

HOSPITALS AND HEALTH SERVICES AMENDMENT BILL 2002

Declaration as Urgent

MR KUCERA (Yokine - Minister for Health) [7.54 pm]: I move -

That the Bill be considered an urgent Bill.

As the second reading speech indicated, this Bill is intended to address an uncertainty in the Hospitals and Health Services Act 1927, which has implications for the operations of PathCentre. I remind the House that the Government has received advice from the Crown Solicitor's Office, the effect of which is to raise uncertainty regarding the valid scope of PathCentre's service delivery and in particular its involvement in forensic work. The advice concerns the interpretation of the terms "function", "duty" and "power" as they are used in the Hospitals and Health Services Act. Essentially, the Crown Solicitor's advice is that notwithstanding that the definition of the term "function" in the Interpretation Act 1984 embraces "powers" and "duties", that definition may not apply in the case of the Hospitals and Health Services Act. The lack of consistency in the use of these terms in various provisions of the Act may call into question whether Parliament intended the terms to have distinct meanings in the context in which they were used.

PathCentre was established as an agency under the Hospitals and Health Services Act. Agencies are limited in what they can do to the performance of duties and functions conferred on the minister by or under the Act. If there existed no doubt that the definition of "functions" in the Interpretation Act applied to the Hospitals and Health Services Act, PathCentre as an agency would unequivocally be able to exercise the minister's powers. It is of relevance that one such power in section 7A is to provide diagnostic and related services. However, the effect of the advice from the Crown Solicitor's Office is to place a more limited interpretation on what an agency can properly do. The Government's view is that this uncertainty needs to be resolved as a matter of urgency.

PathCentre is the principal provider of forensic support to the Western Australia Police Service. It is a recognised centre of forensic science expertise. Uncertainty regarding the performance of this role by PathCentre has potential implications for crime investigations and the operation of the criminal justice system in this State. I remind members that this relates directly to the passage of the DNA legislation, which has recently gone through both Houses. It is in everyone's interests that this uncertainty be addressed as a matter of urgency.

It has been suggested to me that the Bill would have implications for hospital boards. In a briefing on the Bill the member for Murdoch quite rightly noted that clauses 4 and 7 of the Bill amend sections of the Hospitals and Health Services Act that relate to hospital boards. The Crown Solicitor's advice on the effect of these clauses has been provided to the member for Murdoch. I take this opportunity to make it clear that the Department of Health did not seek the amendments included in clauses 4 and 7 during the preparation of this Bill by parliamentary counsel, so there is no suggestion that it has anything to do with hospital boards. The amendments merely deal with the issue of PathCentre. The clauses were quite properly and appropriately included at the suggestion of parliamentary counsel to ensure consistency in the interpretation of sections of the Hospitals and Health Services Act where the terms "function", "duty" and "power" appear in whatever combination. Indeed, one could say that had this been done when this legislation was originally passed in 1994, this uncertainty would not have arisen. That did not happen, so we need to move on with this Bill.

I note that the Crown Solicitor's advice provided to the member for Murdoch characterised the amendments made by clauses 4, 5, 6 and 7 as ensuring -

... a desirable consistency in the affected provisions, and hence a degree of certainty as to their proper interpretation.

I hope that this brief statement satisfies the member for Murdoch on the background and intent of clauses 4 and 7. This issue was appropriately raised by both the member for Murdoch and the Leader of the National Party in relation to some current issues concerning hospital boards. There was no intention for those clauses to do anything other than provide consistency. I hope that the Opposition will support the motion to progress this Bill as an urgent Bill.

MR BOARD (Murdoch) [7.59 pm]: The Opposition does not object to the Government proceeding with this Bill by declaring it as urgent, as it understands the nature of the amendments. Although there will be discussions about the amendments, particularly with regard to hospital boards, I accept the advice from the minister and the Crown Solicitor. This is the first piece of health legislation we have seen in the Parliament for some time. It gives the Opposition the opportunity to state its objections to the changes in rural health care. The Opposition understands the urgency of the Bill. The Opposition does not want the Parliament to be prorogued with the operations of PathCentre, particularly in forensic investigation and medicine, in question. It would not be good governance for the Opposition to object to the Bill proceeding as an urgent Bill. The Opposition supports the motion of the minister.

Mr Kucera; Mr Mike Board; Mr Terry Waldron; Mr Kucera; Mr Brendon Grylls; Mr John Bradshaw; Mr Kucera

Question put and passed.

Second Reading

Resumed from 19 June.

MR BOARD (Murdoch) [8.01 pm]: The House is dealing with an amending Bill, which deals primarily with the Hospitals and Health Services Act 1927. As mentioned by the minister in the second reading speech and the urgency motion, the Bill tidies up difficulties in phrasing and understanding the powers, duties and responsibilities of agencies created by the Hospitals Amendment Act 1994, as introduced by the previous Government. That amending Act gave the opportunity for the Department of Health to create agencies. To date, the only agency created is PathCentre. The Hospitals and Health Services Amendment Bill relates to the operations of PathCentre and interpretation of the term “duties, powers and function”. The Bill aims to clarify the terminology to ensure that PathCentre operates within determined functions and has the protection of legislation. This is particularly important in the light of other Bills that have come before Parliament.

The Parliament has debated DNA legislation. PathCentre will be used to conduct examination of DNA for forensic investigations. PathCentre will be required to provide support to the Police Service, the Director of Public Prosecutions and other agencies involved in criminal investigations. The Opposition does not want to impede the operations of PathCentre in any way or to bring into question the legality of its operations or the importance of its work. PathCentre was created through legislation of the previous Government and the Opposition recognises the importance of its operations in connection with the DNA legislation.

