

Alcohol and Drug Authority Amendment Bill 2014

EXPLANATORY MEMORANDUM – AMENDED 14 OCTOBER 2014

OVERVIEW

The purpose of the Bill is to enable the amalgamation of the Mental Health Commission (a department established under s35(1)(a) of the *Public Sector Management Act 1994*) and the Western Australian Alcohol and Drug Authority.

- The Bill amends the *Alcohol and Drug Authority Act 1974* to abolish the Western Australian Alcohol and Drug Authority (Authority).
- The current functions of the Authority will be carried out by the chief executive officer of the department of state principally assisting the Minister in the administration of the Act (The Mental Health Commission).
- The amendment provides the power for the chief executive officer to be the employing authority of persons employed for the purposes of the Act.
- The Minister will assume the powers that the Authority currently has in relation to acquiring and disposing of real property. In addition the Minister will also be able to develop and turn to account technology, education, training services and other intellectual property related to the purposes of this Act. A ministerial body corporate will be established for the purpose of entering into contractual arrangements for these purposes.
- A new advisory board will be established titled the Alcohol and Other Drugs Advisory Board. The purpose of which is to provide advice to the chief executive officer on alcohol and other drug use issues.

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PART 1 – PRELIMINARY MATTERS

Clause 1 – Short title

Sets out the name of the amending Act.

Clause 2 – Commencement

Clause 2 provides for the amending Act to come into operations as follows:

- a) Part 1 and section 13 on the day the Act receives Royal Assent.
- b) The rest of the Act on a day fixed by proclamation.

PART 2 – ALCOHOL AND DRUG AUTHORITY ACT 1974 AMENDED

Clause 3 – Act amended

Cites the title of the principal Act to be amended in this Part.

Clause 4 – Long title replaced

Clause 4 replaces the long title of the *Alcohol and Drug Authority Act 1974* and inserts a new long title that removes reference to the Authority and includes persons who have co-occurring health issues.

Clause 5 – Part I heading amended

Deletes 'Part I' and inserts 'Part 1'.

Clause 6 – Section 1 amended

Section 1 is amended by replacing the reference to 'Drug Authority' with 'Other Drugs'.

Clause 7 – Section 4 amended

The terms; 'Authority', 'Chairman', 'Deputy Chairman', and 'member' are deleted as they refer to the Authority and the Authority's Board of management which is being abolished.

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The terms 'section' and 'subsection' are deleted as they duplicate section 15(1) and (2) of the *Interpretation Act 1984*.

The term 'centre' is deleted as it defines premises maintained by the Authority. This is replaced by the term 'facility' in the insertions under clause 6(2) below.

'CEO' is inserted to mean the chief executive officer of the Department.

'Department' is inserted to define the department of state principally assisting the Minister in the administration of this Act.

'facility' is inserted to define premises maintained by the CEO for persons experiencing alcohol and other use drug problems or co-occurring health issues, including persons who have or may have a mental illness.

'Ministerial Body' is inserted to mean the Alcohol and Other Drugs Ministerial Body to be established by proposed section 5.

'staff member' is inserted to include persons employed or seconded to work in the department.

Clause 8 – Parts II, III and IV replaced

Clause 8 deletes Parts II, III and IV of the *Alcohol and Drug Authority Act 1974* and inserts a new 'Part 2 – Administration', and 'Part 3 – Facilities for alcohol and other drug use problems'.

Part 2 – Administration

Division 1 – Role of Minister

Proposed section 5 establishes the Ministerial Body as a body corporate governed by the Minister that has the status, immunities and privileges of the Crown.

Proposed Section 6 states the purpose and nature of the Ministerial Body.

Proposed 6(2) states that the Ministerial Body is part of the Department's operations for reporting purposes under the *Financial Management Act 2006*.

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Proposed 6(3) ensures that the Ministerial Body, and ministerial officers employed to perform functions for it, are not required to have a chief executive officer which is normally a requirement for public sector organisations. This wording has been used in other statutes that establish corporate Ministerial bodies [e.g. *Transport Co-ordination Act 1966* s.6A and the *Fire and Emergency Services Act 1998* s.6(3)].

Proposed section 7 sets out that the Ministerial Body is to have a common seal and the requirements by which documents of the Ministerial Body may be executed. The Ministerial Body may authorise the CEO or another person to execute documents on its behalf.

The proposed section 8 provides the Minister with powers in relation to real and personal property. The Minister may acquire, hold, manage, improve, develop, dispose of, and otherwise deal in real and personal property for the purposes of the Act. The Minister may also develop and turn to account any technology, software or other intellectual property, as well as hold patents, copyrights and similar rights. The terms 'acquire' and 'dispose of' are defined for the purposes of the section.

