

HOSPITALS AND HEALTH SERVICES AMENDMENT BILL 2002

Introduction and First Reading

Bill introduced, on motion by Mr Kucera (Minister for Health), and read a first time.

Second Reading

MR KUCERA (Yokine - Minister for Health) [12.08 pm]: I move -

That the Bill be now read a second time.

The Bill is intended to address an uncertainty in the Hospitals and Health Services Act 1927 which has recently become apparent and which affects the operations of PathCentre. In reviewing the Bill, it is necessary to understand the background to the agency provisions in the Hospitals and Health Services Act. The Hospitals and Health Services Act was amended by the Hospitals Amendment Act 1994. That amending Act provided for the establishment of agencies for the purpose of carrying out a duty or function conferred on the Minister for Health by, or under, the Hospitals and Health Services Act.

The second reading speech for the Hospitals Amendment Act 1994 - delivered in the Assembly by the now Leader of the Opposition on 30 November 1994 - noted that a key impetus for the agency provisions was to support the amalgamation of three publicly funded pathology services, namely -

- the State Health Laboratory Service, which previously formed part of the Department of Health;
- the pathology service attached to Sir Charles Gairdner Hospital and administered at that time by the board of that hospital; and
- the pathology service operated by the University of Western Australia.

Although the agency provisions of the Hospitals Amendment Act 1994 were written in terms that would enable agencies to be created for a range of purposes, it is notable that the only agency that has been established is PathCentre.

The Hospitals Amendment Act 1994 also amended section 7A of the Hospitals and Health Services Act, which confers certain general powers on the Minister for Health. It is relevant in the present context that this amendment inserted a new power for the minister to provide diagnostic and related services and any other prescribed services to meet the requirements of the department, public hospitals and other bodies and persons. This power is found at section 7A(1)(ba) of the Hospitals and Health Services Act. Its broad scope can perhaps be taken as an indication that the intention at the time was to reflect and possibly allow for an expansion of the service provision role of PathCentre's predecessor organisations. PathCentre was formally established by the Agencies (PathCentre) Notice 1995, which was published in the *Government Gazette* on 3 March 1995. The notice defines the objectives and powers of PathCentre in broad terms.

I turn now to the specific rationale for the Hospitals and Health Services Amendment Bill 2002. I mentioned previously that the Hospitals Amendment Act 1994 provided for the establishment of agencies -

... for the purposes of carrying out any duty or function conferred on the Minister by or under this Act.

This statement of purpose is found in section 7B(1) of the Hospitals and Health Services Act. Advice provided by the Crown Solicitor's Office has noted a distinction in the meanings of the terms "duty", "power" and "function" as those terms are used in the Hospitals and Health Services Act. As a consequence, while the Minister for Health has a broadly defined power to provide diagnostic and related services pursuant to section 7A of the Hospitals and Health Services Act, the Crown Solicitor's Office has advised that an agency may only discharge duties and functions that the minister has under the Act. The Hospitals and Health Services Act does not include an expressly defined statement of the minister's functions but it does describe his duties in section 5A(1).

Insofar as PathCentre is concerned, this statement of duties operates to limit PathCentre's service role to the provision of hospital and health services. This being the case, the effect is to call into question elements of PathCentre's current service provision, most notably its involvement in forensic work. It is essential that the law clearly reflect the range of PathCentre's service provision, particularly its provision of forensic support to the Western Australia Police Service. PathCentre is recognised as a centre of expertise in forensic biology and forensic pathology. The Criminal Investigation (Identifying People) Act 2002 will expand the reliance of the police on DNA testing for crime investigation purposes. PathCentre will have a key role in supporting the police in this important and evolving area of police work, both in the preparation of DNA profiles and the management of DNA databases.

This Bill addresses the legal uncertainty that, in the view of the Crown Solicitor's Office, currently exists in the Hospital and Health Services Act 1927. The Bill will rectify what may, in fact, have been an oversight in the preparation of the Hospitals Amendment Act 1994. It will do this broadly by amending section 7B(1) of the Hospitals and Health Services Act to enable an agency to be established for the purposes of carrying out a duty, power or function conferred on the minister by that Act. It will also do this by amending section 7A(1) of the Hospitals and Health Services Act to more accurately describe and limit the scope of the minister's power to provide pathology services while expressly acknowledging PathCentre's forensic biology and forensic pathology service provision role. Clause 8 of the Bill is a validating provision intended to ensure that these amendments are to be taken as having effect from the time the agency provisions were included in the Hospitals and Health Services Act. The Bill also makes minor changes to two other sections of the Hospitals and Health Services Act consequential upon the distinction made between powers, functions and duties in the Act.

In summary, the Bill may appropriately be characterised as a minor but nonetheless important measure to validate PathCentre's service provision role, particularly its role as the State's principal provider of forensic support to the WA Police Service.

I commend the Bill to the House.

Debate adjourned, on motion by Mr Bradshaw.