES: These provisions are no different. As the member asked me to say, and as I said during our last debate, I concur that there were no issues of conflict that were not declared by the previous members. This provision reflects the standard conflict-of-interest clauses that we would expect to find for any committee.

Mr C.J. TALLENTIRE: My question on voting rights for interested members relates to members who are perhaps on the new foundation by dint of their connection with an organisation. How would they justify their ability to vote when there is perhaps not a direct conflict of interest but there is some relationship between what they might be voting on and what the organisation that they normally work for is endeavouring to do?

Dr K.D. HAMES: I do not know whether the member has ever been on a committee of that sort for which a person has to declare an interest but it is a pretty standard procedure. Having been on a council for eight years, I think that is what happens in councils. For example, someone with a clear and obvious interest will declare that interest and leave the chamber. Others may have an interest that is not so certain and they say to other board members that they have an interest and ask them for their views. The board as a whole can decide whether that is an interest in common. For example, a member of Bayswater council who owns a house in Bedford might decide to do something that upgrades Bedford but the house will not be affected by the changes. That might be an interest in common for all the people of Bedford and so the member would still be allowed to participate. If there could be a clear financial gain to the property in Bedford, as there probably would be in that case, the member would declare an interest and go. Those things are decided by the board and it is standard for local government, for state government and for boards—all of those things.

Clause put and passed.

Clause 32: Section 31 may be declared inapplicable —

Mr R.H. COOK: This clause further clarifies the way that conflict-of-interest issues will be managed by the board. It states that section 31 does not apply if the board has at any time passed a resolution that —

(i) specifies the member, the interest and the matter; and

(ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

I assume, therefore, that this clause gives birth to a register of conflicts of interest that have been declared by the board, and the register would stand as an ongoing reference. I am wondering whether it is the intention of the minister to create such a register; and if so, whether the minister would want that register to be made public.

Dr K.D. HAMES: There is no register. I thank the member for pointing this out. This clause in fact answers the question the member for Gosnells just asked. It will be recorded in the minutes and those minutes will remain the record. That is what happens, again, with all the boards; they do not have a register of interest. People are asked whether they have an interest in any item on the agenda and they declare it at that time, and that is written into the minutes and remains on the record.

Mr R.H. COOK: Are the minutes of the board public documents?

Dr K.D. HAMES: Yes.

Mr R.H. COOK: And they are available online; is that correct?

Dr K.D. HAMES: No. The advisers here do not know, not having been on the board. However, I am fairly sure that is the usual process. I would need to check that for the member as I do not have the answer.

Mr C.J. TALLENTIRE: If somebody's conflict of interest has been deemed to be of a trivial or insignificant nature but they have seen fit to make that declaration anyway, will it be recorded that the person did present some form of conflict and it was then decided collectively or by the chair that it was an insignificant or trivial matter? Is that actually noted in the minutes?

Dr K.D. HAMES: In my experience and what normally happens if I am in a situation like that is that it can be declared trivial, and then I might say, "I would like it recorded that I put it up and that was the decision of the committee." So, it is normally up to the member and the committee to do that.

Mr R.H. COOK: I seek clarification from the minister. I think he said that clause 31 currently stands in the Tobacco Products Control Act. Is the information in clause 32 also in the Tobacco Products Control Act?

Dr K.D. HAMES: Yes. It is in schedule 1. A subclause has been added and the words "insignificant" and "trivial" to qualify it. Really, it is just a matter of format to take it out of the schedule and put it into this clause of the bill.

Mr R.H. COOK: Does that mean the minister is elevating the issues of conflict of interest into the body of the bill; and, if so, is that as a result of concerns about the management of conflict-of-interest issues?

Dr K.D. HAMES: No, this has nothing to do with the government; this is all to do with the draftspeople deciding that it is a better spot to put it. Is there concern? No.

Mr R.H. COOK: It has everything to do with the government, because this is the minister's legislation, not the draftsperson's legislation.

Dr K.D. HAMES: I am just talking about the format of the layout.

Mr R.H. COOK: It does not matter whether it is the positioning of the semicolon; this is the minister's legislation.

Dr K.D. HAMES: Nevertheless, that is the reason.

Mr R.H. COOK: I understand the temptation to blame technicians in relation to this.

Dr K.D. HAMES: There is nothing wrong with it being there. I am just saying there is no reason for it.

Mr R.H. COOK: No; "blame" is not the word; perhaps "deflect questions" in relation to that.

Dr K.D. HAMES: There has been no government direction—that is the point I am making.

Mr R.H. COOK: Please understand that this is the minister's legislation and not the draftsperson's.

Clause put and passed.

Clause 33: Quorum where section 31 applies —

Mr R.H. COOK: This clause deals with, essentially, the quorum provisions for the board in the event of what might otherwise be described as rampant issues of conflict of interest. I am intrigued by the second subclause, which states —

> (2) The Minister may deal with a matter to the extent that the Foundation cannot deal with it because of subsection (1).

Can the minister provide us with a description of how this would work?

Dr K.D. HAMES: I asked questions about this subclause, because I am not allowed to make any determination on the distribution of funds. I am advised by the senior solicitor that this will apply only to areas outside that, so it would be very rare and very unusual. It may be to do with decisions around the administration of the body, I imagine, of Healthway itself if many people had a conflict of interest.

Mr R.H. Cook: And only one person was left on the board!

Dr K.D. HAMES: It has to be fewer than three; there must be at least three. A normal board would be four, so if it got down to three people on something, the other four would have declared an interest. I fail to see what on earth it may be that people would have an interest in if it was not to do with the distribution of funds. I see the member's point that this may relate to the distribution of funding, but I am not allowed to be involved in making decisions. If funds were going to a particular body of which, by coincidence, all four were members—let us say the Rottnest debating club—I could not make a decision on that because that would be a decision on the distribution of funding. I do not know which decisions they may be. I think this is just a backup clause that allows me to make decisions in areas where I am allowed to make decisions, and not those where I am clearly not allowed to make decisions. I say that specifically here to get it on *Hansard* so that anyone in doubt in the future can look back and say, "This is not related to ministers making decisions on the distribution of funds."

Mr R.H. COOK: I agree with the minister that it is not easy to understand. I assume it relates solely to the issue of providing the board with the ability to make a decision in the event that it would otherwise not be able to make a decision because of the quorum provisions.

Dr K.D. Hames: But not on distribution of funds. It is hard to imagine an example.

Mr R.H. COOK: It is interesting. A good example of this is the issue with the Environmental Protection Authority when it had to make a decision on issues about Barrow Island. Only one member was left to actually make the decision after the other members had dealt with their conflict-of-interest issues. In that sense it will lead to the very understandable apprehension that some unsafe decisions might be made.

Dr K.D. Hames: I have been given an example. It is sponsorship. They might make the decision that they want to enter into a sponsorship deal. That is not distribution of funds. In that case, I might be called upon to do the decision—the chair would formally write to me about that.

Mr R.H. COOK: That is right. I observe that the wording in the current bill is very different from the wording in schedule 1 of the Tobacco Products Control Act. Therefore, from that point of view, I am very interested to hear from the minister why these changes have been made for the exercise of those powers.

Dr K.D. HAMES: Clause 20(2) in schedule 1, division 2 of the Tobacco Products Control Act 2006 states —

> The Minister may deal with a matter in so far as the Foundation cannot deal with it because of subclause (1).

That is also how it reads in proposed section 33(2) of the bill.

Mr R.H. Cook: No; that is not correct.

Dr K.D. HAMES: Okay. I will read out the old one and the current one. Clause 20(2) states —

> The Minister may deal with a matter in so far as the Foundation cannot deal with it because of subclause (1).

Proposed section 33(2) states —

> The Minister may deal with a matter to the extent that the Foundation cannot deal with it because of subsection (1).

They seem pretty similar to me.

Mr R.H. COOK: Okay. I thank the minister for that clarification. I now draw the minister's attention to clause 21 in schedule 1, division 2 of the Tobacco Products Control Act, which provides that the minister may declare two clauses—that is, clauses 18 and 20—inapplicable in relation to a quorum. Can the minister clarify what has happened to that particular aspect of the ministerial powers and how that relates back to this proposed section, which the minister has just observed is also in the Tobacco Products Control Act?

Dr K.D. HAMES: The view in drafting was that those old clauses that are in the act were already fully covered, so in effect the original draft covered these things twice. All the requirements to deal with conflict of interest are adequately stated in those old clauses. Therefore, to do a comparison, clause 20(1) of schedule 1 of the act states —

> Despite clause 10, if a member is disqualified under clause 18 …

The proposed section states —

> Despite section 20, —

As opposed to clause 10 —

> if a member is disqualified under section 31 …

As opposed to clause 18. As the member pointed out, there is a mild difference between the old clause and the proposed section, but my advice is that they achieve exactly the same end result and so it was thought that those words were superfluous.

Mr R.H. COOK: I should say that we are not trying to create some elaborate political trap here. This is a genuine effort to understand. Clause 21(2) of schedule 1 of the act states —

> The Minister must cause a copy of a declaration made under subclause (1) —

That deals with declarations about quorum —

> to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

It seems to me that in that clause, there is greater transparency around the minister executing these particular provisions of the act. I am looking, I guess, for the same level of transparency in this bill.

Dr K.D. HAMES: The advice I am given is that under the old clause, the minister could be involved, and, having been involved, had to cause a copy of the declaration to be laid on the table of the house. The minister will now have no involvement. Issues relating to quorums will now be completely up to the board. I have no involvement in that. I will just seek some clarification on this. That is right. Clause 21(1) of schedule 1 of the act states —

> The Minister may by writing declare that clause 18 or 20 … do not apply …

That meant that the minister could interfere in those declarations of interest and declare that those other clauses relating to declarations of interest do not apply. I wonder whether that was because we had representatives on the board who may have had some conflict of interest because they were on organisations that were receiving money from Healthway. That provision gave the minister a power that I have now taken away. I no longer have the power to declare those declarations invalid. Therefore, because I no longer have that power, I do not have to lay it on the table. I am not telling them what to do anymore, so I do not have to lay it on the table.

Mr R.H. COOK: In the interests of the independence of the board, I think that is a pretty good explanation. Thank you very much.

Mr C.J. TALLENTIRE: It will now be the case that the minister will not be making any decisions on funding, and I understand why that would be the case, and, indeed, I support that structuring of the bill. However, the minister will still be dealing with some level of decision-making, because there is capacity for the minister to have some things referred to him when there is not a quorum. What are the sorts of things that the minister expects to be deciding upon? Does it open up the possibility that the minister will be able to decide on matters such as lobbying for policy change?

Dr K.D. HAMES: I reiterate that these proposed sections are exactly the same as the clauses in the schedule to the Tobacco Products Control Act. In seven years I have not had any opportunity whatsoever to do what is listed there. As the member heard us discuss before, it would be very difficult to think of a circumstance in which I would do that. Other parts of the bill make it very clear that I am not allowed to interfere, or even be involved, with any decision-making processes around funding. I think that explanation is clear.

Mr C.J. TALLENTIRE: The minister is right in saying that he has not had to consider this aspect over the last seven years, because Healthway was set up to be an organisation that could engage in lobbying for policy change. However, the minister now wants to change the whole structure of Healthway so that it is an organisation that hands out grants. That is why I am asking why the minister has the capacity to consider other things. Maybe my concerns will be unfounded and the minister will say that the new Western Australian Health Promotion Foundation—the Healthway organisation—can engage in lobbying for policy change.