The proposed section 9 allows the Minister to delegate any of the Minister's powers or duties under another provision of the Act to the CEO, including those exercised or performed in governing the affairs of the Ministerial Body. Further delegation by the CEO is not permitted. This proposed section does not limit the Minister to perform a function through an officer or agent.

Division 2 – Role of CEO

The proposed section 10 outlines how the Act will be administered. It provides that, subject to the general control of the Minister, the CEO must carry out the administration of this Act.

The proposed section 11 outlines the functions of the CEO. The functions of the Authority under the former Act are retained, with some amendments and become functions of the CEO.

Proposed 11(1)(a) outlines the services to be provided to persons experiencing alcohol and other drug use problems including those with co-occurring health issues. This may include those persons who have or may have a mental illness. The

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CEO may also subsidise or otherwise support persons or organisations providing these services.

Proposed 11(1)(b) requires the CEO to establish and maintain premises for the provision of services outlined in 11(1)(a). This is subject to the Minister's consent.

Proposed 11(1)(c) requires the CEO to establish and maintain accommodation for persons for whom services are being provided under this Act. In addition the CEO may subsidise or otherwise support persons or organisations providing such accommodation. This is subject to the Minister's consent.

Proposed 11(1)(d) requires the CEO to provide facilities and services necessary to fulfil the purposes of the Act.

Proposed 11(1)(e) allows the CEO to determine the persons or classes of persons for whom the CEO may provide facilities or services to. Furthermore the CEO may subsidise or support other persons or organisations providing facilities and services consistent with the purposes of the Act.

Proposed 11(1)(f) requires the CEO to coordinate, promote, subsidise research and provide education on alcohol and other drug use and co-occurring health issues that include mental illness.

Proposed 11(1)(g) requires the CEO to inquire into offences and penalties where the use of alcohol and drugs was a factor and make recommendations on legislative action necessary.

Proposed 11(1)(h) requires the CEO to cooperate and enter into agreements with other persons or organisations necessary for the purposes of the Act. This will require the Minister's consent.

Proposed 11(2) allows the Minister to determine the terms and conditions of the Minister's consent for the purposes of sections 11(b)(c) and (h).

The proposed section 12 provides a general head of power for the CEO.

Proposed section 13 sets out the CEO's powers of delegation to a staff member or, with the approval of the Minister, any other person.

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Division 3 – Role of Alcohol and Other Drugs Advisory Board

The proposed section 14 sets out that the Minister is to establish an Alcohol and Other Drugs Advisory Board (Board) which is to provide advice to the CEO about matters relevant to performance of functions under section 11. The Board is to consist of members that the Minister thinks suitable to appoint.

Division 4 – Staff

The proposed section 15 sets out the categories of staff that may be employed or engaged by the Department, being:

- a) public service officers appointed under Part 3 of the *Public Sector Management Act 1994*;
- b) medical practitioners; and
- c) wages staff.

The proposed section 16 provides for the secondment of persons into and from the Department. The term 'employer' is defined for the purposes of the section.

The proposed section 17 provides that the CEO may engage a person to perform services for the purposes of the Act under a contract of service on terms and conditions determined by the CEO.

Proposed section 18 out that the CEO's powers are in addition to their powers as an employing authority provided under the *Public Sector Management Act 1994*.

Part 3 – Facilities for Alcohol and Other Drug Use Problems

The proposed section 19 provides that, subject to the approval of the Minister, the CEO may prohibit or regulate the admission of persons to, or rights to remain in, a facility; and fix fees for services provided at facilities. In addition the CEO may determine persons or classes of person who are liable for full payment, partial payment or exemptions for payment.

The proposed section 20 requires the CEO to hold an inquiry into the serious injury or death of a person while in a facility. A person in charge of a facility is also required to report to the CEO regarding the circumstances surrounding such an event.

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Clause 9 – Part V heading amended

In the heading to Part V, 'Part V' is deleted and replaced with 'Part 5'

Clause 10 – Sections 34 and 35 replaced

Current sections 34 and 35 are deleted.

Current section 34 is replaced with proposed section 34 which provides that fees payable under the Act are recoverable by a staff member authorised by the CEO, in a court as a debt due to the State.

Current section 35 is deleted as it refers to the protection of members of the Authority, which will not exist under the proposed Bill.

Clause 11 – Section 36 amended

Section 36 is amended by replacing the gender specific words 'he considers' with 'are' in subsection (1).

