



Queen Elizabeth II Medical Centre Trust

Report to the Minister to assist with the statutory review of the operation and effectiveness of the QEII Medical Centre Act 1966 (“Act”)

December 2010

1 Introduction

- 1.1 This report is prepared to assist the Minister in fulfilment of the Minister’s statutory mandated review of the operation and effectiveness of the Act.
- 1.2 Pursuant to section 21 of the Act, the Minister shall carry out a review of the operation and effectiveness of this Act at the end of each successive period of five years calculated from 1 January 1991. Accordingly, in the terms of the Act, a review is scheduled “as soon as practicable” after 1 January 2011.
- 1.3 The scope of the Minister’s review under section 21 of the Act includes consideration of and regard to:
 - a) the attainment of the object of the Act;
 - b) the administration of the Act;
 - c) the effectiveness of the operations of the Trust and each committee referred to in section 12, each delegate under section 13, each managing body referred to in section 16 and each appointments committee referred to in section 16;
 - d) the need for the continuation of the Trust and each committee, delegate, managing body and appointments committee referred to in paragraph (c); and
 - e) such matters, other than those referred to in paragraphs (a) to (d), as appear to the Minister to be relevant.
- 1.4 The QEII MC Trust is currently undertaking a vast and complex role. Its responsibility has changed dramatically over recent years and now its main roles include:

- to develop the Reserve which includes responsibility for the Master Plan, Structure Plan, Transport and Access Plans and other planning guidelines and instruments such as sustainability, heritage and public art.
- to allocate premises and to provide leases and tenancy agreements to the tenants on the Reserve;
- to effectively and efficiently manage the common areas of the Reserve with site facilities and service integration with particular current focus on site access, travel, traffic and car park management;
- to control, police and enforce the QEIIMC By-laws promulgated under the Act; and
- to promote co-operation and mutuality of engagements between tenants of the Reserve to enhance the QEIIMC as a centre of medical excellence (academic, clinical and research) with national and international repute.

2 Attainment of the object of the Act

2.1 The object of the Act is set out in the long title to the Act namely to enable a Medical Centre to be established at Hollywood by reserving certain lands therefor and constituting a body corporate for the development, management and control of those lands and for incidental and other purposes.

2.2 The object of the Act has been and continues to be attained in that:

- The Reserve at Hollywood has been created under section 6 of the Act;
- The Queen Elizabeth II Medical Centre Trust (“**Trust**”), is a body corporate which has been constituted under section 7 of the Act for the purposes set out in the object;

- A Medical Centre, within the meaning ascribed under section 3(1) of the Act, has been established on the Reserve;
- The Trust has and continues to develop, control and manage the Reserve consistent with its functions under section 13 of the Act;
- The Trust has and continues to exercise its functions and powers under the Act in a planned, strategic, methodical, responsible, transparent and accountable manner consistent with governance principles enunciated by the WA Public Sector Commission and relevant financial, administrative, audit and reporting requirements of WA statutory authorities;
- The Medical Centre established on the Reserve, namely the Queen Elizabeth II Medical Centre (“**QEII MC**”) is a world class centre with respect to clinical care, education and research of national and international repute.
- The Trust’s development, management and control of the Reserve and the QEII MC has and continues to:
 - be achieved through a cooperative approach between the Trust, the State and site tenants including relevant academic and professional schools of medical and related learning, medical and related research institutes, clinic care (and allied health) tertiary teaching hospitals, and providers of ancillary services;
 - ensure the provision of appropriate infrastructure and support services to the Reserve for the benefit of site tenants and in furtherance of the object of the Act.

2.3 In particular currently committed new development projects for the Reserve for the 5 year period to 2016 include:

- New Children’s Hospital
- Telethon Institute of Children’s Research
- Western Australia Institute of Medical Research
- Path West
- Cancer Centre Stage 2

- Multi-deck car park
- Central Plant
- Mental Health
- Western Power Substation
- Ronald McDonald House

2.4 In addition, foreshadowed further prospective developments for the Reserve within the next decade, which prospective developments are at early stage discussion, but for which accommodation has been allowed on the Reserve as part of the long term Master Planning of the Reserve, include:

- [Women's Hospital]
- [Neuroscience]

2.5 Attached to this Report (Attachment "A") is a copy of the Master Plan for the Reserve as developed and adopted by the Trust and endorsed by the Minister in 2010.

2.6 It is strongly submitted that the object of the Act has been attained, and based on currently committed and prospective projects for the Reserve, will continue to be attained.

3 Administration of the Act

3.1 The administration of the Act is vested under the control of the Minister for Health.

3.2 The object of the Act renders the Minister for Health the logical Minister in whom administration of the Act should be vested.