Dr K.D. HAMES: I totally disagree with the member's assertion that we have changed Healthway in some way from an organisation that was involved in lobbying for policy change to one that is just a grants distributor. Show me where it does that in the bill. We have taken from the original Tobacco Products Control Act all the stuff that Healthway was able to do before and have put that in this bill. The only thing we have changed is the number of members on the board, the people who are on the board, and the tick-off by the minister on decisions that are made about the distribution of funds. That does not prevent them from doing anything that they were doing before in the lobbying space.

Mr C.J. TALLENTIRE: Minister, I think we canvassed this at length during the second reading debate and when we looked at clause 7 of the bill, and it was pretty clear from that discussion that that policy development and advocacy role was being reined in and that in the future Healthway would not be able to fund a campaign such as the one called "Alcohol and Sport Don't Mix". That sort of campaign will not occur again. That was a brilliant initiative by Healthway. We had the signs at the WACA saying "Alcohol and Sport Don't Mix", but that offended some of the people who also wanted to advertise at the WACA, and as a result we now have this legislation before us.

That is why I keep coming back to the point I have made consistently while we have been debating this bill. This has nothing to do with the poor management of tickets and corporate box allocations; it is all about reining in the powers of Healthway. If the minister does not agree with me on that point, he must indicate what other matters he may deal with when there is not a quorum present. The minister has said that he will not get involved in funding arrangements—that is good; I understand that—but he will get involved in something else. The bill gives him the power to be involved in something else. What is that something else? Is it lobbying for policy change? Is it advocacy work?

Dr K.D. HAMES: The clause gives me the power only to do what is under subclause (2) if there is not a quorum present. Out of seven members, it means there are only three left who are either absent or have not declared an interest. That is likely to be extremely rare. I am not going to be able to do these things that the member for Gosnells suggests I will do. The member saying things over and over again does not make them true, and I will

deny them over and over again. I think the "Alcohol and Sport Don't Mix" campaign was a good one. There is absolutely nothing in the legislation that stops that board from still being able to undertake that sort of campaign if that was the decision of the board.

Clause put and passed.

Clause 34 put and passed.

Clause 35: Chief executive officer —

Mr R.H. COOK: Clauses 35 and 36 deal with some changes that the minister will bring in under this bill. The opposition has never fully understood the minister's motivation for bringing this bill to this place. Sometimes it appears it is because he wants to update the bill; at other times it is because he wants to follow the orders from the Premier's media office about the government getting its mitts on cash. Sometimes it is about the alleged rorts involving hospitality tickets. It is a bit of a confused and garbled message. Amidst that somewhat confused narrative has always been the issue that something was going wrong in Healthway. My understanding is that the provisions around placing the chief executive officer and staff under the Public Sector Management Act was an exercise in somehow carrying what we now know as the flawed report from the Public Sector Commissioner, yet the minister, I guess by implication, is relying on the flawed report to bring in these two clauses. Those comments are by way of introduction. Could the minister provide us with an explanation of the changes in the arrangement for the employment of the chief executive officer?

Dr K.D. HAMES: These changes were made on the recommendation of the Public Sector Commissioner. Once again, I deny the assertion made by the member for Kwinana that the report is flawed. A single person has done a critique of that report. The Public Sector Commissioner, after having a review of the report undertaken by one of his staff, was confident in the report and its outcomes and he disagrees with those comments that have been made.

Mr R.H. Cook: He has to, I suppose—his credibility is on the line.

Dr K.D. HAMES: The member for Kwinana can go out and publicly challenge the credibility of the Public Sector Commissioner if he wants to; I just do not agree with him. Others have done it, and I do not agree with them. The recommendation was that it come under the Public Sector Management Act, which means that the staff would become public servants, and the chief executive, who in the past has been appointed by the board, under this legislation will be appointed under the normal process that applies to the majority of organisations with government, including the Lotteries Commission. Those staff will be appointed through the normal process by the Public Sector Commissioner.

Mr C.J. TALLENTIRE: On this issue of the CEO being appointed under the Public Sector Management Act and the comment by the Minister for Health that this is a standard practice when it comes to appointments of CEOs to various boards, I think I understood him to say, by implication, that the CEO of, say, Lotterywest, is appointed under the Public Sector Management Act. The minister has also said throughout our discussion that there is a need for the Healthway board to have a degree of independence. In fact, in discussion on a previous clause we talked about parallels where there are similar quorum arrangements to those that would be found with the Environmental Protection Authority. To my knowledge, the chair of the Environmental Protection Authority is not appointed under the Public Sector Management Act. That is for the very good reason of having that independence from the public service. I question why we have to change things so dramatically and, effectively, make this an agency that is akin to another government department. Surely one of the virtues of Healthway was its independence and its capacity to engage in campaigns, lobbying and health promotion works that a government agency would not be safe or comfortable doing because they might be too progressive, too adventurous, for where the agency might want to head.

However, when there is that genuine degree of independence that would come only by having a CEO who is not appointed under the Public Sector Management Act, then there is something worthwhile. I question the minister's claim that this is standard practice. I think it depends on the nature of the body the minister wants to create. If he wants to create a body that is just another government agency, sure, then it would be put under the Public Sector Management Act. But if he wants to create a body that has true independence, a capacity to think and scan the horizon for the latest in health promotion initiatives, then he wants somebody who is not going to be shackled in this way. I ask the minister to check the worthiness of this approach.

Dr K.D. HAMES: I am no expert on how the EPA operates, but I thought the person who had that independent authority at the EPA was the chair, not the CEO. I do not know whether there is even a CEO in that department, and if there is, whether they are appointed independently. There is a huge difference between the two. Under this legislation, the CEO will not have any statutory authority or responsibility in his or her own right. The CEO reports to the board and undertakes work on behalf of the board. They have no decision-making power in their own right whatsoever, and that is appropriate. It means that the Public Sector Commissioner is responsible for the employment of the CEO and their staff. They deal with any staff matters, whereas previously the board had to do those things. Now the board can get on with doing what it is supposed to do, which is dealing with

decision-making issues about distribution of funding and other things it wants to do, and not be tied up dealing with the day-to-day employment of staff within that organisation. I have to say that the previous chair was having difficulties in that space and, as the member knows, had already been to the Public Sector Commissioner about issues involving her chief executive—a person appointed by the board. This was seen to be a much better model. It is totally wrong to try to compare this with the chair of the EPA who has enormous statutory responsibility as an independent person.

Mr R.H. COOK: I wonder whether the minister could acquaint us with the recommendation from the Public Sector Commissioner that makes this suggestion.

Dr K.D. HAMES: There is a letter on the public record about proposed amendments to the procedure for the appointment of members. I cannot find what it says about the staff coming under the Public Sector Management Act. I will sit down and discuss this further with my advisers.

Mr R.H. COOK: I will entertain the minister some more. I have read this report a few times, and I am happy to be corrected if I am wrong, but the Public Sector Commissioner makes four main recommendations, with a range of sub-recommendations. In fairness to the minister, the report discusses the implementation of State Supply Commission guidelines, but there is absolutely no reference to any findings on the issue of changing the nature of the employment of staff and the chief executive officer. I am not for a moment suggesting that what the minister is proposing is not a good idea; I am waiting for the minister to justify it. Certainly, the justification that the minister is grappling for at the moment—that it is a recommendation from the Public Sector Commissioner's report—is just not supported by the text of the report itself.

Dr K.D. HAMES: The member is right; it is not in the report, and the letter is about how this change was to be carried out. I do not have anything that specifically states that it was recommended by the Public Sector Commissioner, other than that I recall my conversations with the Public Sector Commissioner who suggested that as the best model. At the end of the day, I do not know whether that matters. It is the view of the government that we wanted to have a model that reflected what occurs at the Lotteries Commission, and this clause applies the processes of the Lotteries Commission. There has been a suggestion that the chief executive officer of the Lotteries Commission has shown political bias, but aside from that I do not believe that there has been any political bias at the Lotteries Commission.

Mr R.H. Cook interjected.

Dr K.D. HAMES: That is apart from the member's accusations, and I do not accept those either. At the end of the day, I do not have evidence before me that the Public Sector Commissioner recommended that, but nevertheless it is the wish of the government to go down that line.

Mr R.H. COOK: I thank the minister for the explanation. Obviously, this bill was brought about amidst an extraordinary hysterical euphoria in the media about these issues. The Premier dined out on this issue for a good couple of weeks, as he assassinated the characters of a range of staff and board members uphill and down dale. We saw the Public Sector Commissioner and his report being used in a similar manner. The Public Sector Commissioner's report is the key motivation for bringing this legislation forward. The minister could have used the 2011 review of the Tobacco Products Control Act, but he has allowed that to sit on his desk for a good four years without addressing its recommendations. It is clear, and the minister has once again confirmed this today, that the government is using the Public Sector Commissioner's report as the justification for this raft of changes. As the minister has just confirmed, there is nothing at all in the Public Sector Commissioner's report that suggests that this new bill will remedy the situation with which the Premier so elegantly manipulated the media before this bill was introduced, to create the justification for essentially destroying a government agency that has served the public very well for many years. Utilising the hysteria around at the time, the Premier and the minister said they were going to make changes, and the minister has referred on several occasions to changes being made because the Public Sector Commissioner said they were a good idea. This is the classic clause that the minister is pointing to as fixing things up. However, this is not what the Public Sector Commissioner's report said at all. I am just wondering whether the minister could confirm for us that there has been no such recommendation from the Public Sector Commissioner, and that this is simply another red herring thrown out to destroy the independence of the Healthway board.

Dr K.D. HAMES: Once again, the member is going over old ground that has been repeated over and over again, but I am not just going to sit here and let him say it without denying it.

Mr R.H. Cook: You've been doing an awful lot of denying.

Dr K.D. HAMES: The member is making wild accusations, and of course I am going to deny them.

As I have said before, I had already been having conversations with the chair for a time about restructuring the board. It was not about this clause; it was about the structure of the board and changing the representation on the board to achieve a structure similar to that of the Lotteries Commission. I had asked the Department of Health to

start working on that. This was not a component of it. The member is right: I do not have proof that this measure was included. From memory, I think it came up in conversations between me and the Public Sector Commissioner, but I have no proof of that. At the end of the day, this is the structure of the Lotteries Commission. This area of change will not miraculously fix things, because it is not necessarily related to the problems that Healthway was having. This was seen as a better structure. I do not know what problems the member is thinking of that the board was having that he thinks I am addressing by this clause. Perhaps he can make that more clear. This is the structure that the government wants—that is, the same as the Lotteries Commission. There is no downside that I can see to having this sort of structure. The chair was having issues relating to the chief executive. My view was that that was partially related to the structure under which that CEO was employed by the board, and how that could be managed under the Public Sector Management Act—which could not happen, because they were not public sector employees. As the member would know if he had talked to the staff who were working there, there were deep divisions within the organisational structure of the board. In effect, there were two wings of people who were not always working together as a united team. The opposition is always complaining when things like hospital services are privatised, as the member puts it, and wants us to bring them back under the Public Sector Management Act. Here we are bringing something under that act, and the member is criticising it. He cannot have it both ways.

Mr R.H. COOK: I can assure the minister that it is not necessarily our intention to oppose the clause; we simply want to understand why it is in the bill because this is a significant change from what occurred previously. The minister has said in the past, as he did just now—I am sorry but I do not have the magical capacity to conjure up that part of the *Hansard*—that there were problems between the chair of the board and the CEO. He has just alluded to what he described as conflicts amongst the staff, although previously he said this was a recommendation from the Public Sector Commissioner. We now know that that is not the case.

