

Explanatory Memoranda ***Hospitals and Health Services Amendment Bill 2013***

General

These amendments to the *Hospitals and Health Services Act 1927* are the first tranche of changes that will be required for WA Health to be able to conform to the *National Health Reform Agreement* to form independent local health networks. In order to retain the flexibility of staff moving from one public hospital to another without a break in service being recorded these amendments will allow for public health staff to be employed by a single public agency and work in any of the State's public hospital facilities.

- CI 1 Short Title** - Self explanatory.
- CI 2 Commencement** - Self explanatory.
- CI 3 Act amended** - Self explanatory.
- CI 4 Section 7A amended** – This clause inserts into the section that provides for the general powers of the Minister (section 7A) an additional subclause to ensure that the term ***provision of services*** through an agency includes the provision of staff to provide the services in public hospitals.
- CI 5 Section 7C amended** – This clause replaces the specificity of three persons (or more) being required to constitute an agency board.
- CI 6 Section 20A and Section 20B inserted** - The insertion of these two additional clauses after section 19 provide legal certainty on the relationship between the agency and a public hospital board in the provision staff to public

hospital boards by an agency for the purpose of providing services within public hospitals.

20A This clause defines the terms used in the clause in addition to the power for a board of a public hospital to perform the employment functions of the agency.

(1) This subclause defines a number of terms used in this clause and clause 20B including:

board – provides for the two types of governance arrangements that can exist under the Act;

employing agency – provides for the existence of an agency that can employ or engage health service staff to work in a public hospital;

employment-related functions – defines the functions a board of a public hospital or a delegate of a boards may perform for or on behalf of an employing agency;

health service member – defines the staff employed by the employing agency and working in or connected with a public hospital.

(2) This subclause provides for a board or a delegate of the board to perform or act on behalf of the agency all of the defined employment related functions.

(3) Self explanatory.

20B This clause modifies the requirements of the *Workers' Compensation and Injury Management Act 1981* in the circumstances of civil proceedings for common law claims. The clause seeks to limit the claim by health service staff member to the employing agency. The clause does not diminish the normal entitlements of a public sector employee.

(1) This subclause defines the terms used in this particular clause including:

injury or hearing loss – defines the terms injury or hearing loss applicable for health service staff members employed by the employing agency;

WCIM – is the acronym for the *Workers' Compensation and Injury Management Act 1981*

(2) This subclause makes the employing agency liable under a civil claim for any damages awarded to a health service staff member against a board.

(a) This part makes the employing agency liable under a civil claim for any damages awarded to a health service staff member against a board

(b) This part makes any negligence or other tort against a board to be the responsibility of the employing agency

(c) This part provides for any prohibition related to the awarding of damages under Part IV Division 2 related to common law claims in respect of injury or hearing loss similarly applies to either or both the employing agency or the board.

(d) This part provides for any condition or limitation related to the awarding of damages under Part IV Division 2 related to common law claims in respect of injury or hearing loss similarly applies to either or both the employing agency or the board.

CI 7 Section 35D inserted – The insertion of this clause provides legal certainty for the delegation of responsibilities for the board and the agency.

35D – This clause provides authority for the board and the agency to delegate any powers or duty.

(1) This subclause provides for the board to delegate in writing any power or duty to a public service officer employed within the Department of Health or a person employed by the board or an agency.

(2) This subclause provides for an agency to delegate in writing any power or duty to a public service officer employed within the Department of Health or a person employed by the board or an agency.

(3) This subclause confines the delegation power or duty.

(4) This sub clause confines the power of the delegation to the terms of the delegation.

(5) Self explanatory.