During the debate, the Opposition will explore with the minister the operations of PathCentre and the way in which the Bill will improve the agency - not only in a legal sense - and give it some certainty. The Opposition is interested in the effect the DNA legislation will have on the operation of PathCentre. The minister mentioned that the Bill will upgrade the terminology in the Hospitals and Health Services Act.

The debate will give the House the opportunity to discuss the changes to hospital boards. The minister is to assume the function of hospital boards. The Opposition wants to explore how the minister will deal with conflicting roles. The Hospitals and Health Services Act provides that it is not the role of the minister to determine health outcomes for either individual patients or the community. The debate will give the opportunity to explore any possible conflict of interest between the minister acting as a board and as the Minister for Health in delivering health services. It will also help the House to determine whether the Act intended to separate those functions. The Opposition does not object to the amending Bill as it supports the operations of PathCentre. It is important to clarify its role. The minister has given us the opportunity to explore the operations of hospital boards, and country boards in particular, as well as the conflicting roles of the minister in developing and assuming the roles of the boards. In overall terms, the Opposition supports the amendments, notwithstanding the issues that need to be resolved during consideration in detail.

MR WALDRON (Wagin) [8.07 pm]: The National Party supports the Bill although it has problems with the amendment to section 18 of the Act. The stated purpose of the Bill is to address the uncertainty in the operation of the Hospitals and Health Services Act in relation to PathCentre, which was created in 1994, and which is the principal provider of forensic services to the Western Australia Police Service. The role of PathCentre is broadening and increasing with the use of DNA technology. It is the intention of the National Party to support the Bill to correct any uncertainty about the functions and powers of PathCentre. It supports the retrospective provisions that validate findings and evidence obtained from PathCentre from 1994.

This is the first health Bill introduced by the minister. The Bill also amends the more general sections affecting the powers and functions of the hospital and health services boards. This is happening at the same time that the minister is abolishing country hospital boards, as we know them. The minister should be prepared to remove the amendments contained in clauses 4 and 7 of the Bill, which affect country hospital boards. The minister stated that the intent of the Bill was to clarify the powers, duties and functions of PathCentre at a time when its role is becoming more crucial in providing forensic and DNA services. He said that the Bill is unconnected to his intention to abolish hospital boards. If it is the parliamentary draftsman, and not the minister, who wants to change sections of the Act affecting hospital boards for the purpose of making the terminology “duties, powers and functions” consistent, the National Party believes the minister should have no problem removing references to section 18 in order to progress the Bill. If the minister wants to abolish the boards, he should bring in an amendment Bill that deletes reference to boards in the Act, so that the Parliament can properly debate that. Instead, the minister has introduced a Bill that plays with the wording about the powers of the boards in the very same week that those boards will cease to exist. Many of the hardworking volunteers who have done so much for their communities have strong feelings about that. Although it is unintended, there is a risk in using those words in the Bill. The National Party will support the Bill, but we feel strongly that, in return, the minister should repeal the amendment to section 18.

Mr Kucera; Mr Mike Board; Mr Terry Waldron; Mr Kucera; Mr Brendon Grylls; Mr John Bradshaw; Mr Kucera

MR KUCERA (Yokine - Minister for Health) [8.10 pm]: I am not necessarily disagreeing with the view of either of the opposition speakers, but the purpose of this legislation is to bring certainty to the operations of PathCentre. Clauses 4 and 7 were inserted in the Bill as a matter of course on the advice of crown counsel. The issue of the boards was as much of a surprise to me as was having to frame this legislation in the first instance, because our initial understanding was that legislation was not required to push through the PathCentre matter. However, I take the point that the members for Wagin and Murdoch have made about that.

There was no intention for this to be any kind of subterfuge for making changes to the boards. This issue of consistency has arisen as a result of the advice of crown counsel following the issues that were quite rightly raised by the member for Murdoch and the Leader of the National Party in the other forum. The advice we have received from the Crown Solicitor's Office is clear on the matter. It states -

1. There is no internal conflict in section 18(2) of the *Hospitals and Health Services Act 1927* as it is clear from the statutory context, and particularly from the use of the term "hospital board" rather than "board" (the word defined, subject to the context, in section 2(1) and used in section 7(2)), -

It relates to other subsections -

that sections 18(2) and 18(3) are concerned only with appointed boards, ie. boards constituted under section 15(1). In other words, sections 18(2) and 18(3) apply to appointed boards but not to Ministerial boards.

By virtue of the fact that we will be abolishing the boards, there is no change in essence. It continues -

2. By reason of section 7(2), both in its current form and in its form as proposed, there is no legal difference between the functions, duties and powers that may be exercised by the Minister in his corporate capacity and the functions, duties and powers which may be exercised by an appointed board.

Essentially, the advice is that these amendments do not affect the issue of the boards one way or another. It is simply removing uncertainty regarding agencies. The only agency that we have established under this legislation is PathCentre. I am reluctant to accede to the excision of the two clauses, because, in essence, that could mean that the uncertainty regarding the boards would remain.