Dr K.D. Hames: We know that. I don't have proof that that's the case and I don't think I can produce the proof because I'm fairly certain it was verbal.

Mr R.H. COOK: The minister has also confirmed that it is in no way a recommendation from the commissioner's report. Clearly, we need to remedy something here. Is this what the minister envisaged in these changes? Will these changes remedy these so-called conflicts?

Dr K.D. HAMES: As I have said, this was not part of our discussion with the chair; this was separate. The discussion with the chair was about membership of the board. Sure, we had discussions about staff issues but it was not her recommendation that this provision should be changed; this is a government decision to make that change.

Mr R.H. COOK: I will also ask this question when we consider clause 36. How will the world change for the chief executive officer and the organisation if these changes are implemented as opposed to the arrangements that were in place before?

Dr K.D. HAMES: Under the previous arrangements, the chief executive officer was appointed by the board, who managed employment issues and issues to do with the operation of the staff—the whole structure of employment, including hiring and firing of staff within that system. Under these arrangements, as with Lotterywest, all my health department staff and all the Deputy Leader of the Opposition's staff, the final responsibility of management is prescribed by the Public Sector Management Act, with the Public Sector Commissioner having oversight of that to deal with disciplinary issues, issues of pay, employment conditions, leave entitlements and all those standard things that are managed under the Public Sector Management Act. That will now be a standard department of government, if you like.

Mr C.J. TALLENTIRE: This issue of people being employed under the Public Sector Management Act is very important because it impacts on something that I think all members are occasionally asked to do; that is, when people are going for a job in the public sector, it is not unusual for us to be asked to provide a reference. Perhaps the minister's advisers can assist the minister. There is a provision in the Public Sector Management Act that prohibits us from being involved in the appointment of someone to a public service position. It might be section 104 or section 114; I cannot quite recall. That provision means that we cannot be involved in their appointment at all. To what extent are we then precluded from being involved in the continuation of that appointment? If a minister is seen to be critical of a CEO—perhaps there was reason to be critical of the previous CEO of Healthway; I think the minister engaged the public in some criticism of his activities—would he not be impacting on the ongoing nature of that person's appointment? Therefore, would the minister not be in breach of or at odds with that part of the Public Sector Management Act?

Dr K.D. HAMES: As the member will know and as all my 40 000-odd staff in the Department of Health and all the staff in Tourism—I do not know how many there are but there are quite a few —

Mr P. Papalia: Nowhere near that many.

Dr K.D. HAMES: There are nowhere near that many. I have absolutely no powers when it comes to the employment of staff. I am consulted when my two chief executives are appointed, generally after a committee has made recommendations on their appointment. Normally that is a board decision. I do not make a decision at that level but I clearly am involved at higher levels, which is standard under the Public Sector Management Act. Nothing changes. I am no expert in it.

Mr C.J. TALLENTIRE: I realise that it may appear to the minister as being standard across the public service. Given that we have had a case in which there perhaps was cause for criticism to be made of a person in a CEO position, my question remains: in the future, will the minister be restricted from criticising someone who is a CEO because of those provisions in the Public Sector Management Act that relate to our capacity as parliamentarians to be involved in the ongoing appointment of someone? I am referring to the specific provision that prevents us from participating in the appointment of someone to the public service.

Dr K.D. HAMES: I do not think anything stops me as a minister from criticising people within my employment but that does not give me the power to —

Ms J.M. Freeman: They're not in your employment; they're in the employment of the Public Sector Management Act.

Dr K.D. HAMES: That is right. I think I should get the member for Mirrabooka to answer the member's questions. I seriously know that she knows more about this than I do. I do not have those powers to interfere. I can still criticise someone. I am somewhat critical of the performance of one or two people working within the health department but I have no power to influence the employment of those people, as I understand it.

Mr C.J. TALLENTIRE: I suppose there is a subtle difference between the minister making some sort of criticism when something has gone wrong in his agency and expressing some dissatisfaction with how things have occurred and unfolded but that is quite different from him making comments that would lead to the termination of a person's employment. That is what we saw here, if I understand correctly. It was negotiated that the former CEO's contract would conclude or that he be moved on in some way. I am trying to find out whether the minister would be in breach of the Public Sector Management Act if he was to engage in that sort of thing in the future because in the future the CEO will be appointed under the PSM act.

Dr K.D. HAMES: I would not be in breach of the Public Sector Management Act if I criticised the performance of someone within my employment. I am allowed to do that. I am not allowed to interfere in any way with their employment. If they have a contract, my comments cannot lead to that person ceasing to be employed unless it is the view of the board, in consultation with the Public Sector Commission, that, for whatever reason, their contract should be terminated. That occurs between the board and the Public Sector Commissioner, with no involvement whatsoever on my part. It does not stop me saying, and it never has in any of my areas, that I think one of my staff is not necessarily doing a good job.

Ms J.M. FREEMAN: The report of the Education and Health Standing Committee 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" questioned whether the chief executive officer had kept the minister in the dark about a major issue before him, which became a major public issue as it caused delays in building Fiona Stanley Hospital. It seemed very much the case that the minister's argument was that he did not know about the issue because the director general did not give him the information. When we asked the Public Sector Commissioner if that was the case and what could be done, he said it is up to the director general or the chief executive officer to decide what information is given, and there are protocols around that, but it is just thought necessary to inform the minister about issues in the agencies.

Given the issues that have occurred in the health promotions area and with the foundation previously, and given the concerns that were expressed by government, how will the minister ensure, now that this person will be employed as the chief executive officer under the Public Sector Management Act, that he will be fully informed of any contentious issues? The "More than Bricks and Mortar" report states that there is no responsibility necessarily to inform the minister of contentious issues, unless the chief executive officer thinks it is necessary. How will the minister ensure that he will be informed?

Dr K.D. HAMES: I am advised that the huge difference here is that the CEO is there for only administrative purposes; therefore, it is the chair who bears direct responsibility to me. I will have more involvement than before; I will have regular meetings with the chair and presumably the CEO, but as it has always been, it is up to those CEOs to report to me the information that they believe is appropriate. I do not have control over what that is any more than any other minister does. We rely on the integrity and quality of service that we get from our chief executives and, as I said, this chief executive is an administrative chief executive working with the board. It is different from Tourism WA, for example, whereby the chief executive of that organisation has a lot more executive power than this CEO.

Ms J.M. FREEMAN: Further to that question, where in the Western Australian Health Promotion Foundation Bill 2015 are the responsibilities of the chair to keep the minister fully informed of any contentious issues? I am now looking at the Public Sector Management Act and section 30 provides —

> In performing the functions of a chief executive officer … that chief executive officer … shall —
>
> (a) endeavour to attain performance objectives agreed with the responsible authority of the department or organisation;

I am assuming that the chair will set the agreed objectives and the responsible authority for the chief executive officer. Is that what will occur? The chair will do that and will be directing the chief executive officer. That still leaves me with the question of how the minister will ensure that he is fully informed and where that is shown in the bill. If such major change is being undertaken because of the minister's concerns that this foundation was not responsive to government, where does the minister give himself that power? The Public Sector Management Act actually removes the powers of ministers in those things. The Public Sector Management Act in making chief executive officers and directors employees of the Public Sector Commissioner took away what was previously in place. That was done under this government in previous amendments to the Public Sector Management Act. It took away the minister's responsibility to be the employer of the person who heads up its agency. Is the minister telling me that, effectively, the minister will become the employer of the chair and he therefore has the authority to ensure that the chair keeps him fully informed? If the chair does not keep him fully informed, does the minister have the right to dismiss the chair because they have not fulfilled their responsibilities to the minister?

Dr K.D. HAMES: I think the answers are "No, no and no." There is no responsibility of the chair to inform me of things. It is set up as an independent body with oversight by the chair and the board of the running of their organisation. If issues are going wrong, they can choose not to inform me; they do not have to tell me if there are issues of conflict or difficulties whatsoever. I appoint people of integrity. I rely on their integrity and the quality of the people I appoint to run that organisation. If that chair chooses not to tell me something that might be difficult—the *Carmen* issue, for example—they are totally within their rights to do that. As the member said, this takes away some powers, although I do not know that I had any direct involvement anyway under the previous legislation.

Ms J.M. Freeman: The changes to the Public Sector Management Act took it away.

Dr K.D. HAMES: Even before the current legislation, I am not aware that I had any direct powers then either. I do not think I did under the previous act, even though it was not under the Public Sector Management Act. I am fairly certain I had no power of hiring and firing, disciplining, or whatever, any of the Healthway staff. I think it was still set up to be totally independent of ministerial responsibility. I do not think that has changed just because it has moved across. I have no desire nor intention to be involved with hiring, firing or disciplining people within the new Healthway board.

Ms J.M. FREEMAN: I understand that the minister is not interested in being involved with any of the administrative aspects of the operations of the board, but he is interested in hiring and firing because he will be appointing people. Under these changes to the legislation, the minister has given himself the capacity to appoint and he says that he will appoint for integrity. He is giving himself that ability to appoint. Effectively, is employing a chair the only way that the minister can manage the outcomes of the principles, goals and the focus of the foundation? The CEO will be employed under the Public Sector Management Act, so the minister does not have employing authority there, but he will employ a chair and all of that under this legislation. However, the minister is saying that he has not given himself any capacity for direction. The minister has not given me an indication of where in this bill he can give direction. Is the minister saying that the only power he has given himself to ensure the policies, principles and philosophy of the foundation is through the people he appoints? Let us say, for example, that because the Liberal Party takes donations from the tobacco industry we can say that its philosophy is that the minister will not be so agin that industry over time—I am just being facetious there, clearly! Is the minister saying that the only way he can have influence over those principles and the foundation is by how and who he appoints and not through an administrative capacity to set objectives with the chair or to give a direction to the chair that is therefore brought to this Parliament or put into the public arena? Is the only effective way the minister can do that by making sure that the people he puts there are his people? Is that really the only way the minister can have any of that capacity?

Dr K.D. HAMES: The answer is no again. Clause 35 relates to staff coming under the Public Sector Management Act, not my powers and what I can do. When we get to clause 39, the member will find a whole list of powers that I have that are put in this legislation.

Clause put and passed.

Clause 36: Other staff —

Mr R.H. COOK: I assume clause 36, roughly speaking, comes under the same sort of category as clause 35, which is to put the staff under the Public Sector Management Act. My question to the minister was about how the world changes in relation to the role of the CEO under the provisions of clause 35. Therefore, rather unremarkably, I now ask: how does the world change with the changes brought in by clause 36?

Dr K.D. HAMES: I will read out the information from the note I have been given. It states —

> Employment conditions will not change in a noticeable way for employees that transition to public service officers. Terms and conditions of employment will continue as per the general agreement and leave entitlements, eg, personal, annual and long-service leave, continuity of service, superannuation, redeployment and redundancy, salaries and allowances will remain the same. There are only minor differences between the employment conditions of public services officers and government officers. Where they are different, they are largely in the wording and structure of clauses.

That leads to why we are doing this. We are doing it for the same reasons that apply to the CEO. It will leave the responsibility for management of all those matters under the Public Sector Commissioner instead of leaving people on the board to deal with them all, so the board can get on with the business of dealing with the decisions on applications for grants and its other responsibilities.