3.3 There exists a strong bond of accountability to, and oversight by, the Minister for the Reserve and the Act by reason of:

- the audited annual report of the Trust to the Minister which is tabled in Parliament;
- the presence on the Board of the Trust of 2 nominees of the Minister;

- the delegation by the Trust of certain of its functions and powers under section 13(2a) of the Act to the Board of Sir Charles Gairdner Hospital, the functions of which board are currently vested in the Minister;
- periodic informal reporting concerning the Reserve, its development, control and management by:
 - the Chairman of the Trust to the Director General for Health, and to the Minister
 - the Chief Executive Officer, North Metropolitan Area Health Services (NMAHS) as the executive officer with responsibility for the operations and affairs of the Board of Sir Charles Gairdner Hospital, to the Director General for Health and to the Minister.
- the significant engagement and investment by the State, through its health policy commitment, under the oversight of the Minister for Health, for the Reserve to be an instrumental component of the State's future delivery of integrated health services.

3.4 It is submitted that the Act is being appropriately administered consistent with the State's committed health policy, with strong accountability and reporting channels concerning the administration of the Act to the State via the Minister.

4 Effectiveness of the operations of the Trust

4.1 *QEIIHC Trust*

4.1.1 The Trust is a body corporate constituted under section 7 of the Act;

4.1.2 Despite its name "Queen Elizabeth II Medical Centre Trust", the Trust is not a charitable or public benevolent institution, nor are its functions and purposes charitable in nature, despite the community inspired objectives mandated by the Act. The Trust is more aptly categorised as a statutory infrastructure and

administration authority providing essential health infrastructure and ancillary services.

- 4.1.3 The Trust comprises five members, three of whom (including the chairman) are appointed by the Governor on the written application of the Minister and/or UWA Senate (as applicable), to hold office during the Governor's pleasure.
- 4.1.4 The Act does not empower Trust members to be remunerated and therefore to date, service by Trust members is gratuitous, notwithstanding:
- the time commitment;
 - the expertise required;
 - the responsibility assumed;
 - the fiduciary duties imposed; and
 - the personal liability exposure arising from the office.

The nature of the roles assumed by the Trust members are complex and demanding.

- 4.1.5 If the availability of strong sound professional members are to be assured to lead the Trust and optimise the Trust's output, then urgent consideration needs to be given for Trust members to be fairly remunerated for their time and skill provided, and responsibility assumed, otherwise the Trust is unlikely to attract people with the skills and commitment necessary to achieve the Trust's legislative mandate and potential.

In this context, up until 2008, the majority of Trust members have been employee nominees of the 2 major stakeholders of the QEIIIMC ie. Department of Health and UWA, with the Chairperson being an employed member of the WA Judiciary. At present the Trust membership comprises 2 UWA employees, 1 Department of Health employee, 1 independent health administrator Trust member (a former Department of Health employee with relevant experience in the corporate history and affairs of the QEIIIMC and the Trust), and 1 independent company director (with relevant experience and expertise) as Chairman.

The continued services to the Trust of independent professional Trust members on a non-remunerated basis cannot be expected to continue, and without urgent redress, the Trust is at risk of loss of these valuable services.

4.1.6 The Trust formally meets on a regular monthly (or thereabouts) basis with the Delegate and the Trust Business Manager also in regular attendance. The Trust Board is supported by the Trust Business Manager, who is a seconded employee of NMAHS.

4.1.7 Periodically special meetings are also held:

- to address urgent business between regular scheduled meetings;
- to deliberate, plan and resolve the Trust's strategic plan;
- to address audit and risk management issues.

4.1.8 Meetings of the Trust are supported by a formal agenda and ancillary detailed "board pack" (typically of several hundred pages) compiled by the Delegate and Trust Business Manager under the supervision of the Trust Chairman.

4.1.9 Typically Trust meetings are from time to time attended (by invitation) by consultants, tenants and State representatives to address specific agenda items and to assist the Trust in its deliberations and resolutions.

4.1.10 The Trust and the meetings of its Board operate in accordance with sound prudential contemporary corporate governance practices consistent with guidelines recommended by the WA Public Sector Commission.

4.1.11 In addition to the absence of remuneration for Trust members there are 2 other statutory constraints which risk compromising the ability of the Trust to effectively discharge its governance mandate:

- a) Under section 18 of the Act, 4 Trust members (out of a maximum of 5 members) are required to constitute a quorum of the Trust for decision making purposes. In the busy

schedules of Trust members' affairs (personal and business) the unavoidable risk of the absence of 2 Trust members for a scheduled Trust meeting is unavoidable eg. for reasons of other pressing business commitments, being called for Parliamentary or Ministerial attendance, personal health constraints, vacation and family commitments, inadvertent events generally.