On the basis of the advice that I have received from the Crown Solicitor's Office, I do not see any need to have these two clauses withdrawn. Indeed, the advice I am being given is that there is no need for it. However, it is absolutely vital that this legislation be passed to make sure that PathCentre can provide the forensic service that is required in this State. This is a crime-fighting tool that we desperately need to hand to our Police Service. We must make sure that there is no uncertainty in the matter. Obviously, if we go into the consideration in detail stage, I will be prepared to talk through these issues with both the National and Liberal Parties to make sure that this legislation passes through the House as quickly as possible. However, I do not see the need for the removal of these two clauses.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title -

Mr BOARD: I indicate to the minister that we support the short title of the Bill. The Hospitals and Health Services Act is a major Act. It outlines the operations of public hospitals and health services throughout Western Australia. It also deals with private hospital situations and the interaction between the two systems. Therefore, it is a major Act of Parliament. Given the Health Administrative Review Committee report and the situation the minister has outlined regarding a number of changes and review boards, we anticipate that this Act will come before the Parliament before the end of this year. If not, would the minister indicate when that might occur? Obviously, the minister has chosen to introduce this Bill, which is not part of an overall amendment to the Act or a new Act, because of the urgency of the situation. It would be appropriate during this general debate on the short title for the minister to explain how that urgency has arisen. Apart from the advice from the Crown Solicitor's Office, have any incidents or situations arisen that the minister feels may have jeopardised PathCentre operations? Are we looking at some real situations in that regard? We assume that the minister has introduced this as an urgent Bill, without considering any other amendments that may have been made to the Act, solely because these amendments have some priority. Will the minister tell us when we might have an opportunity to explore further amendments to the Hospitals and Health Services Act?

Mr Kucera; Mr Mike Board; Mr Terry Waldron; Mr Kucera; Mr Brendon Grylls; Mr John Bradshaw; Mr Kucera

Mr KUCERA: The member for Murdoch is correct that the passage of the DNA legislation prompted this amendment to the Act. There is a school of thought that this Bill might not be needed; however, an uncertainty was raised in advice from the Crown Solicitor's Office, which uncertainty was not discovered until the DNA legislation was virtually passing through the House. That uncertainty was discovered by the staff of the Department of Health when they examined the DNA legislation for consistency with the operation of the Act.

In answer to the first part of the question, no incidents prompted this legislation. I will deal with retrospectivity in another clause, which is designed to remove uncertainty in any forensic testing that has been done under the Act since 1994. It was not my intention to bring this Bill before the House at this stage until amendments to the Act had been framed relating to boards generally, as mentioned by the member. Obviously, it is cumbersome to bring the boards onto my shoulders as minister and delegate the responsibility for them to the Director General of Health, as occurred with the former Metropolitan Health Service Board. However, in undertaking to introduce this Bill, I had discussions with staff about bringing back a full set of amendments to the Hospitals and Health Services Act relating to country boards. I expect to have draft legislation available in the next session of Parliament, which I hope to bring before the House fairly quickly, again, because an uncertainty must be dealt with. This Bill, however, deals simply with PathCentre and will remove the current uncertainty. I emphasise that it is only an uncertainty; it has not yet in any way been proved or tested. However, the amendment to the legislation is necessary to remove that uncertainty.

Mr BOARD: I do not want to hold up the Bill by debating the short title. It appears from the minister's statement that there may or may not have been a need for an amendment to the Act, yet the matter was raised by the Crown Solicitor. That appears to fly in the face of the minister's reason for dealing with this matter urgently. The fact that the amendment to the legislation may or may not be required gives an impression that a perception or a point of view has arisen, yet in the last couple of days of this session of the Parliament we are dealing with this as an urgent Bill. That is why the Opposition raised the fact that it could have been dealt with by more major amendments to the Hospitals and Health Services Act, which we anticipated would have been before the Parliament by now. However, we are dealing with this Bill only to give effect to the operations of PathCentre; hence the reason for the terminology throughout the Bill. The point I make is that it cannot be a question of only perception by the Crown Solicitor if it is an urgent matter; it must be a matter of considerable doubt. He must believe that the State is vulnerable to some extent, which is why the Opposition supports this as an urgent Bill. I hope the minister agrees that some considerable doubt has been placed on this matter and that is why we are dealing with it tonight.

Mr KUCERA: Of course there is doubt, otherwise we would not be in this place debating this Bill. The difficulty is that in 1994 nobody envisaged that PathCentre would deal with the technology with which it is now dealing. There is therefore an uncertainty and a doubt about the operations of PathCentre. That doubt must be clarified and the uncertainty removed. As I said, this kind of technology was not around, and was not even envisaged, in 1994. This amendment will bring the operations of PathCentre into the twenty-first century.

In answer to the question of uncertainty about the boards, there is absolutely no need to amend any part of the current Act relating to boards, because I as minister can simply take on my shoulders the role of the board. Because the legislation is predicated on boards conducting the business of the minister, and therefore the business of the Government, the Act is designed to accommodate that situation. There will always be situations in which boards either fall over or are not there, or the minister may abolish a board for some other reason than the current restructure of the health system. The only real need for a full amendment to the Act will be the decision to abolish boards; that amendment will come later on down the track. At this stage, as I said, enough of an uncertainty has been created about PathCentre for the Government to ask for this legislation to be placed before the House.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 7 amended -

Mr BOARD: This clause, which gets to the meat of the Bill, amends section 7 of the Hospitals and Health Services Act. Section 2 of the Act states -

Whilst the Minister is so controlling any hospital he shall be deemed to be the board thereof and to be incorporated under the name of such board, and shall have all the powers and duties of a board, and all property which would vest in a board of such hospital shall vest in the Minister.

The purpose of this clause is to substitute the words "duties, powers and functions" for the words "powers and duties". That sounds technical and might need clarification for the record. Why is it important that the word "functions" be added to the term "duties and powers"? Although that is self-explanatory, there might be more to

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it than the terminology first indicates. Will the minister explain what adding the word “functions” will do to the Act and how it will widen the operations and support the legality of what PathCentre does?