Mr R.H. COOK: I want to take the minister back to June 2011 when one of the board members, Mike Allenby, from the WA Sports Federation, resigned and, at the time, the subject of his resignation found its way into *The West Australian*. I appreciate that this is more at the board level. Mr Allenby accused Healthway of bullying, isolation and so forth. There are some fairly robust quotes around those issues. I wonder whether the minister could enlighten us about whether the CEO and other staff being employed under the Public Sector Management Act might impact on the resolution of those sorts of accusations, albeit, the one concerning Allenby was more to do, I think, with the interaction with the board. I think at the time some discussion was also about Mr Allenby's interaction with members of the staff. I wonder whether the minister could provide us with some guidance on that.

Dr K.D. HAMES: I am advised that that issue was much more about the board than about staff. Clearly, clause 36 is about staff, not about the board.

Mr R.H. COOK: I thank the minister for that answer. I think the Public Sector Commissioner has alluded to some of the staffing issues. I believe also there was previously an inquiry into Healthway around the relationship between different staff members and accusations of bullying at the time. I think those accusations were dismissed.

Dr K.D. Hames: That was about the chief executive. Complaints made against him of bullying were investigated and the complaints were dismissed.

Mr R.H. COOK: I beg the minister's indulgence. Do these two clauses—obviously we are dealing with clause 36 at the moment—in some way resolve or provide some mechanism to address those sorts of issues?

Dr K.D. HAMES: No more than occurred before. It was investigated previously and it would be investigated in the future. Allegations of bullying are not infrequent within the public sector. They are investigated in the normal course of events. Those allegations would be investigated in exactly the same way.

Mr R.H. COOK: I am not necessarily saying that these are bad changes but if, as the minister has confirmed, they are nothing to do with the Public Sector Commissioner's report and they are not around those previously highlighted issues of bullying and so forth, why are we making these changes?

Dr K.D. Hames: I answered that the first time I stood up.

Mr R.H. COOK: Indeed; but the minister is confirming that there does not seem to be a hell of a lot of motivation behind it other than it is the vibe.

Dr K.D. Hames: It's the government decision.

Ms J.M. FREEMAN: Can the minister clarify whether these changes mean the staff go from the Government Officers Salaries, Allowances and Conditions Award to the Public Service Award or were they previously not employed on either of those two awards?

Dr K.D. Hames: I am advised that they are government officers currently. I am not sure what award they were under.

Ms J.M. FREEMAN: Were they employed under the GOSAC award or the Public Service Award?

Dr K.D. HAMES: I do not know, but they will be employed under the Public Service Award. I think I said under previous clauses that their award would change. The part I read previously refers to the transition under clause 72.

Ms J.M. FREEMAN: They were employed under the GOSAC award and they will be employed under the Public Service Award.

Dr K.D. HAMES: I have no idea what they were employed under, nor does it matter what award they were appointed under because, as I have said, the pay and conditions will be almost the same. There has already been discussion with members about that. I have not heard any objections from anyone about the changes that they will encounter. I cannot answer more than that.

Ms J.M. FREEMAN: I am happy for this to be taken on notice.

Dr K.D. Hames: What does it matter?

Ms J.M. FREEMAN: It matters because they are workers and the GOSAC award has a shorter long service leave clause.

Dr K.D. Hames: I just read that out; they will be the same.

Ms J.M. FREEMAN: Yes, but I would like to know whether they will get the additional long service leave they would have got under GOSAC, once they are under the public sector award.

Dr K.D. HAMES: Perhaps we can do clause 72 in advance; it provides that all their rights will be preserved.

Ms J.M. Freeman: I'm asking whether their rights will be increased.

Dr K.D. HAMES: The other part I read out said that they will be the same.

Ms J.M. Freeman: I am asking whether they will be increased.

Dr K.D. HAMES: They will be the same.

Ms J.M. Freeman: You're changing them to an award and you will keep them on lesser award provisions.

Dr K.D. HAMES: No; the pay they get under the new area will be the same as they get under the current area.

Mr W.J. Johnston: You're missing the point.

Ms J.M. Freeman: Yes, you're missing the point.

Dr K.D. HAMES: I am clearly missing the point. Can we deal with this under clause 72?

Ms J.M. Freeman: No.

Mr W.J. JOHNSTON: The only knowledge I have of this issue is from the discussion across the chamber. I make the point that if the employees of Healthway are currently covered under one set of provisions that are unique to that set of organisations and they will be coming under the general provisions, and the minister says that another clause they cannot get less than they are currently on, that is not related to the discussion.

Dr K.D. Hames: I know that but what I read out before says they will be the same.

Mr W.J. JOHNSTON: The point the member for Mirrabooka was making to the minister is that one is superior to the other. If the employees are being moved from the existing arrangement to the new arrangement, it is not a question of whether conditions will be the same but whether they will be superior. The minister is saying they will be the same. If they will be the same, that means they will not be moving to the superior provisions. His answer is therefore confusing. It is probably confusing, because unlike the member for Mirrabooka, he does not have the detailed background she has on these matters. Quite frankly, neither do I, but I understand the point she is raising, and that is why she appears a little frustrated with the minister's answer. The minister does not seem to understand the question. The question is not: will they be the same or will they not lose? Rather it is: will they go to the better conditions?

Dr K.D. HAMES: I do not understand why the members do not understand my answer. I will read it out again.

Mr W.J. Johnston: Your answer is confusing.

Dr K.D. HAMES: It is not my answer; this is the answer provided.

Mr W.J. Johnston: It is your answer.

The DEPUTY SPEAKER: Member for Cannington, listen to the minister.

Dr K.D. HAMES: Listen to the words. I understand the point the member is making, but this note says that there are only minor differences between the employment conditions of public service officers and government officers. Where there are differences they are largely in the wording and structure of the clauses. Surely that is the answer to the member's question.

Mr W.J. Johnston: What are they?

Dr K.D. HAMES: Clearly, from that, the amount of funding they get under their current award is the same as they will get under the new award.

Mr W.J. Johnston: That's wrong. Those words say something completely different.

Dr K.D. HAMES: No; it says, "Where there are differences they are largely in wording and structure of clauses", not in payment schedules or long service leave entitlements or all those other things we are talking about.

Mr W.J. Johnston: Who says?

Dr K.D. HAMES: They say.

Mr W.J. JOHNSTON: Firstly, let me make this clear to the minister. He is not here as an empty vessel; he is providing his own answers to the chamber. When he says, "They say", and, "This is not my answer", actually, minister, that is the whole point: nobody else can address the chamber except the minister. He is providing his answer to the chamber. His answer could be, "This is the advice I have received", and we understand that occasionally that is what he does and that is what every minister does. Occasionally, a minister does not know more than the advice they are given. In which case the answer would be, "I'm not sure of the answer to that question, and this is the information I have in front of me."

Ms J.M. Freeman: "And I will get back to you."

Mr W.J. JOHNSTON: "And I will get back to you." But to then say, "This says that there are minor differences, and therefore that means there is no difference", is wrong. That is not what the words the minister read out said. The words the minister read out said there are differences; they did not say there are no effective differences, and they did not say there are no differences. They said there are differences, and it is not unreasonable, therefore, for the member to ask what those differences are. It is a pretty damn simple question, and, again, I do not understand why it is causing the minister such angst in giving an answer.

Dr K.D. HAMES: It is not causing me any angst —

Mr W.J. Johnston: It is.

Dr K.D. HAMES: — and I think my answer was a very good answer. Let me do two things. Firstly, I will get those details for the member for Mirrabooka; that puts that issue to bed. Secondly, in relation to clause 72 the foundation and its staff have been consulted as to the change and have no concerns as to the change in employment arrangements. I would assume that if they had an opportunity to get higher pay under a different act and we were saying, "No, you are not going to get the same as all the other public servants doing that work, you are going to get less", they would not be happy.

Ms J.M. FREEMAN: I thank the minister for getting me those differences.

Dr K.D. Hames: It is a pleasure.

Ms J.M. FREEMAN: It may be that those staff are not completely aware. My understanding is that the only difference, which is the minor difference, is the access to long service leave. Under the Public Sector Management Act, access is granted a lot quicker than under the Government Officers Salaries, Allowances and Conditions General Agreement.

Dr K.D. Hames: So they are better off?

Ms J.M. FREEMAN: Yes. But the minister is not saying they will be better off. That is all I want to know. What I want to know, minister, is whether they will be better off; that is all. Just come back to me; just tell me that they will be better off. That is what I want to know.

I have another thing I want to know. When a person is under the GOSAC award, the Public Sector Management Act will not allow them to transfer in an appointment under the public sector award because it says that person is employed in different instruments. If someone is employed now in the Western Australian Health Promotion Foundation under the Public Sector Management Act under the public sector award—this is what I want to know—does that mean that they will have the entitlement to transfer into a similar or the same position under the Public Sector Management Act? The Government Officers Salaries, Allowances and Conditions General Agreement tends to be for agencies that stand outside of government so when those people become redundant or get an injury in the workplace or other things happen, they cannot transfer. My experience is that if they get an injury in that workplace and they are not fit to fulfil that position anymore, they cannot transfer into the general public sector because they are seen as being under different employment conditions. Despite the fact that they are employed by government, those people do not have the same rights and entitlements as other people employed under the public sector award. My question is: will this bill enable people to have access to the broader public sector in terms of their employment options; in the case of an injury, if they are no longer fit to

work in that particular foundation or, in the case of them being made redundant, can they seek redeployment in the general pool of the public sector when they would not have been able to under the Government Officers Salaries, Allowances and Conditions General Award? I am happy for the minister to get back to me on those things.

Dr K.D. HAMES: I will get back to the member and confirm it, but my understanding and my advice is that as public sector staff they are entitled to transferability within the public sector.

Mr R.H. COOK: Madam Deputy Speaker —

Dr K.D. Hames: You're going to flog this to death, aren't you?

Mr R.H. COOK: Not at all, minister; we are just seeking some clarification around what has been a very difficult time for the organisation. I am going to repeat a question I have often asked; I did not ask it during clause 35 because there was no chief executive officer around it. I simply ask whether the minister consulted with the then chairperson who has now moved on, the staff and the union in relation to the changes clause 36 will make?

Dr K.D. HAMES: I did not personally, but I am advised that there was nothing to do through the chair and that the department consulted with both the staff and the foundation in making this decision.

Mr R.H. COOK: Did the minister consult the Community and Public Sector Union–Civil Service Association of WA?

Dr K.D. HAMES: No, we did not, but we told the staff that they should do whatever they wanted to do in relation to their union.

Mr R.H. COOK: In relation to that consultation, what was the response from the staff?

Dr K.D. HAMES: That was the bit I read out before. The foundation and staff—this comes under clause 72—have been consulted as to the change, and have no concerns as to the change in employment arrangements.

Mr C.J. TALLENTIRE: I also have concerns about the capacity to create an organisation with two streams of employee—those employed under the Public Sector Management Act, and those employed either as contractors on a service basis or as persons on a casual employment basis. One of my concerns is around disciplinary procedures. I know we will come to clause 46 that refers to confidentiality of information, but what would be the procedure should someone employed as a casual be found to have perhaps released information that had come to Healthway and was of a critical nature? What would be the course of action—the disciplinary procedures—open to the Public Sector Commissioner, I suppose, if the person was a casual employee who was not bound by the Public Sector Management Act in any way? I look forward to the minister's answer on that.