It is strongly recommended that the Act be amended so that 3 Trust members be sufficient to constitute a quorum, rather than 4. The 3 members must include at least the Chairman or Deputy Chairman, at least one Department of Health appointee to the Trust, and at least one UWA Senate appointee to the Trust.

b) Without denigrating from the benefits of deliberations between Trust members in person, in meeting, having regard to:

- the complexity, and sometimes urgency, of the affairs and issues to be addressed by the Trust (including to respond to governmental and Ministerial desired timeframes for policy announcement and implementation); and
- the other business commitments and engagements of Trust members, which commonly mean they may be interstate or overseas when an urgent Trust deliberation and resolution may be required,

the facility for Trust members to resolve on behalf of the Trust, outside of formal meetings, by "unanimous circular resolution" is sought. Such a facility is commonly recognised as an appropriate and sound governance facility for corporations generally (see Corporations Act).

At present the Act does not recognise a "unanimous circular resolution" of the Trust members and requires all decisions of the Trust to only be made at duly constituted and held formal "in person" meetings.

It is strongly recommended that the Act be amended to recognise “unanimous circular resolutions” of Trust members and attend at meetings of the Trust by teleconferencing and other electronic means, is sought. Such facilities are commonly recognised.

4.2 *Committees*

- a) Section 12 of the Act allows the QEII MC Trust to convene and to delegate to, a committee of Trust members and other persons, any of its powers under the Act except the power of delegation.
- b) Consistent with contemporary sound prudential corporate governance principles the Trust has formally established an Audit and Risk Management Sub Committee of the Trust with a defined remit, chaired by the Vice Chairman of the Trust and with a membership base of Trust members having relevant skills and experience in financial, accounting and risk management matters.
- c) The remit of the Audit and Risk Management Sub-Committee is primarily administrative and advisory, rather than executive, in nature, and accordingly the Trust has not formally delegated any of its powers in accordance with section 12 of the Act.
- d) However, the power under section 12 of the Act is considered to be useful should the need for the Trust to avail itself of that power arise in the future.

4.3 *Delegate*

- a) Pursuant to section 13 (2a) of the Act and under the instrument of delegation duly gazetted in the Government Gazette, the Trust has set aside the Reserve, and delegated a number of its powers (other than certain reserved powers), to the Board of Sir Charles Gairdner Hospital which thereby has assumed responsibility for the day-to-day management of the Reserve, including general administration, management and other statutory requirements in relation to the Reserve.

- b) The principal day to day operation undertaken by the Delegate include:
- maintenance of the reserve (gardens and grounds, roads and paths);
 - management of parking facilities and traffic control;
 - external security; and
 - servicing the executive needs and requirements to the Trust.
- c) Responsibility for the Board of Sir Charles Gairdner Hospital is formally vested in the Minister for Health which has in turn vested responsibilities for the discharge of the Delegate's functions to NMAHS and its Chief Executive Officer.
- d) The Delegate acts in an executive capacity for the Trust, allowing the Trust to be a "virtual" and efficient structure, operating under the governance oversight of its Board, constituted by its non-executive membership base.
- e) There exists a strong level of co-operation, respect, communication, reporting and accountability between the Trust and the Delegate.
- f) Having regard to the significant role of NMAHS on the Reserve in the provision of government funded health and ancillary services, there is efficiency and utility in the present operational and executive structure.
- g) It is recognised that from time to time there is the prospect for potential conflicts of interest to arise between the role of NMAHS in performing the role of the Delegate and in performing its functions on behalf of the Department of Health. However, such a potential is recognised and strategies and protocols have been applied from time to time to prudentially address this potential.
- h) Certainly at present the Trust is satisfied that the efficiency and utility of the current arrangements, coupled with these strategies and protocols it is able to implement to manage the risk, including

those contained in the formal governance charter that the Trust has adopted, more than compensate the potential for such conflict.

4.4 *Managing body and Appointments Committee(for the purpose of the legislation) of teaching hospital*

Each teaching hospital on the reserve was originally required to have a managing body and an appointments committee to nominate person for appointment by the managing body of the hospital to the medical staff as per section 16 of the Act.

However, much of this section of the Act was rendered effectively redundant when the health reform agenda disbanded individual hospital boards. Accordingly, the Act was amended by the *Health Legislation Amendment Act 2001* to resolve matters and to remove the requirement to have a managing body and an appointments committee where the Minister is the managing body of the relevant hospital (Section 16(7a)).

The managing body of the Sir Charles Gairdner Hospital is currently vested in the Minister for Health, in his incorporated capacity, therefore, no managing body or appointments committee are currently required or exist.