Mr KUCERA: The advice concerns the interpretation of the words “duties, powers and functions”, as those words are used in the Hospitals and Health Services Act. As I said in my second reading speech, the advice of the Crown Solicitor’s Office is that, notwithstanding the fact that the definition of “function” in the Interpretation Act 1984 embraces “powers and duties”, the definition might not apply to the Hospital and Health Services Act because it is only implicit. We presume from the Interpretation Act that the Hospitals and Health Services Act includes the minister’s being able to state a function. All the amendment does is make it explicit. The member will see that we have included the terminology in clause 5, which states -

- (bb) to provide forensic biology services and forensic pathology services, including obtaining DNA profiles for forensic or other purposes;
- (bc) to conduct training and instruction in, and research into, the services referred to in paragraphs (ba) and (bb);

A minister might say that a particular function can be carried out. However, the Act is implicit in that it does not use the term “forensic” or the like. We are simply seeking to put that term into the Act and being more explicit about the term “functions”. This amendment will insert the word “functions”, which will allow us to describe a function, and in clause 5 and the proposed new paragraphs I described previously, that function is described. A function was not described previously, but we are now seeking to put a description into the Bill to clear up that uncertainty. The Act has never stated that we can carry out forensic services. Under this amendment we will now be able to carry out a function as well as a power and a duty, and that function is clearly stated as being forensic services. Technology will move on down the track and because the term “function” is already in the wording of the legislation, we can include those new technologies. In other words, this uncertainty will not be created in the future.

Mr BOARD: I thank the minister for that explanation. It is difficult for the Opposition, the National Party and probably for all members and anybody who does not have legal training, to understand that, although the minister is talking about PathCentre and the DNA legislation, this part of the Bill relates only to the minister acting in place of a board. Section 7(2) of the Act deals with the minister acting in place of a board. The minister is now being provided with the functions of that board in addition to the powers and duties. How does that relate to PathCentre and the DNA legislation when we are dealing with the minister acting in place of a board? I do not argue with the advice of the minister or the Crown Solicitor. However, why are we adding functions to the section dealing with the minister’s power to act in place of a board when, according to the minister’s second reading speech and explanations, he wants to solely provide additional support for the operations of PathCentre? Why do we choose to deal with that particular part of the Act?

The timing of the introduction of the Bill leads one to question its intent. I would not, in any way, question the advice that I have been given, which was first class and accurate. However, the timing of the introduction of the Bill makes it appear as though the minister is trying to adjust the Act to ensure that the operations of the minister acting in place of a board are covered. There is no mention of agencies in this part of the Act. They were probably not created when it was put in place. However, this part of the Act deals only with the minister acting in relation to a board. Can the minister explain how that relates directly to PathCentre and how we can connect the two in terms of what he is trying to achieve?

Mr KUCERA: The Crown Solicitor’s advice on that matter is quite explicit. There is no difference, as the Crown Solicitor said in the second paragraph of his advice, which states, in part -

By reason of section 7(2), both in its current form and its form as proposed, there is no legal difference between the functions, duties and powers that may be exercised by the Minister in his corporate capacity and the functions, duties and powers which may be exercised by an appointed board.

It makes no difference; it is as simple as that. The third paragraph of the Crown Solicitor’s advice states, in part, that -

The proposed amendments to section 7(2), which would vest in a Ministerial board the functions of an appointed board, in addition to such a boards’ powers and duties, merely make explicit what is implicit in any event.

These two clauses were included on the advice of the Crown Solicitor to achieve consistency throughout the Act; it is nothing more or nothing less. It does not change in any way the legal status of the minister or the boards; whether the boards stay or are abolished and whether the minister delegates his authority or retains it, nothing changes. We did not seek to have these additional clauses. The Crown Solicitor advised that these clauses be included in the legislation to ensure that, whenever any change is made to legislation, it is consistent throughout.

Mr Kucera; Mr Mike Board; Mr Terry Waldron; Mr Kucera; Mr Brendon Grylls; Mr John Bradshaw; Mr Kucera

Referring to one of the member's earlier comments, it would have been easier to do this at the same time as we deal with the issues in relation to boards later this year or early next year. If we must change the Act in order to abolish boards, it would have been far easier to deal with this matter then. However, if we waited as long as that, it may interfere with the operations of the DNA legislation and PathCentre. I reiterate that those two clauses are there for consistency.

Mr BOARD: I accept that and I have a copy of the Crown Solicitor's advice for which I thank the minister. His explanation is clear about adding the term "functions" to the powers and duties of the board. However, it does not answer my question: what relationship does that have to PathCentre in this clause?

Mr Kucera: Absolutely none. It is simply put in there for consistency.

Mr BOARD: This clause deals only with the boards. Proposed new section 7A specifically widens the terminology for diagnostic and related services and then expands into pathology, forensic biology and so forth. Proposed new section 7 deals only with the boards and proposed new section 7A brings in the general power of the minister acting in regard to what the agency provides. Is that correct?

Mr KUCERA: This section in the original Act deals with powers and duties. The amendment introduces the term "functions". The Crown Solicitor has quite rightly said that the amendment should apply consistently throughout the Act wherever it specifically deals with PathCentre and with powers, duties, functions and the like. The fact that it has fallen into two clauses that deal with boards is merely coincidental. It is a little bit like having hamburgers, member for Murdoch. It is one of those things, as the member said, that relates to timing. I would have preferred not to have dealt with this legislation because it affects legislation that relates to the portfolio of the Minister for Police. However, I must take the advice of the Crown Solicitor's Office on consistency and that is why this amendment is here. We could read whatever we liked into the timing of it, but the reality is that wherever those two terms appear in the legislation and the word "functions" does not appear, the Crown Solicitor has quite rightly written that in for consistency.