Dr K.D. HAMES: A casual employee still comes under the Public Sector Management Act, but for someone employed under a contract there are contract provisions built in relating to disclosures and behaviour. It is up to the board to sort out someone who is under contract. If it is a casual employee, they will still come under the Public Sector Management Act.

Mr C.J. TALLENTIRE: Is the minister saying that if it was a person employed as a contractor, the only disciplinary procedure open to the organisation, should there be, say, a release of confidential information or something, would be a termination of their contract; whereas somebody who is perhaps employed under the Public Sector Management Act could have a far more hefty penalty put on them?

Dr K.D. HAMES: That is no different from all the other contracts of government or government employment throughout the public sector. That is the case. There are requirements under the Public Sector Management Act for behaviour, which deals with people making public statements or misbehaving or the like. I am no expert in the Public Sector Management Act—I have had very little to do with it—but that is what it is contained under. Whereas someone who is contracted to the board is certainly not subject to the Public Sector Management Act, and so quite clearly in all those contracts the provisions will be different.

Ms J.M. FREEMAN: I would be happy to ask this during clause 37, but I suppose I will ask it now. Clause 36(2) reads —

> Subsection (1) does not affect the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Foundation to engage a person under a contract for services …

Clause 37 provides the same power. My question is: why do we need clause 36(2) if that power is available under clause 37? I get that it does not provide the power for a casual employee, but why is clause 37 needed when all the powers needed to engage are contained in clause 36(2)? Clause 36(2) is reflective of section 100 of the Public Sector Management Act, which provides the capacity to —

> … engage a person under a contract for services on such terms and conditions, including the rate of remuneration, as the employing authority determines.

I cannot understand why we need clause 37 when the same power is in clause 36(2). The additional power under clause 36(2) is to appoint a person on a casual basis, which is outlined in the provision and found in the Public Sector Management Act. We know that a casual employment basis is for a contained period. I understand that clause 36(2) provides the capacity to employ someone under a contract for services or on a casual basis. What I do not understand is why that power seems to be duplicated in clause 37. My question is probably more related to clause 37, but it is also relates to clause 36, which is why I raise it now: given the power under clause 36(2), why do we need clause 37?

Dr K.D. HAMES: I do not think that that is what it says. Clause 36(1) is about public servants and states —

> Public service officers may be appointed under the *Public Sector Management Act 1994* … to perform its functions.

Subclause (2) states that it does not affect the power that the Public Sector Management Act gives the employing authority to engage a person under contract. That is a negative, in effect, saying that it does not affect its power. Then clause 37 gives the foundation the power to employ someone.

Ms J.M. Freeman: No, the Public Sector Management Act gives it the power. The foundation has been given the power and then you have duplicated the power in clause 37.

Dr K.D. HAMES: Clause 37 deals with contractors. Clause 36 deals with the Public Sector Management Act and management under that.

Ms J.M. Freeman: And contractors, which is what this is.

Dr K.D. HAMES: No, it does not say that. Clause 36(2) states —

> Subsection (1) does not affect the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Foundation to engage a person under a contract …

The member is saying that it is not clause 36 that is doing it twice, but that clause 100 is doing it twice. Is that what the member is saying? I have not got to clause 100 yet.

Ms J.M. Freeman: No, section 100 of the Public Sector Management Act.

Dr K.D. HAMES: Is the member saying that we are duplicating what is in the Public Sector Management Act?

Ms J.M. Freeman: Yes.

Dr K.D. HAMES: I do not know that that is a problem. The member is saying that this happens under clause 36, not clause 37—remember?

Ms J.M. Freeman: No, I am saying that clause 36(2) ensures that the foundation has the power to —

Dr K.D. HAMES: That does not give —

Ms J.M. Freeman: Yes it does.

Dr K.D. HAMES: Clause 36(2) just states that clause 36(1), which provides that officers may be appointed under the Public Sector Management Act, does not affect the power in section 100 of the Public Sector Management Act. The conflict is not between clause 36 and 37 but between clause 37 and the Public Sector Management Act, in which case we are saying it twice.

Ms J.M. Freeman: I am happy to raise it when we move on to clause 37.

Dr K.D. HAMES: Good idea.

Clause put and passed.

Clause 37: Contracts for services —

Ms J.M. FREEMAN: Clause 37—thank you!

Dr K.D. Hames: I get the member's question; can I answer that bit now?

Ms J.M. FREEMAN: I would like to put it on record.

We have just passed clause 36. For some strange reason, clause 36(1) states that the foundation will appoint staff under the Public Sector Management Act 1994. On that basis it will take in the whole Public Sector Management Act, including section 100 because a person will be employed under that provision. But despite the fact that it includes the whole act—none of the rest of the act has been excluded—clause 36(2) specifically states that it —

> … does not affect the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Foundation to engage a person under a contract for services or appoint a person on a casual employment basis.

A person is employed under this act and every section in it pertains to their employment, but a very specific and pointed allowance has been made for section 100, "Engaging people by contracts for services and casual employees, powers for", which states —

> (1) An employing authority may in accordance with the Commissioner's instructions engage a person under a contract for services on such terms and conditions, including the rate of remuneration, as the employing authority determines.
>
> (2) An employing authority may in accordance with the Commissioner's instructions appoint a person on a casual employment basis on such terms and conditions as the employing authority, subject to any relevant written law or any binding award, order or industrial agreement under the *Industrial Relations Act 1979*, determines.
>
> (3) If the chief executive officer or chief employee of a department or organisation is not its employing authority, the employing authority of the department or organisation may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to that chief executive officer or chief employee any of its powers or duties under this Act.
>
> (4) Section 33 applies to and in relation to a chief executive officer or chief employee to whom a power or duty is delegated under subsection (3) as if the power or duty were one of his or her own powers or duties under this Act.
>
> (5) The powers conferred on an employing authority by this section are in addition to, and not in derogation from, any powers conferred on the employing authority by any other written law.

The Public Sector Management Act provides the foundation with all those powers and then, under clause 37, the powers are given to the foundation again. Everyone is employed under clause 37, "Contracts for services", and then a specific comment is made about section 100, which gives the foundation all those powers. This is done again under clause 37, "Contracts for services". Clause 36(2) states —

> … does not affect the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Foundation to engage a person…

However, clause 37(1) states —

> The Foundation may engage a person to perform services for the purposes of this Act under a contract for services on the terms and conditions (including as to remuneration) that the Foundation thinks fit.

That is what I cannot understand because that is exactly the power that the foundation gets from section 100. Clause 37(2) states —

> A person engaged under subsection (1) is not a person appointed under the *Public Sector Management Act 1994* Part 3.

Section 100 is in part 8 of the Public Sector Management Act and part 3 of that act is about permanent employment in the public service generally. Therefore, this provision is not in contravention of the Public Sector Management Act part 8 nor is it doing anything in contravention of part 3 because we are already giving the foundation that power. I am completely and clearly of the view that either the foundation is being given the same power and we are just repeating ourselves or that clause 37 is in the bill to provide the foundation with an additional power to that which it has already been given under the Public Sector Management Act.

Dr K.D. HAMES: I will point out two things: we are not giving ourselves anything additional. This was in the original act that members opposite passed back whenever it was. It is exactly the same —

Ms J.M. Freeman: It is just poorly drafted.

Dr K.D. HAMES: No, it is the same; the words are the same and the clause is the same. The second thing is —

Ms J.M. Freeman: But clause 36 is not the same, is it?

Dr K.D. HAMES: Yes, they are all there; they are slightly separate but I have them right here in front of me. My staff have advised me that the Public Sector Management Act already gives the chief executive officer the power to do all those things because he is employed under that act, but it does not give the foundation the power to do those things. This clause specifically provides that the foundation may employ a contractor. Clause 37 will give the foundation the specific right to, under its own power, employ contractors.

Ms J.M. FREEMAN: Clause 36(2) states —

> … gives the employing authority of the Foundation …

Therefore, is the employing authority not the foundation but rather the Public Sector Commissioner? Can the minister define what the employing authority of the foundation is, in contrast to what the foundation in clause 37(1) is? How are those two entities different?

Dr K.D. HAMES: Clause 36(2) refers to the CEO and clause 36(1) refers to the foundation.

Ms J.M. FREEMAN: The foundation being the board?

Dr K.D. Hames: Yes.

Ms J.M. FREEMAN: The clause states that the foundation may engage a person to perform services. Can that person be a company?

Dr K.D. Hames: Yes.

Ms J.M. FREEMAN: Could the foundation determine that it wanted to employ a total company to operate all of its businesses to deliver the services of the foundation, such as grants and stuff like that? I am thinking about the Scanlon Foundation, for example, or the Smith Family. Actually, that is a very good point. The Smith Family get money from the federal government to distribute grants for the Seaforth Sea Grant program. If someone wants to get a Seaforth Sea Grant—I think it is called "children for children"—they put in an application for a grant to the Smith Family, even though the federal department operates it. Does that mean that the foundation could effectively engage a "person", which is a company, and could that be the Smith Family or the Scanlon Foundation, so that everyone would go to it for their grants? It might be a company that does medical research. It might be a pharmaceutical company that says, "I think we could do these grants. You could make a whole bunch of people redundant, and we are happy to deliver this service simply for the administrative costs and not for any of the employment costs." Under clause 37(1), could the foundation engage a company to take in the grant applications, have them considered by the board and then distribute the grants?

Dr K.D. HAMES: My advice is no. This clause is about the performance of services. It gives the foundation the opportunity to contract out the delivery of services for which a grant has been made. But there are a lot of other clauses in the bill that make very clear the requirements of the foundation in making decisions about grants.

Clause put and passed.

Clause 38: Use of other government staff and facilities —

Mr C.J. TALLENTIRE: This clause is somewhat changed from the equivalent section in the Tobacco Products Control Act. It has changed in a couple of senses, but there is a bigger underlying change that is brought about by the change in arrangements on the background of people who will be appointed to the board. I therefore think it is very important to look at some of the detail here. I note that the clause states —

> (1) The Foundation may be arrangement with the relevant employing authority make use, either full-time or part-time, of the services of any officer or employee —
>
> …
>
> (c) otherwise in the service of the State.

Previously there was the capacity to have other people from other "instrumentalities"—I think that was the actual wording. My first question is: why have we dropped the use of other instrumentalities? I am also keen to hear from the minister whether "otherwise in the service of the state" applies to places such as universities and research institutes. I am concerned that this clause headed "Use of other government staff and facilities" is too restrictive. Perhaps the minister could first give an explanation for dropping the term "instrumentalities". Perhaps the list has not been added to given that the nature of the board will change. But I do not think the minister can answer this question by saying that it is basically the same wording as previously. That is because this wording is totally different now as it relates to the new board structure with the new set of backgrounds that people on the board will have. I think we should consider including in this clause organisations that we would expect to be reaching out to and working with. Why is there no special listing for universities or for organisations such as the Australian Council of Social Service? I ask the minister to respond first to the point about "instrumentalities" and then we can go into this clause a little more deeply.

Dr K.D. HAMES: I will first read out the advice from the drafters. Clause 38 carries forward the provisions of section 70 of the Tobacco Products Control Act. It provides for the use of other government staff and facilities. Parliamentary counsel has updated the language; for example, "employer" has been replaced with "employing authority" and the word "instrumentality" has been removed. My legal advice is that "instrumentality" has no

specific definition and it is covered in all the other things that are stated. The member suggests that this is enormously different. I hold before me the wording of the old provisions in the Tobacco Products Control Act and the new provisions in this clause. I will read them out. The old one states —

> The Foundation may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee …

The new one states —

> The Foundation may be arrangement with the relevant employing authority make use, either full-time or part-time, of the services of any officer or employee …

The old one states —

> (a) in the Public Service; or

The new one states —

> (a) in the Public Service; or

The old one states —

> (b) in a State agency or instrumentality; or

The new one states —

> (a) in a State agency; or

My advice is that "instrumentality" has been removed because it has no definition.

