PUBLIC HEALTH BILL 2014

Committee

The Chair of Committees (Hon Adele Farina) in the chair; Hon Donna Faragher (Minister for Planning) in charge of the bill.

Clauses 1 to 3 put and passed.

Clause 4: Terms used —

Hon DONNA FARAGHER: I move —

Page 10, lines 14 to 19 — To delete the lines and insert —

(b) a person employed or engaged in a health service provider (as defined in the *Health Services Act 2016* section 6);

Just by way of background, as currently drafted, the definition of "public health official" captures, amongst other things, persons employed or engaged in a health service or agency under the Hospitals and Health Services Act 1927. The purpose of the proposed amendment is to capture the same people by reference to the Health Services Act 2016, which will replace the Hospitals and Health Services Act 1927 on 1 July.

We have a number of amendments coming through and I indicate that a number of them will relate to legislation that will be subsequently passed. There will be references to why we need to move technical amendments to amend the legislation to reflect those changes.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Crown bound —

Hon LYNN MacLAREN: I move —

Page 13, line 6 — To delete the line.

I do so for the purpose of binding the Crown and ensuring that it can be prosecuted.

Clause 5 provides for binding the Crown. Currently, the Public Health Bill has provisions for binding the Crown based on the principle that all persons are entitled to the same health standards irrespective of whether the land or building that affects them is owned, managed or controlled by the Crown. This principle is not backed up in practice, though, because the Crown or a Crown authority can still apply to the Minister for Health for exemptions from compliance with the legislation or regulations. Furthermore, the bill does not authorise enforcement action to be taken in respect of the Crown. As flagged during the second reading debate, Victoria is one of those states that allows for the Crown to be prosecuted under its equivalent legislation, which I have with me—that is, the Public Health and Wellbeing Act 2008. Section 13 of that act reads —

(1) This Act binds the Crown—

(a) in right of the State of Victoria; and

(b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

It is as simple as that. In the Western Australian bill before us, the first two subclauses are very similar —

(1) This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Which is the same; and —

(2) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

(3) Subsection (1) is subject to Part 17.

The amendment I propose is to delete the last subclause, subclause (3). Part 17 provides explanations about how binding the Crown is limited and constrained. It is important to recognise that, if this amendment should succeed, it will not mean that any individual who is a public officer can be prosecuted; it will mean that the authority they work for is open to prosecution, so the protections for civil servants will remain—this amendment will not touch them—but it will bind the Crown.

I note that the Public Health Advocacy Institute of Western Australia has stated that another act in which binding the Crown is an important feature—I know the minister will be well aware of this—is the Wildlife Conservation Act 1950, which might have been important in forest management and in protecting threatened species had it bound the Crown in the case of Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director of the Department of Conservation and Land Management (1997) 94 LGERA 380. Instead, it meant that since CALM,

an agent of the state, carried out logging operations, relief could not be obtained against it, even if logging operations could be said to amount to an unlawful taking of threatened fauna contrary to the act. In my contribution to the second reading debate I mentioned two other acts that should have had the Crown bound and under which the Crown should have been prosecuted. In one case, the Department of Agriculture and Food Western Australia has agricultural animals and should be bound to animal welfare provisions regarding the treatment of those agricultural animals, but it is able to presumably do whatever it likes without being prosecuted under the Animal Welfare Act.

It is a principle that is accepted in other legislation, and the Greens are arguing that that principle in particular should be applied here, and we are not the first to argue that. I am saying that strong action is needed because we clearly have an unacceptable situation of some children in this country not having their very basic needs met. The Public Health Advocacy Institute of WA expanded on this point in its issues paper on this bill; I believe Hon Sue Ellery may have flagged this earlier, but it specifically said that services such as sewerage, refuse collection and water supply in Indigenous communities simply do not work effectively in many instances. A report authored by the Western Australian health department in 2008 found that 80 per cent of Aboriginal communities in WA rely on bores for water supply, while 70 per cent of residents do not have their rubbish collected by a local shire. Almost 90 per cent rely on a community effluent system for the disposal of sewage, with many facilities unfenced and overflowing. The lack of operating infrastructure, which causes many poor health outcomes, is often related to the Health Act not binding the Crown. This is an opportunity for us to demonstrate our commitment to ensuring that the building blocks are in place for improving health outcomes for Aboriginal people living in remote communities.

Hon SUE ELLERY: I rise to indicate that we will be supporting this amendment. Hon Lynn MacLaren is seeking to delete words found under clause 5, "Crown bound". This clause contains three subclauses. Subclause (1) states —

> This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Subclause (2) states —

> Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

I want to ask a question about that. Subclause (3) states —

> Subsection (1) is subject to Part 17.

Part 17 of the bill sets out all the exemptions that apply to the Crown. We are happy to support the deletion of subclause (3) because that removes all the exemptions. I ask Hon Lynn MacLaren why there is no amendment—not that I have seen—to delete subclause (2)? Subclause (2) states —

> Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

Why would we not want to get rid of that as well? Is there a reason?

Hon DONNA FARAGHER: The government will not be supporting this amendment. I understand that it was always intended that the bill would provide an exemption mechanism. I appreciate that Hon Sue Ellery has referred to prosecution in subclause (2). But in respect of the specific amendment moved by Hon Lynn MacLaren, it was always intended that the bill would provide an exemption mechanism of some type. This was outlined in some detail in the 2015 discussion paper. It said that the exemption mechanism provided by the bill would ensure that exemptions are seen as only temporary measures that will keep the Crown accountable for taking action to achieve compliance in the long term. As I indicated in my second reading reply, equivalent public health legislation in other states and territories, including the Northern Territory, Queensland, South Australia and Victoria, includes exemption mechanisms. As I indicated in my response, the Crown is bound in clause 5. The onus is on the Crown—for example, Crown agencies—to provide to the minister a specific reason for an exemption. I appreciate that we will get to that part later in the bill but it is helpful to talk about it now. A series of criteria or processes need to be met that are all publicly available. I understand that should an agency seek an exemption, the exemption and its conditions have to be published in the agency's annual report. This is not a process that lacks transparency. If an agency is granted an exemption, it is required that the information surrounding it is publicly available, and I think that is an important point to make.

Division

Amendment put and a division taken, the Chair (Hon Adele Farina) casting her vote with the ayes, with the following result —

Ayes (9)

Hon Robin Chapple	Hon Adele Farina	Hon Sally Talbot
Hon Alanna Clohesy	Hon Lynn MacLaren	Hon Ken Travers
Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Samantha Rowe *(Teller)*

Noes (15)

Hon Ken Baston	Hon Donna Faragher	Hon Alyssa Hayden	Hon Michael Mischin
Hon Liz Behjat	Hon Nick Goiran	Hon Col Holt	Hon Simon O'Brien
Hon Jim Chown	Hon Dave Grills	Hon Peter Katsambanis	Hon Phil Edman *(Teller)*
Hon Peter Collier	Hon Nigel Hallett	Hon Mark Lewis	

Pairs

Hon Martin Pritchard	Hon Helen Morton
Hon Kate Doust	Hon Brian Ellis
Hon Stephen Dawson	Hon Robyn McSweeney
Hon Darren West	Hon Jacqui Boydell

Amendment thus negatived.

Committee interrupted, pursuant to standing orders.

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Sitting suspended from 4.17 to 4.30 pm