Clause put and passed.

Clause 5: Section 7A amended -

Mr BOARD: This clause goes to the heart of what the minister is trying to achieve in the operations of PathCentre. Section 7A(1)(ba) of the Hospitals and Health Services Act states -

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;

Paragraph (ba) is proposed to be expanded to paragraphs (ba), (bb) and (bc); namely, to provide pathology services and related medical scientific services; to provide forensic biology services and forensic pathology services, including obtaining DNA profiles for forensic or other purposes; and to conduct training and instruction in, and research into, the services referred to in paragraphs (ba) and (bb). This amendment clearly outlines and leaves no doubt about the expanded operations and functions of PathCentre. We support the expansion of that paragraph.

I ask the minister to explain how PathCentre is operating and whether the DNA legislation has met with the requirements of PathCentre in its investigative role, and how that relates to the operations of the police and other investigative bodies, because while that is not covered in this amendment, this amendment gives us the opportunity to talk about the operations of PathCentre.

Mr KUCERA: The member is right. That was a fairly succinct description of the difficulties that we have encountered since this matter has been brought to my attention. Section 7A(1) of the Act states that the minister shall have general power. It then talks about the powers of agencies. Paragraph (ba) talks about providing diagnostic and related services. We could say that PathCentre is already providing related services. However, it is not clear. The second difficulty is found in section 7B, which talks simply about any duty or function conferred on the minister by or under this Act, rather than about the power of a minister. The member is right in saying that this amendment goes to the heart of what we are trying to achieve. Proposed section 7A(1)(ba) clearly outlines the functions of the agency to remove any uncertainty. It in no way interferes with the functions that are currently being carried out by PathCentre. Clause 8, validation, will also remove any uncertainty that may have existed about the diagnostic and related services of the agency. There is also some confusion about the fact that one section refers to duties and functions and another section refers to power. This amendment will clear up that anomaly.

Mr BOARD: I thank the minister for that explanation. I expected that reply. I think the minister agrees that this amendment will support what the minister is trying to achieve. I asked the minister also whether he could comment on the operations of PathCentre.

Mr Kucera; Mr Mike Board; Mr Terry Waldron; Mr Kucera; Mr Brendon Grylls; Mr John Bradshaw; Mr Kucera

Mr KUCERA: The reason for this clarification is so that PathCentre can move on. My understanding is that the police are very comfortable with the DNA legislation and believe it fits in with the role of PathCentre. The DNA legislation is not before the House tonight. However, my understanding also is that if we cannot get this legislation to link in with the DNA legislation by removing the uncertainty, it will make it difficult for the police to establish the DNA database in this State. We do not want that database to be moved elsewhere. However, there is a requirement for that database to be run by a government body other than the police. Our advice is that we can probably proceed without this legislation, but I do not think we should move into a new era of technology and forensic sampling if we have any uncertainty. This is enabling legislation to allow that to proceed by removing that uncertainty.

Clause put and passed.

Clause 6: Section 7B amended -

Mr BOARD: Section 7B of the Hospitals and Health Services Act relates to the establishment of agencies and is part of the amendments that were brought into this House in 1994 for the establishment of agencies. At this stage PathCentre is the only agency that has been created by the Health Department. In time other agencies will probably be created, particularly with the advent of technology and the way in which the delivery of health services in this State is being reconstituted and reorganised. However, we are dealing only with PathCentre at this stage. The amendment to section 7B adjusts the terminology in subsection (1) by deleting the words “carrying out any duty” and inserting the words “the performance or exercise of any duty, power”.

I do not have the legal training, but I note that the Bill does not use the word “function”; it refers only to duties or powers. The word “power” will be inserted in that section of the Act.

Mr Kucera: The term “function” will remain in the Act, so the section will read “duty, power and function”. We are simply adding that word. Again, it is an issue of consistency. Mr BOARD: Why did the word “function” appear in this subsection and not in other sections originally?

Mr Kucera: That is a very good question. If that had been thought about in 1994, we would not be here today arguing.

Mr BOARD: Yes. I can understand why it seems to be an anomaly, and why it is being cleared up. The word “power” will be added to the terminology in section 7B. That is consistent with what the minister is trying to achieve with the Bill.

Mr KUCERA: In the Interpretation Act, the definition of the word “power” includes duty or function. The member is well aware that this Act has been amended on a number of occasions over the years. In the Interpretation Act, the definition of “function” includes powers, duties, responsibilities, authorities and jurisdictions. That was implicit. The terms “duty” and “function” are being used in this Bill, and we would naturally presume that the word “power” was included if we referred to the Interpretation Act. If the Interpretation Act is read in conjunction with the original Act, we could say that that is implicit. Because of the very nature of DNA testing, and because there can be no uncertainty, the Crown Solicitor’s Office has quite rightly said that we must remove anything implicit and replace it with explicit wording. When dealing with something as specific as DNA testing, it is far more appropriate that the meaning be clearly stated in the legislation rather than its being implicit. This avoids the need to refer to the Interpretation Act.