The old one states —

> (c) otherwise in the service of the Crown in right of the State.

The new one states —

> (c) otherwise in the service of the State.

Just "Crown" has been removed. I do not see any draconian plot hidden in those changes.

The new provisions in subclauses (2) and (3) of the bill are again virtually identical to the old provisions in the Tobacco Products Control Act. The old one states —

> (a) a department of the Public Service; or

The new one states —

> (a) a department of the Public Service; or

The old one states —

> (b) a State agency or instrumentality, …

The new one states —

> (b) a State agency, …

The old one states —

> (3) An arrangement under subsection (1) or (2) is to be made on the terms agreed to by the parties.

The new one states —

> (3) An arrangement under subsection (1) or (2) must be made on the terms agreed to by the parties.

As you can see, Madam Deputy Speaker, despite this Freudian plot that we are hearing about, there are probably two words of difference.

Mr R.H. Cook: How long is a Freudian plot?

The DEPUTY SPEAKER: Order, members!

Dr K.D. HAMES: Yes, it is the wrong word. I am sure that Hansard will find the correct word for me instead of "Freudian".

Mr C.J. TALLENTIRE: I attempted to explain my concern to the minister.

Dr K.D. Hames: It is a Machiavellian plot! That is the word I was looking for.

Mr C.J. TALLENTIRE: A Machiavellian plot!

I acknowledged when I was last on my feet that on the surface there does not appear to be a dramatic change between this clause 38 and section 70 of the Tobacco Products Control Act. The point is that the membership of the foundation will change dramatically. We discussed at length during debate on clause 11 the move away from appointment to the board of people who are representative of very good organisations that are expert in their area to a set of appointments that are much vaguer about who these people will be. A lot of the decision on whether someone has expertise in a particular area will be down to the opinion of the minister. I know that we are seeing a trend to this sort of change right across government. Indeed, we debated it yesterday when we were considering appointments to various boards in the environment portfolio; it was all about "in the opinion of the minister". Here we have that carryover of drafting from the act to this bill.

I put it to the minister that now there will be vagueness about the nature of the people to be appointed to the board, it will be more important than ever to be more precise about who the people are that the foundation can engage to make use of—to use the words in the bill. That is why I am saying that perhaps it needs to be specifically mentioned that universities and research institutes are the sorts of bodies that we would expect the foundation would need to make use of in the future.

Dr K.D. HAMES: The advice I have been given is that, paradoxically, if we try to define those organisations that could or should be consulted, we will limit the powers of the board to deal with whomever it wishes. There is nothing in the clause to prevent the board from having involvement with whomever it wishes, including all those organisations that the member listed, others that it may choose to deal with and some that may not even have been created yet. Organisations may change their names and their structure over time. The Australian Council on Smoking and Health may not be called ACOSH in 10 years' time. Who knows? It may be called something different. This will provide the board with total flexibility.

Mr C.J. TALLENTIRE: I agree with what the minister is saying about the need to keep it as broad as possible. We do not want something that restrictive. However, what is before us is fairly restrictive. I believe that the deletion of the word "instrumentalities" is risky, because it limits the foundation to making use of people who are in the public service, in a state agency or otherwise in the service of the state. I know the universities are constituted under a statute of Western Australia; however, I am not confident that the same definitions would apply to some research institutes. I do not know that we could say that some of the health research institutes are necessarily constituted under a banner that enables them to be described as being otherwise in the service of the state. The term "service of the state" has a particular meaning. I think there are bodies that the foundation would want to be able to "make use of". I do not really like that term, but it is the one we are stuck with in the bill. Perhaps we should broaden this to include any other incorporated body. Is that the sort of language we should be looking at? I agree with the minister that we do not want to make this restrictive. However, I think that it is restrictive as it stands, and therefore I seek the minister's advice on how we can be sure that this is as broad as possible.

Dr K.D. HAMES: I point out to the member that the heading of part 4 is "Staff". It deals with the staff of the agency. This is not about who the agency can consult with, who it can deal with and who it can enter into contracts with. That is all separate to this—this is about staff. It says that the foundation can make use of other government staff and facilities in doing its work. If it wants to use facilities from ACOSH, it can do that via contract. This applies only to staff.

Ms J.M. FREEMAN: I am also interested in the words "otherwise in the service of the state". Serco holds a contract at Fiona Stanley Hospital. It is, therefore, "otherwise in the service of the state", because it is serving the state by its contract at Fiona Stanley Hospital. Does that mean that the foundation would be able to make an arrangement with Serco to employ the staff or the services of Serco? That is my first question. I notice that the act uses the words "otherwise in the service of the crown in right of the state". Is there any case law around what "otherwise in the service of the state" means? I am a bit confused. Serco is contracted at Fiona Stanley Hospital, and it could be perceived to be in the service of the state. I guess it could also be perceived to be in the service of itself in delivering a service to the state. However, either way, could Serco fit within this definition?

Dr K.D. HAMES: My legal advice is that we should go to the line that says that the authority may make use of the services of any officer or employee. The words "otherwise in the service of the state" would not apply to a company such as Serco, because it is not an employee of the state; it is an employee of another company by contract.

Clause put and passed.

Clause 39: Minister may give directions —

Mr R.H. COOK: Context is everything, I guess. In the context of this debate, we have a government that is trying to undermine the independence of the board. The text in clause 39 is the same as the text in the Tobacco Products Control Act 2006. However, the context in which we now see this text has very much changed. We now have a government that has signalled its intent to involve itself in the work of the foundation and in particular to have

control over the granting of funds—not the deliberations and the decision on that process, but certainly the staging of it and, we would suggest, other aspects of the foundation's work. This particular clause is the same as the one in the Tobacco Products Control Act and deals with the minister providing directions from time to time to the foundation. In this context, I am very keen to understand two things: what has been the history of the directions given under these provisions in the Tobacco Products Control Act, and how does the minister see this operating in the new Western Australian Health Promotion Foundation Bill?

Dr K.D. HAMES: The member is asking for the history of directions. There have been no directions.

Mr R.H. COOK: I guess that begs the question: why do we have this clause, and what sorts of things does the minister anticipate using this clause for?

Dr K.D. HAMES: I anticipate that I might use it with respect to the performance of its function, either generally or in relation to a particular matter.

Mr R.H. COOK: I thank the minister for that rather technical explanation.

Dr K.D. Hames: I thought it was good!

Mr R.H. COOK: The minister confirms that we have never used this provision of the act and from that perspective he never anticipates having to use it. This would obviously apply when the foundation is not undertaking its functions under the act. Is this clause necessary in the context of sections 35 and 36 of the Public Sector Management Act, or is this clause simply a gratuitous addition?

Dr K.D. HAMES: I do not think so. There are two things. The first is that it is in the original act. Secondly, let us suppose, for example, that the board made a decision that it was not going to fund grassroots football anymore. Clearly it would not do that. I cannot direct it on grants, but in policy direction. If the board's policy direction was that it will concentrate totally on football and leave out everything else—it has to do the distribution of funds as per the requirements—and it states it will not deal with grassroots stuff anymore but just with the big boys, I would say that I did not think that is appropriate. I would be perfectly willing to give a direction to the board that it was not appropriate for it to change a policy to not look after grassroots sport or arts or other activities, as it has done for all these years. That would be one area in which I would be prepared to give a direction. As we have said, there have been no directions before because it is inconceivable that a board might make that decision.

Another example is the board's decision to stop funding *Carmen*. In that case, clearly I would have no power.

Ms J.M. Freeman: They didn't decide to stop it.

Dr K.D. HAMES: There was an agreement between the two.

Ms J.M. Freeman: The opera company didn't put it to them because of the policies around smoking.

Dr K.D. HAMES: The opera company decided not to put that to the board because it was of the belief as part of the policy direction that that would be something very strongly welcomed by the board and it would have a much better chance of getting the funding it wanted for the next show. That being the case, if we just take instead the media view of what happened with that—namely, that the board cut off that funding—could I then say that that was not appropriate and that that must be funded? No, I cannot. Clearly I am restricted from doing that by clause 39(2) that states that I cannot.

Ms J.M. Freeman: Could you direct them not to have such a strong principle against smoking so that the *Carmen* situation wouldn't have occurred?

Dr K.D. HAMES: Yes, I could but I would have to give that direction in writing and I would have to lay that on the table. Obviously, I would be severely criticised by not only members opposite, but also my side.

Ms J.M. Freeman: You're severely criticised all the time!

Dr K.D. HAMES: Yes, but the difference would be that it would be my side criticising me as well, not just the opposition trying to score political points.

Mr R.H. COOK: In this sense, the minister is saying that he may give direction to policies of the foundation but not to grants of the foundation; is that correct?

Dr K.D. HAMES: Yes.

Mr R.H. COOK: In effect, would any direction to the board not be in contravention of subclause (2) if the effect of the minister's direction were to have impact on the nature or provision of funds or grants?

Dr K.D. HAMES: I am advised that, no, it would not come under that. Although it would affect distribution of funds, as the member knows, by law the funds must be split between the three organisations. Sure, it makes a difference to the distribution of funds if they are taking it all away from the kids and giving it to major organisations, but it is individual decisions about funding that subclause (2) relates to. What I am directing them

on is about not funding, but policy. The secondary effect of that might be that there is then more money for kids, but it is policy I am directing them on, not the distribution of funds. Within that policy bracket, the board still has free rein to distribute funds as it wishes.

Mr R.H. COOK: Is it currently the case that the foundation submits its policies to the minister, and will the minister require that in the future?

Dr K.D. HAMES: No and no. I will see what its policy is because I get to see where the funds are approved to. If it was to change its policy, it would presumably make that public as part of its annual report—but I may well see that in the funding allocations made or the minutes of the meetings of the board. The board cannot just do it without talking about it and making a decision about it. I would get the opportunity to see those separate options. I will be meeting with the chair regularly. I did not in the past. I am sure the board will make me aware of any sudden change in direction.

Healthway has been running for a long time. Clearly, directions on how that funding needs to be distributed, and that distribution, are not going to change. People running that will want to do that. I just used as an example, not for any suggestion, that that might happen, because I totally believe it would not happen. I have just given members an example.

Ms J.M. Freeman: You said that they don't give you policy, but aren't you entitled to that policy under section 40? You are entitled to have information in the possession of the foundation and all those things.

Dr K.D. HAMES: The bill refers to the minister having access to information specified—any tape, disk or other device or medium; I am entitled to have that.

Ms J.M. Freeman: The only reason that you do not have that policy is that you have not asked for it.

Dr K.D. HAMES: Yes because I tried to set out in the second reading speech of the bill that there is a history and requirement for the distribution of funds, as to how they should operate. Nothing in the legislation, though, or in policy says it should be X amount to junior footy and X amount to senior footy or whatever. That is up to the board to decide. It would only be if one saw a massive deviation from the norm that one would become aware of that. There would be an opportunity for me to say, if I wanted, in writing, and taping it, that I did not think that that direction is appropriate. The same applies to us in government as you in government if similar things were being done. I am sure members opposite would want to be able to direct the board not to have that enormous change in direction from the position it has always had.