Need for the continuation of the Trust and each committee, delegate, managing body and appointments committee

5.1 Continuation of the Trust

5.1.1 The QEIIMC Trust is currently undertaking a vast and complex role. It's responsibility has changed dramatically over recent years and now its main roles include:

- to develop the Reserve which includes responsibility for the Master Plan, Structure Plan, Transport and Access Plans and other planning guidelines and instruments such as sustainability, heritage and public art.
- to allocate premises and to provide leases and tenancy agreements to the tenants on the Reserve;
- to effectively and efficiently manage the common areas of the Reserve with site facilities and service integration with particular current focus on site access, travel, traffic and car park management;
- to control, police and enforce the QEIIMC By-laws promulgated under the Act; and
- to promote co-operation and mutuality of engagements between tenants of the Reserve to enhance the QEIIMC as a centre of medical excellence (academic, clinical and research) with national and international repute.

5.1.2 The Trust has planned and structured its ongoing funding framework to ensure the integrity of its financial sufficiency and independence to meet its statutory object and functional mandate. Revenue generation is sourced from:

- Car parking fees;
- Rent from commercial tenancies;
- Recovery of outgoing charges to tenants; and
- By law enforcement fines.

5.1.3 The Trust is currently reviewing both car parking fees and tenancy outgoing charges to support the ongoing infrastructure and capital demands of the significant developments now committed to and being undertaken on the QEIIIMC.

5.1.4 The need for the continuation of the Trust has never been greater.

5.2 Continuation of each Committee

5.2.1 As commented upon in paragraph 4.2 above, no committee with delegated powers under section 12 of the Act has been established.

5.2.2 The Audit and Risk sub Committee of the Board has recently been established and is projected to perform a valuable function in support of the Trust with respect to its financial and risk assurance consistent with sound prudential contemporary governance principles and practice.

5.3 Continuation of the Delegate

5.3.1 As commented upon in paragraph 4.3 above, the Delegate provides a valuable, effective and efficient role in the interests of the object of the Act and in the administration and management of QEIIIMC.

5.3.2 Relations between the Trust and the Delegate are co-operative and constructive.

5.3.3 The presence of the Delegate is also facilitative of communication flow to the Minister in his administration of the Act.

5.4 Continuation of Managing Body and Appointments Committee (refer section 16 of the Act)

5.4.1 As commented upon in paragraph 4.4, no managing body or appointments committee exist, or are called for in the terms of the Act as currently constituted.

6 Such matters, other than those referred to in section 21(1)(a) – (d) of the Act, as appear to the Minister to be relevant

6.1 Other than as set out in 6.2 following, no such matters are known, or believed to exist.

6.2 One of the functions of the Trust, through the Delegate is to develop, recommend for adoption and gazettal, apply and enforce By-laws promulgated under the Act to assist in the control, management and administration of the Reserve. This entails ensuring the By-laws remain relevant and respected over the years as the QEIIMC develops and accepted community mores and values change (e.g. smoking ban).

Despite the content of By-laws being able to be varied and adopted from time to time by subordinate regulations, section 20(2) of the Act imposes a statutory monetary limit of \$50 for any breach of By-laws.

This section of the Act was last amended in 1985 and this monetary limit has not been escalated consistent with inflationary trends over the years.

The quantum of this monetary limit now lacks relevance as a material deterrent in the enforcement of the By-laws and inhibits the effective management, control and administration of QEIIMC by the Delegate on behalf of the Trust.

7 Recommendations arising from this Report for amendments to be made to the Act

7.1 The following changes to the Act are recommended for urgent consideration:

- To include the facility for Trust Board members to be appropriately and reasonably remunerated for their services (refer paragraph 4.1.4 and 4.1.5 of this Report).
- To allow a quorum of the Trust to be constituted by 3 members rather than 4 at present (refer paragraph 4.1.10(a) of this Report)

- To allow resolutions of the Trust also to be passed by a “unanimous circular resolution” and to allow attendance at meetings of the Trust by teleconference and other electronic means (refer paragraph 4.1.10(b) of this Report)
- To allow penalties for any breaches of the By-laws to be escalated to a more relevant monetary limit, that may be specified in the By-laws themselves, rather than in the Act (refer paragraph 6.2 of this Report).

8 Conclusion

8.1 The Trust commends this Report to the Minister.

8.2 The Trust recommends the urgent amendment of the Act consistent with the recommendations in paragraph 7 of this Report so as to assure the continued high standard of outcome of delivery of the Trust’s statutory mandate at this critical stage of major infrastructure investment in QEIIIMC, including by the State with respect to essential community health services, over the next period.

8.3 The Trust invites the Minister’s review in the terms of section 21 of the Act to be consistent with the terms of this Report.

Appendix A

QEIIIMC Master Plan