Mr BOARD: Because of the nature of DNA legislation and what PathCentre will do, particularly with criminal investigations and the evidence thereof, the terminology likely to be tested in the courts will be that in section 7B. I can understand why the Crown Solicitor wants to seal this tighter than a drum to make sure that when DNA work done by PathCentre is used in criminal investigations and court proceedings, nothing is left open to interpretation by the court that could spoil or interrupt a prosecution as a result of sloppy drafting or difficulties in the perception of the intention of the Act. The Opposition supports that aim, which is why it has agreed to deal with the Bill as an urgent matter. I add that by way of support for this clause.

Mr KUCERA: In this case, and in fairness to those who drafted the legislation - the shadow Attorney General introduced the 1994 Act - it needs to be recognised that nobody envisaged that this kind of technology would be around in 2002. However, the member’s point is well made and well taken. Again, that is the heart of the amendment to the Act.

Clause put and passed.

Clause 7: Section 18 amended -

Mr WALDRON: I have been listening to the debate on the last few clauses and to what the minister has said. We oppose this amendment to the Act, because it does not seem necessary. Such a change could lead to unforeseen consequences. This is an urgent Bill, and, although we have not had the time that we would have

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liked to spend on it, we do not want to delay the passage of the Bill. The minister stated that the intent of the Bill is to simply and solely clarify the powers, duties and functions of PathCentre. We have no problem with that; that is fine. If there is any doubt, we see no reason to insert these words that could have an effect in other areas, particularly in light of the present status of hospital boards. The minister has said that the changes are for consistency throughout the Act. We are concerned that the insertion of the words “or exercise such other duties, powers” could lead to unforeseen consequences, especially with the abolition of country health services. We oppose this clause as it is not needed to progress the Bill. We support the Bill, but I ask that this amendment to the Act be withdrawn because it is not necessary at this stage.

Mr KUCERA: I refer the member for Wagin to section 18(1)(b) of the original Act. This is simply for consistency. As the advice from the Crown Solicitor’s Office clearly states, it does not change in any way the nature of the boards, the power of the boards or the minister. In fact, in some ways it may even increase the power of the boards, simply by being explicit in terms of their functions and powers. Section 18(1)(b) of the original Act states -

may perform such other duties and functions for the purposes of this Act as may be prescribed.

The Interpretation Act states -

“function” includes powers, duties, responsibilities, authorities, and jurisdictions.

In other words, this does not change the nature of the original Act in any way, other than to clearly define what is meant by the term “function”. The definition in the Interpretation Act includes powers. This change is for consistency. As I said, the Crown Solicitor’s Office has said that we need to amend the specific section that deals with agencies; that is, PathCentre. However, in doing that, we have to change the terminology. The Crown Solicitor has then gone through the entire Act and said that wherever the terms duties, functions or powers appear, those three words will appear together. That is the only reason for it. It does not change the nature of the Act in any way. The argument that the member and I will have later will be when we seek to remove from the Act any reference to boards. As it stands now, the nature of the provision of health services in this State is predicated on the basis that boards provide those services. However, the powers already exist in this Act -

Mr Waldron: You have referred to the Interpretation Act. Are you saying that, as it stands now, the same powers that are in the Interpretation Act will be inserted in this Act? The words “other duties and functions” are already in the Act, but the word “powers” is not included.

Mr KUCERA: Our problem is that there are two legal views, and there will always be two legal views. One legal view is that the Interpretation Act gives us the power to continue doing what we are doing with PathCentre without making changes. However, the Crown Solicitor’s view is that the Act is not explicit and therefore creates an uncertainty.

Mr Waldron: There is an element of doubt about the way the Act refers to PathCentre. Does that same element of doubt exist in other areas?

Mr KUCERA: No. The advice that was clearly given to the Leader of the National Party yesterday is that, essentially, nothing will change. There are no conflicts within the Hospitals and Health Services Act 1927. Nothing will change. I suspect our fight will come on later this year or early next year when we amend the Hospitals and Health Services Act to remove the predication that health services in this State are run by boards. Essentially, this Bill will change nothing. The Act still gives me the power as minister to place the power of the boards on my shoulders and then delegate them to the Director General of Health. That does not change. The term “power” has not changed. Rather than hold up the passage of the DNA legislation for the sake of consistency, we should have our fight at another time. I am happy to debate at length with the member how that should proceed.

Had this been picked up during the passage of the original DNA legislation, the Police Service could have amended its Act, and this would not be before this House today. However, that legislation has gone through. It was during the passage of that legislation that our legal team told the Crown Solicitor’s Office that there are two legal opinions about the terminology “duties, powers and functions” and to what those words refer.

Mr GRYLLS: I would like the minister to continue.

Mr KUCERA: I thank the member for Merredin. Had that been picked up before the DNA legislation went through this House, this matter would not have arisen. Like all legislation, there are differences. The Crown Solicitor has rightly said that there are two legal opinions on whether those three issues correspond, and this legislation has been brought before the House to provide certainty. I put on record now that that there is no intention to use this legislation to interfere with the operations of the current boards. There is no need to do that. I already have the power as the minister to do that. The boards in the south west have already been

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amalgamated, and nothing has changed. This legislation will not allow me to do anything more than what I can do now. This legislation is simply to enable and facilitate the quick passage of the DNA legislation.