Ms J.M. FREEMAN: In terms of your direction —

Dr K.D. Hames: You're determined to drag this out.

Ms J.M. FREEMAN: No, I am interested. I went to the briefing; thank you, minister. The thing about this analysis sort of legislation is that it actually matters: when there is an interpretation issue, what is said in consideration in detail can be used in an interpretation of the act—that includes the minister's second reading speech, which is integral in what will happen if there is a dispute over how these clauses —

Dr K.D. Hames: That is why we made sure that that speech had the comments of the original minister.

Ms J.M. FREEMAN: Yes, that is integral, and that is why this consideration in detail is important. Having been involved in Supreme Court matters in which one argues over the meaning of a few words in a clause relating to a stress claim, the capacity to go back and refer to consideration in detail and source materials has made me realise how important consideration in detail is in these matters. That is why I stand up and ask the minister questions. I appreciate that he therefore gets a greater understanding of the legislation. As we just noted, the minister could have been asking for policy for some period, if that is what he wanted to do about access for information. This probably goes to my criticism of the minister in other areas in which I feel he is not proactive in how he does his job.

Dr K.D. Hames: But that is because you have no opportunity to see what I actually do.

Ms J.M. FREEMAN: The minister does many good things —

Dr K.D. Hames: But those things you say I don't do, how do you know that I haven't done endless amounts of work on?

Ms J.M. FREEMAN: That is because the minister stands up and says he has not read stuff and whatever else.

Dr K.D. Hames: That was just a report.

Ms J.M. FREEMAN: The minister decided to say to me that we were trying to drag this out, and I do not want to drag it out by having a protracted argument about me dragging it out.

Dr K.D. Hames: Or a debate about my stress levels and what I might do!

Ms J.M. FREEMAN: In any event, I will get to my question so we can move on so that somebody else does not have to stand up and say that they are interested in hearing further from me.

I take the minister to clause 37. If the foundation may engage a person to perform a service for the purposes of this act, can the minister direct the foundation on the engagement of a person to perform a service for the purposes of the act, and can he direct the foundation to appoint a particular person? I understand that the minister would have to lay such a direction before the house. Say there is an organisation that calls itself the "responsible drinking association", which is actually an association of alcoholic beverage companies. Say such an organisation gained influence over a minister—not the present minister, because I do not believe that such an organisation could have influence over him, with his knowledge and capacity—and gained enough media coverage and public support, so that there would not be a huge backlash against the organisation being appointed to carry out an investigation into the principles and policies of the organisation and how it distributes its grants. With the minister's capacity to give direction, is that a direction that the foundation may engage a person, which can be a company, to perform services for the purposes of this act?

Dr K.D. HAMES: I make two points again. The first is that, once again, this is the same provision that has been in the original act since the beginning. I presume that no other ministers have made that decision, but the answer is yes, I could direct the foundation to do that sort of thing. However, I would have to do so in writing and lay the direction on the table of both houses of Parliament for 14 days. It gives me an opportunity to stop something that I do not like. That provision has been there all this time, but as the member knows it has not been used. It would be an extremely courageous decision for any minister to give such a direction.

Clause put and passed.

Clause 40: Minister to have access to information —

Ms J.M. FREEMAN: This clause entitles the minister to access information in the possession of the foundation. For the purposes of this clause, the minister must request such information, and require staff members to obtain information, and the foundation must comply with that request. What is the penalty if it does not? The minister is entitled to information and he is entitled to request that information, but what is the penalty if the foundation says that certain information is outside the area of the request? I suppose then, the only thing the minister can do is make use of the direction provisions, so maybe that is what he would do. The question then becomes, if the minister gives a direction—maybe I have answered my own question. If the minister seeks access to information and the foundation does not supply that information, for whatever reason, perhaps commercial-in-confidence, one assumes that the only recourse the minister has is to give a direction. Then the question becomes, If the foundation does not comply with the direction, what recourse exists? My first question is: what is the penalty if the foundation does not provide the minister with information? My second question is: if the minister does not know the answer to that, is the only recourse for the minister to give a direction, and what is the penalty if that direction is not complied with?

Dr K.D. HAMES: Obviously, the foundation is required to provide information. If it refuses to do so, clause 15 provides the grounds on which I may remove a member from the office. If a staff member refuses, they can be dealt with under the disciplinary procedures of the Public Sector Management Act.

Clause put and passed.

Clauses 41 and 42 put and passed.

Clause 43: Foundation's funds and expenditure —

Mr R.H. COOK: I seek your guidance in the first instance, Madam Acting Speaker. I have some questions to ask about this clause, but this is a clause for which the opposition has amendments on the notice paper. Do I have to deal with the amendments first, or is that at my own and the minister's leisure?

The ACTING SPEAKER (Ms L.L. Baker): If you are speaking to the clause, you may do so, but if you want to speak to an amended clause, you should wait until the amendments are put. Do you still intend to move the amendments, member for Kwinana?

Mr R.H. COOK: That is the other thing. It would be useful to have the minister on his feet just prior to the amendments being considered, if that is all right. Can I ask a general question about this clause before dealing with the amendments?

The ACTING SPEAKER: Of course.

Mr R.H. COOK: As members would be aware, when the legislation establishing Healthway was first put together back in 1990, it was based on hypothecated excise gained from tobacco sales. I am not sure when it

occurred, but I do not think it was long after that, there was a successful High Court challenge to that measure. Ever since then, the funds that the foundation uses have been allocated from consolidated revenue. My understanding is that that amount sits at about $21 million at the moment. I notice, from one of the second reading contributions from 1990, that members were excited because they had $5 million to spend. They must have been heady days indeed. Obviously there have been changes to the hypothecation, and one of the anxieties that comes up from time to time is about how that number is arrived at, and how it is negotiated and delivered. This is particularly related to clause 43(2). How is the number arrived at, and has the Department of Treasury been consulted in the drafting of this legislation, in the context of those discussions?

Dr K.D. HAMES: This amount is totally determined by Treasury, and always has been, since it stopped being taken away from tobacco revenue. The government makes the decision on what the amount will be, and the member will see that it has been progressively increasing. Treasury has provided a regular inflationary component to it. I do not know whether that is based on the consumer price index or not, because I do not know what the amounts were. For example, the amount was $20.087 million in the 2010–11 financial year. I will not read out all the years; I will jump a few years. In 2013–14, the figure grew to $21.808 million—an increase of nearly $2 million. In 2015–16, it is $22.48 million, which is an increase of $600 000 to $700 000 over that two-year period.

It has progressively increased. It is up to the government. At the end of the day, the government funds it. It is not hypothecated revenue, the money is not transferred and it is not Lotterywest funding. This money comes straight out of Treasury; it is managed by government and goes into that account. Treasury was involved in discussions around this because at one stage it was suggested that Healthway would be disbanded and the money would be split, going to separate organisations—the Department of Health, the Department of Culture and the Arts and the Department of Sport and Recreation—to administer these grants. Who knows what that end funding may have been? One of the reasons I was strongly supportive of keeping Healthway as it is was so that we continue to get those funds. That is the answer; no-one is in control of the amount of money that comes in other than the government, and it rises or falls on the decision it makes.

While I am on my feet, I would like to move the amendment and give the history behind it. The proposed amendment was initiated by the shadow minister, not by government. The original legislation prevents Healthway cheques from being issued during state or federal elections but not during by-elections. The shadow minister proposed to add an amendment that related to by-elections. The government has agreed to do that but has just changed the proposed amendment so it relates to a by-election of a specific seat. For example, if there was a by-election in Busselton, Healthway cheques could not be handed out in Busselton during that election but there could still be one in the Kimberley or other parts of the state. I move —

> Page 21, lines 23 to 25 — To delete the lines and insert —
>
> (a) the period from the issue of the writ for a general election, whether State or Federal, to be held within the State until the close of voting in that election; or
>
> (b) the period from the issue of the writ for an election in relation to a vacancy, whether State or Federal, to be held within the State until the close of voting in that election, if the decision relates to the division or district in respect of which that election is to be held.

Obviously, there are divisions at the federal level and districts at the state level. No Healthway cheques are to be handed out during a by-election in either a division or a district.

The ACTING SPEAKER: At this point it would be opportune to inquire as to whether the member for Kwinana still intends to move his amendment.

Mr R.H. COOK: I do not think it will be necessary for us to continue with our amendment. I think the minister has done a pretty good job of tidying up our amendment. May this amendment be forever known as the "Mettam amendment". This change came about by what is essentially a complete abuse of the Lotterywest process.

Dr K.D. Hames: I think you have to refer to it as the "Busselton amendment" because you are not allowed to refer specifically to members' names.

Mr R.H. COOK: I was not referring to a member; I was referring to a candidate. The candidate was, of course, Libby Mettam, the now member for Vasse. When Ms Mettam was a candidate in the recent by-election, the government, with extraordinary haste, managed to approve a Lotterywest grant of $2 million for what was seen to be a particularly popular by-election announcement. The speed with which this grant was conceived, considered and granted made the head rush. It was extraordinary. I think it should be the subject of its own inquiry. How was that money so quickly leveraged out of Lotterywest to be used by the government as an election ploy in the by-election? But then to take those public moneys and give them to a private citizen who was

seen to be the person handing out that cheque is, quite frankly, an abuse of process. It is an abuse of the spirit of the grants process. Some would endeavour to say it was corrupt, although I guess technically it may have passed muster in the processes of government. We were particularly disturbed to see this happen.

It is clear that the government now intends to use Healthway as a political vehicle. Why would the minister concede on this point if that was not the case? Clearly, the minister has conceded on the point that there is a case to answer in what we consider was a particularly unsavoury exercise in the Vasse by-election. The Premier glibly dismissed this at the time by saying, "That's politics; deal with it." The Premier was happy for the inference around the abuse of the Lotterywest grants process to remain unchallenged. He simply said, "That's politics." He said that in the context of a written reply to a question from a member of the upper house. That was not one of his usual glib, off-the-hand remarks in a press conference. It is clear that the government now intends to use Healthway as a vehicle for its own public relations exercises. I think even the Minister for Health is embarrassed by what happened at the Vasse by-election. By taking on these amendments, he clearly understands what a bad look it was and that it should not be allowed to occur again.

Before we conclude debate on this amendment, I wanted to inquire of the minister as to what would happen if we have a vacancy in the Mining and Pastoral Region, for example. I am no expert in the election processes of upper house members but I believe that writs are issued for the purposes of finding a new member of the upper house.

Dr K.D. Hames: I don't think so for the upper house. They are chosen as a collective group. If one moves out, another one automatically moves in without an election.

Mr R.H. COOK: Okay. I understand that the Electoral Commission calls for nominations. If one of the candidates who was a candidate at the last election nominates, there is a countback. I understand that it is almost a virtual by-election process, but there is no count.

Mr C.J. TALLENTIRE: I would like to hear more from the member for Kwinana.

Mr R.H. COOK: I understand that that is essentially under the guise of a by-election, albeit ballot papers are being used that have already been used. For instance, I am aware that a member of Parliament retired in East Metropolitan Region and the next couple of candidates on the ticket did not want to fill the vacancy. I think it got down to number five or six—Hon Paul Sulc. Does he get the title "honourable" if he was a member for only six months? In that case, there was a count. Is that count the same as what the minister envisages under this amendment? Will that same count be undertaken and is that the same for an election?