Mr BOARD: One cannot but be struck by a sense of irony when considering this legislation. It is pathetic that we are dealing with amendments that clarify and determine the role of boards when there will not be any. I understand that if the minister has his way, the boards will cease to exist within five days. I am not sure of the status of that intention. I think it is dependent on other things, but I am not sure what they are. The minister might clarify that. We are dealing with an amendment to provide some consistency in legislation that relates to hospital boards that will soon not exist. I assure the minister that we will to a large degree oppose the minister's major amendments to the Act to do away with the role of boards entirely. It might be short-sighted to take the boards out of the Act. The minister could achieve his aim by doing what he is doing now; that is, acting as the board. It might be that in the future, regardless of who is in government, it is in the interests of the Government to re-establish a board and, therefore, legislate for those provisions that are already laid down in the Act. Why would the minister choose to remove boards entirely from the Act? It would limit the opportunities that might come forward at a later time. I advise the minister that, from what I can see, he could achieve what he wants to achieve and still leave within the Hospitals and Health Services Act the provisions regarding the existence of boards so that some other Government would not have to bring forward amendments at a later time. I believe that the Opposition would have supported the minister if he had created regional hospital boards rather than moved to remove the boards entirely. We probably would even have supported regional hospital boards with slight changes in their roles and responsibilities if those groups were allowed to continue to operate as boards and the local communities were given the power and opportunity to have more than an advisory role in the operations of health services within their towns and districts. That model would have to some degree achieved what the minister wanted to achieve - the sharing of resources and streamlining of the ability to deal with the difficulties that face the delivery of health in our country regions - while empowering the communities to be part of and to have pride in the delivery of health services and the ownership of their hospitals. The minister will say that the local communities still have that opportunity through an advisory body. An advisory body is simply that - an advisory body. It does not have the powers contained in this Act to determine the role of the hospitals and the services they will provide. I remind the minister - he probably does not need reminding - that the reality is that the local communities often know better than the Department of Health what is required for the delivery of health in their particular towns and regions. Although that may not impress some bureaucrats and funding bodies, the reality is that the local people know what needs to be done. At the end of the day, they have an overall sense of responsibility in that regard. We take the opportunity during this debate to put on notice that we will oppose the deletion of health service boards.

Mr BRADSHAW: What the member for Murdoch was talking about is very important. The issue of the abolition of hospital boards is close to my heart. I would like to hear a little more of what he is saying.

Mr BOARD: I thank the member for Murray-Wellington. I was taking the opportunity to put on the record our concern and the sense of irony that we feel in dealing with health service boards at the very time they will disappear. Anyone who reads this debate in *Hansard*, especially the second reading speech, in which the direction of the minister was laid out, would think that we were trying to empower the boards and give them an increased role, when in fact the opposite was happening.

I had numerous meetings over the weekend with country hospital boards and community members who are involved in health. These people are genuinely concerned and apprehensive about the lack of power that they will have in the determination, delivery and funding of services and the lack of opportunity they will have to stand up for their hospitals. They are also concerned about the reasons for this change. What is the real intention of this change? Why does the Government no longer want the community involved in making determinations through a local board? During other debates the minister has outlined his concern about the financial liability and responsibility of hospital boards. That has never really been an area of concern for the hospital boards or the community. It may be a concern for those who fund hospitals, because they might not get the entire cooperation of the boards in determining an outcome, but surely the whole purpose of setting up hospital boards, and the way the Act was written in the first place, was to prevent that and to give people a real say in how hospital services would be provided.

The history of public health shows that it has been community driven. The delivery of health and, indeed, public health, was started through donations, the private sector and the generosity of the community. It was always the intention of government and the community for people to be involved in determining the delivery of health services. Over the years there has been a gradual growth in the bureaucracy and in government responsibility for the delivery of health. That will occur because of the demands on the health system. However, it seems that we are now taking a quantum leap beyond that growth and responsibility in public health to a point at which the intention of the original legislation is being removed. Originally, it was intended to empower people to not only take on advisory roles but also make decisions on how health services should be shaped and the type of services

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that should be delivered on the ground. That power is being removed because it does not suit the bureaucracy or funding bodies. They do not want people to go to the media to argue for a particular service in an area. They do not want to be embarrassed about changes they want to make with the streamlining of health services. That is the reality of the situation. It is a great shame and tragedy that we have gone to this extreme to achieve something that suits funding bodies and the bureaucracy.

There is no doubt that cooperation and some rationalisation is needed. There are huge challenges, particularly in the country. The minister could overcome those challenges by making other changes. He could have empowered and changed the role of regional boards to some degree; for example, in their overall financial control or by allowing them to make decisions in certain areas but not other areas that may affect their liability. Hence the minister could have achieved both objectives and not only allowed the community to play an advisory role, but also empowered it to make decisions on health services.

Mr KUCERA: I appreciate the passion of the members for Murdoch and Wagin on the hospital boards issue generally. As I said earlier, this is probably not the time to have that debate.

Mr Board: It is the only chance we have had.

Mr KUCERA: That was not meant as a criticism. The member for Murdoch is right; this is the first chance he has had to raise this issue with me, other than in question time.

This Bill is specifically aimed at dealing with issues that arise in relation to the operation of PathCentre; nothing more, nothing less. As I clearly explained to both the member for Murdoch and the member for Wagin, reference to the boards is merely for consistency, and was suggested and placed in the Bill by the Crown Solicitor's Office. It may well be that down the track, when we present to this House any amendments to the Act that relate to boards themselves, agreement may have been reached on the shape of that legislation or model. In doing that, I might then take into account many of the issues that have been raised this evening by the members for Murdoch and Wagin.

We had a positive and productive Friday afternoon some two weeks ago with local government agencies and people from country towns across this State. The Government will take on board the issues that were raised. The point I must make is that this Bill does not in any way affect the operations of the current boards or the operations of the minister in deciding, for whatever reason, to take the boards on his or her shoulders. It also does not affect the operations of public hospitals or those areas to which the Act currently relates. This Bill is specifically designed to deal with PathCentre. I take on board what has been said tonight by the member for Murdoch and other members. No doubt there will be robust debate in the future on any further amendments that I bring to the House. I suggest that this is not the time for that debate. I take on board the member for Murdoch's point that this is the first time that he has had an opportunity to raise this issue.