Dr K.D. HAMES: I do not think that is what happens. My understanding has always been that a list of, say, seven candidates are put in place and only two may get in. A member of the Liberal Party or the Labor Party, or whoever is the winner of the count at that election, has an entitlement. When it gets down to four or five, nevertheless, the member of the Labor Party, the Liberal Party, the Greens or whomever has an entitlement to that seat based on the total performance of the vote in the upper house. There is no going back and counting votes or numbers. There would be an issue if suddenly we got to the whole seven and none of them wanted to do it, so then we did not have a person, because they have to be on that ticket to be elected as a person who is suitable to be in Parliament. I do not know; I presume that then there would have to be a full upper house election or the seat would be left vacant. I imagine that the seat would be left vacant. No, it is not envisaged; this was to cover the issue that the member raised.

The member for Kwinana made some allegations and accusations about what happened in the seat of Vasse. I want to point out that the advice I have been given is that that decision about that grant was made without any interference by government. It was made well before the by-election. A cheque was made, as a decision of the Lotteries Commission, for provision in that particular grant. The government chose to hand out that cheque during the election phase, but I think that there is recognition for the future that from now on, it might be best if that did not occur. We have agreed—I point out that this is not just me agreeing; I have discussed it with the Premier, who also agreed—that this is something reasonable for us to insert; hence the amendment that I have moved.

Mr R.H. COOK: In relation to whether this includes upper house members, I can assure the minister that there is a countback of the old papers. The papers are counted as though the member who had vacated their position in Parliament was no longer on the ballot. As it happens, in the context of upper house elections, the ballot is always very rigid, so there is an expectation, and my understanding is that that expectation is always met. Although, technically, it is capable of not being met, it is always met, and it is the next person on the ticket for that political party. I will not delay the debate by continuing to argue over that, but it might be good if the minister could check that as this legislation makes its way through the house.

I would like to welcome the member for Vasse back into the chamber, because we are putting forward an amendment sponsored by the minister and inspired by me, which will henceforth be known as "the Mettam amendment", so the member will go down in legislative history.

Amendment put and passed.

Mr R.H. COOK: This is a very important reassertion of a very important principle of this bill. None of us were here—maybe the Premier and the Minister for Planning were—when this legislation was originally passed back in 1990. As I was saying earlier in the debate, context is everything with these things. It is very interesting to go back and look at the debates that took place at the time and the comments that were made by different members of Parliament about the Tobacco Products Control Bill, as it was known back in 1990. The extraordinary thing is that this sort of legislation could not have gone through without the support of the opposition parties at the time—the Liberal and National Parties. As members will be aware, when the Labor Party was in government in 1990, we did not enjoy a majority in the upper house; I do not think we have ever enjoyed a majority upper house. Obviously, this legislation went through with the support of the other side—the Liberal and National Parties. It went through on only the nod or the say-so of the Liberal and National Parties.

Obviously, there was a lot of debate at the time about what should be in the legislation and what should be included to make it work best. One of the things that was very strongly supported at the time was that no party or government should benefit from the handing out of cheques in the name of public health. Separate from the usual way in which governments make grants, governments, in particular, should not gain political advantage through handing out public health grants. It was therefore necessary for the Labor government at the time to negotiate the passage of this bill through the Parliament. It went through the examination by a legislation committee, which was chaired by Hon Garry Kelly. It was a government minority committee. Hon John Caldwell was on the committee, and Hon Cheryl Davenport was the other Labor member. There was also Hon Derrick Tomlinson and, of course, Hon Peter Foss. In the last few weeks I have spent quite a bit of time reading the *Hansard* from that time, although I struggled to find the *Hansard* of the committee debate. My understanding is that Hon Peter Foss was very, very strong on the issue of inserting words that would forbid a member of Parliament to be associated with the granting of these applications, other than the fact that it was done in the name of public health. It was not to be something that was done by the government, by which the government would gain, I guess, in that sense, political favour. It is disturbing to now see that bipartisanship around those issues sent to the full winds and blown apart, if you will, because now we have a government that has very strongly suggested that it wants to do just that. The minister confirmed the government's intentions by virtue of his previous amendment, which we have just agreed to.

We know that the government is hot on this because at the time of the Western Australian Cricket Association sponsorship, there was furious communication between the Premier's media office and Healthway about how the government could make sure that it was inserted in the story around issues to do with sponsorship of Healthway dollars. In fact, we know that there were meetings between the director of the media office, Ms Dixie Marshall, and the executive director of Healthway at that time, Mr David Malone. We know because we have seen the minutes from the finance and audit committee that state that there had been robust conversations around these issues. We also know that Ms Marshall insisted that Healthway seek State Solicitor's advice about how this would be possible under the current act. Of course, it was not possible under the current act because section 71(5) of the Tobacco Products Control Act 2006 makes it very clear that a member of Parliament should not be standing there with a big fat cheque, handing out money and making an absolute hero or heroine of themselves by being inserted into the story. My understanding is that Healthway did not see it as necessary to get State Solicitor's advice—it thought it was pretty clear—yet the Premier's office pushed on and got its own State Solicitor's advice on this. Obviously, we are not privy to what that State Solicitor's advice was, but we now see, through the changes that the government is seeking to make to the act, that that advice was in the negative.

The advice from the State Solicitor was, "No, you cannot contravene that section of the act; therefore, if you want to now indulge in a bit of PR on the back of public health, you will have to change the act." There we see events put in train that see us now in this place making changes to the act. But of course the government had to justify these changes somehow; there had to be some justification for this. That justification was a political opportunity provided by the Public Sector Commissioner. The Public Sector Commissioner never went out to investigate Healthway, by the way; it was the executive director and the chairperson of Healthway who went to the Public Sector Commissioner. Following an audit by the Auditor General, when he said, "You guys need to tighten up in relation to this", it was Healthway that went to the Public Sector Commissioner to seek ways by which it could improve its procedures. Is it not extraordinary that we then find what can only be described as a craven call by the Premier himself about the findings of the Public Sector Commissioner report? The Premier's action suggests that there is a great gotcha moment and somehow Healthway has been sprung and now it will be punished but, of course, Healthway itself was seeking the support. There was no attempt by Healthway to deceive or hide anything. Healthway brought in the Public Sector Commissioner, yet it is the Premier's office that insisted that somehow there was some great act of potential corruption that must bring this about. Is it not extraordinary that this consistent media message says there was abuse of ticketing to the value of $220 000? Not one media agency said that but almost across the board they all got it wrong. I cannot imagine that every

journalist covering this story sat in their offices separate from each other and managed to all get it wrong. Someone in the background must have been spinning a particular line that led them to that conclusion. Now we see exactly what the government wanted.

Roll back to the end of 2012 when this great sponsorship proposal was put together—the sponsorship that was so vehemently opposed by big alcohol—there were then the machinations by the Premier's department and what it wanted to see happen, because at that time it said, "Well, this is a good story. Why isn't the Premier in this photo?" We know why: Hon Peter Foss and other members of Parliament had other intentions when the health promotion fund was put together and that was that it was not to be an exercise in political pork-barrelling and it was not to be an exercise in currying favour. It was to be a bipartisan public health initiative and strategy to drive down the incidence of tobacco consumption in the name of public health.

Mr C.J. TALLENTIRE: Can I hear more from the member?

Mr R.H. COOK: As a result of that, a very important part was inserted in the clause. Why was it inserted? It was inserted at the insistence of the mob opposite—of the majority parties in the upper house. The Liberal and National Parties insisted it be in the legislation. After negotiations, the government brought in an amendment. In 1990, Hon Keith Wilson moved the following amendment —

> … nor shall any such moneys be paid under subsection (4) in such a manner that any member of Parliament is, or appears to be, associated with that payment.

Hon Keith Wilson then goes on to say —

> I thank the National Party for its support for this substitution. The amendment will ensure that we do not have another exercise of consequential amendments. That should be avoided at all costs.
>
> I trust that this will reassure the National Party that the Minister for Health, or any other member of Parliament, will not be handing out foundation cheques and making big fellows of themselves. By acceding to this amendment rather than pursuing its own, it would appear that the National Party is satisfied with the real intent of what is proposed here.

It was the National Party, along with Hon Peter Foss, that was at the forefront of this. I have checked this. I rang Hon Keith Wilson last night and he asked, "What do you want with an old fellow like this, Mr Cook?" I said, "Well, I just wanted to check something, Keith." We talked about it and he said, "Absolutely; Peter Foss was strong on this, and I'll tell you what, Dr Hilda Turnbull was adamant that it had to be in there, and Hendy Cowan backed her all the way." This is because the clause had bipartisan support. Following Hon Keith Wilson's comments Mr Minson said —

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

The intent of this clause is very clear. I shall pass over a bit of an interjection from Mr Pearce. Mr Minson then goes on to say —

> The only thing which disturbs the Liberal Party about this amendment is that when it is sitting on the Government benches it will not be able to do the same!

He obviously understood that this was an important aspect of the bill because he said —

> The community has seen too much of that sort of thing all over Australia and the Opposition supports any move —

This is the Liberal opposition. To continue —

> which will remove that rather distasteful facet from the political scene.

That is a very clear objective for this bill.

Mr R.F. Johnson: The short-sightedness of these changes don't make sense. There are 18 months until the next election. If you take government in 2017, you will have every right to carry on what is being set as a precedent in this chamber today, and the Liberal Party can never argue against it. I think it is foolish; I think it's dangerous and Keith Wilson and, indeed, Peter Foss, were men of enormous integrity.

Mr R.H. COOK: Thank you for that interjection, member. That is the very same observation the president of the Australian Medical Association made in an interview on ABC radio—that the way things were going, the government had only 18 months to hand out cheques. I would not be so presumptuous as to say that; that is a decision the people of Western Australia will make. I want to go on because after Mr Minson spoke on this, Dr Turnbull, from the National Party said the following —

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

The intent of this clause is quite clear. With the exclusion of that clause in this new bill, the government's intention is quite clear.

Dr K.D. HAMES: Madam Acting Speaker —

The ACTING SPEAKER: I am sorry, minister, the amendment has not been moved yet.

Dr K.D. HAMES: What do you mean?

The ACTING SPEAKER: The member for Gosnells needs to get to his feet.

Dr K.D. HAMES: Why?

The ACTING SPEAKER: So the amendment can be moved.

Dr K.D. HAMES: I am speaking to the amendment. Has it not been moved?

The ACTING SPEAKER: The amendment has not been moved yet.

Mr C.J. TALLENTIRE: I would like to hear more from the member.

The ACTING SPEAKER: Member for Kwinana, will you please move your amendment?

Mr R.H. COOK: As I said, the bipartisanship that has always sat behind Healthway is being smashed by this government through its attack on Healthway with this legislation. I move —

> Page 21, after line 25 — To insert —
>
> (3A) A publication, pamphlet or advertisement that is paid for, wholly or in part, from the money from time to time standing to the credit of the Account is not to contain any picture of, statement by or reference to any Member of Parliament, other than any statement or reference of that kind —
>
> (a) required by law; or
>
> (b) necessary or desirable for a proper understanding of the subject matter of that publication, pamphlet or advertisement,
>
> and no money is to be paid under this section in such a manner that any Member of Parliament is, or appears to be, associated with that payment.

This is a very important amendment. It will reinsert bipartisan support for public health in this state. It will ensure the ongoing health of Healthway, because it will maintain its independence and stop it being a political football.

Mr C.J. Barnett: What makes you think it was independent?

Debate interrupted, pursuant to standing orders.

[Continued on page 6166.]