Mr BOARD: Given that this is the only opportunity we have had to raise this issue, and given that these changes will be made before this Parliament resumes, it is important, for the public record, that I outline what I believe to be changes that are not in the interest of the overall Department of Health or, in particular, the community. I refer the minister to clause 7, which seeks to amend section 18 of the Hospitals and Health Services Act. Section 18(2) of the Act states -

The Minister may, after consultation with a hospital board, give to it directions as to the exercise of its functions, but no such direction shall be given concerning the nature of the medical treatment to be provided in relation to a particular patient.

It is clear that this subsection separates the role of the minister acting as a board and the role of the minister in determining a health outcome. If the reference to "particular patient" is generic, it now appears that, in assuming the role of the boards, it would be quite easy for the minister to be in conflict. Although I am sure the minister has power under the Act to act in both capacities, I believe that the intention of the original Act was to separate the roles. It was probably never envisaged that the minister would act in the place of all the boards. It was probably envisaged that the minister might act in the place of a board or in a particular circumstance in which a board was dissolved or, for whatever reason, could no longer manage or control a hospital, as provided under the Act. However, the minister has taken that power another step. He is dissolving all the boards. Hence, he will act as all boards in Western Australia. As a result, it appears that the original intention of the Act will, to some degree, be in conflict. The determination of a health outcome cannot be separated from the minister's role in acting as a board. I am sure that it is covered to some degree by other provisions of the Act. I believe the original intention of the Act was to separate - except for the odd occasion - the operations of the minister acting as a board and the Minister for Health controlling health outcomes. It indicates clearly that it was always the intention that the community have a greater role than just that of an advisory body and that the community, through the intentions of the original Act, be empowered in decision-making except for the odd circumstance when the minister needed to act in that place. How does the minister see his two roles as a replacement for the

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boards and as the Minister for Health responsible for health outcomes? Are the roles not in conflict with section 18 of the Hospitals and Health Services Act?

Mr KUCERA: The advice provided to me by the Crown Solicitor's Office makes it quite clear that there is no internal conflict in section 18 of the Hospitals and Health Services Act. It is clear from the statutory context and the use of the term "hospital board" as opposed to "board" that sections 18(2) and 18(3) are concerned only with appointed boards; that is, boards constituted under section 15(1). Sections 18(2) and 18(3) apply to appointed boards, but not ministerial boards. Once a board is abolished by the minister and the responsibilities are taken on by the minister, the board becomes a ministerial board. Essentially, the minister cannot direct himself. It is as simple as that. The sections that the member is referring to do not apply to ministerial boards. The advice given by the Crown Solicitor's Office shows clearly that there is no conflict.

Mr BOARD: Were these provisions written solely for the purpose of the minister acting on individual cases or for the provision of substituting for a board whenever a board could not operate? Does the minister believe that the intention of the Act is that the minister can act for the totality of boards in the State, rather than on the odd occasion when the minister needs to replace a board to ensure continuity of services? We are talking about a different circumstance that is not set out in the Act in which all the boards will be abolished. Although it is not a prostitution of that part of the Bill, there is certainly a widening of its interpretation beyond what was originally intended.

Mr KUCERA: Section 18(2) refers to the minister acting in his role as the minister concerning the directions he would give to or consultations he would have with a hospital board. It has nothing to do with the situation in which the minister becomes a ministerial board. It is a different issue. The Act does not distinguish the circumstances in which the minister may assume the functions, duties and powers of a hospital board. It is irrelevant whether it is one board or all the boards or whatever the reason is. The Act does not distinguish that. The sections refer to the types of directions I would give to an existing board concerning its functions. The real thrust of the section concerns the nature of medical treatment given to patients. In other words, I cannot instruct a board to do something regarding medical treatment. We are confusing the role of the minister and his duties towards a board with a totally different issue.

Clause put and passed.

Clause 8: Validation -

Mr BOARD: Clause 8 seeks to ensure that the term "agency" has the same meaning as that in the Hospitals and Health Services Act. Subclause (2) states -

Anything done or purporting to have been done by an agency for the purposes referred to in section 7B(1) of the Hospitals and Health Services Act 1927 is, and is taken always to have been, as valid and effective as it would have been if the amendments to that Act in sections 5 and 6 had at all relevant times been made.

In other words, this provision provides retrospectivity and covers any operations of PathCentre, particularly related to DNA legislation, which may come under question due to confusion over terminology in the Bill. The Opposition supports the provision.

Does this clause on validation refer to any section of the Act or is it generic in its effect on the Act? Is the provision only to give retrospective support to the Act?

Mr KUCERA: As I said in my second reading speech, clause 8 is a validating provision intended to ensure that the amendments will be taken to have effect from the date that the agency's provisions were included in the Hospitals and Health Services Act. It does not refer to anything other than agency provisions. It does not affect the nature of the boards; it has nothing to do with that. This will simply validate the operations of PathCentre.

Mr Board: Is there any amendment to the Act?

Mr KUCERA: No. The clause ensures that amendments to sections 5 and 6 of the Act tidy up retrospective aspects. Had we known about this legislation in 1994, we would have put in the provision. The reasons for the provision are quite obvious. PathCentre has been operating as a forensic centre since 1994. We are taking away any uncertainty that may apply to operations between 1994 and now.

Clause put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by Mr Kucera (Minister for Health), and transmitted to the Council.