Subsection (2) is amended by deleting current paragraph (a) which refers to maintaining order and discipline and refers to inmates of a centre. It is replaced with a new paragraph that refers to regulating the general conduct of persons and visitors at facilities.

In subsection (3) the maximum prescribed fine is amended from \$40 to \$500.

In subsection (4) and (5) the respective words 'thereunder shall' and 'shall' are deleted and replaced with 'must'.

Clause 12 – Section 37 inserted

The proposed 37 sets out a requirement for the Minister to review the operation and effectiveness of the Act following the expiry of five years from the commencement of the *Alcohol and Drug Authority Amendment Act 2014* section 8. A report of the review must be tabled before each House of Parliament.

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Clause 13 – Part 6 – Transitional matters for *Alcohol and Drug Authority Amendment Act 2014* inserted.

The proposed Part 6 contains the transitional provisions required because of the effect of this Act.

The proposed section 38 defines the terms used in Part 6.

Division 2 – Authority and its members

Section 39 provides that the Authority is abolished on transition day, which is the day in which section 8 comes into operation.

Section 40 provides that any existing immunity of the Authority in relation to an act, matter, or thing done or omitted before transition day continues despite the abolition of the Authority.

Division 3 – Authority's assets, rights and liabilities

The proposed section 41 provides for the transfer, on transition day, of the assets and liabilities of the Authority to the Ministerial Body by way of a transfer order. Any of the Authority's assets not specified in the order become assets of the State. The Ministerial Body will be substituted for the Authority as a party to any proceedings specified in the transfer order. This includes proceedings, agreements, or instruments.

The proposed section 42 allows the Minister to make a transfer order that specifies the assets, liabilities, and other matters that are to be transferred to the Ministerial Body. A transfer order must be published in the Gazette. Whereby an interest in land, under the Land Administration Act, is specified, the Minister must obtain the approval of the Minister for Lands.

The proposed section 43 allows that where an error is made in a transfer order or schedule for a transfer order, the Minister may publish another order in the Gazette to correct the error. Corrections cannot operate to prejudice the rights of, or impose liabilities on, a person (other than the State or an authority of the State) that existed before publication of the correction.

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The proposed section 44 provides that any Crown land whereby the Authority was the management body is taken to continue under that section of the *Land Administration Act 1997* and is to be managed by the Ministerial Body. The purpose for which the Land is held is to be for the purposes of this Act.

The proposed section 45 requires the Minister to provide a copy of each transfer order, and any schedule, to each relevant official. The relevant officials must take note of each transfer order and any schedule, and must record and register the necessary documents to show the effect.

The proposed section 46 provides a limited continuing existence for the Authority in the event that an asset or liability of the Authority cannot be properly assigned to the Ministerial Body or the State. The Authority must take all practicable steps to ensure that assets and liabilities are effectively assigned and performs such actions through a person appointed by the Minister.

The proposed section 47 specifies that things that occur as a result of the operation of Part 6 are not subject to State tax. The Minister may certify in writing that specific things occurred by operation of, or were done under Part 6.

The proposed section 48 provides for the closure of the former accounts of the Authority and the transfer of funds credited to these accounts to operating accounts of the Department.

The proposed section 49 allows investments by the Authority to continue despite deletion of section 30 of the current Act. When funds cease to be invested they must be credited to an operating account of the Department.

Division 4 – Authority's staff

The proposed section 50 provides for current employees of the Authority to become employees of the Department and the relevant provisions under which their appointment is made.

The proposed section 51 ensures that existing rights to pay, leave, superannuation and continuity of service of an employee to which section 50 above applies are preserved.

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Division 5 – Continuation of certain things done

The proposed section 52 provides that things commenced or done by the Authority may be continued by a relevant successor, provided they fall within the successor's functions.

The proposed section 53 provides that acts or omissions of the Authority are taken to have been done by the relevant successor, provided they relate to the successor's functions.

The proposed section 54 provides that references to the Authority in existing agreements or instruments continue as if they were references to the relevant successor. Similarly, proceedings taken by or commenced against the Authority may continue against the relevant successor so far as the proceedings or remedy relate to a matter or thing within the relevant successor's functions.

Division 6 – Other matters

The proposed section 55 sets out a requirement for all records of the Authority to be delivered to the CEO as soon as practicable following transition day.

The proposed section 56 allows for the Governor to make regulations where there has been no sufficient provision made for dealing with a transitional matter in Part 6 or in a transfer order. Regulations made cannot operate so as to prejudice the rights of, or impose liabilities on, a person (other than the State, the Ministerial Body or an authority of the State) that existed before the publication of the regulations. Regulations may only be made within 24 months after the day on which the *Alcohol and Drug Authority Amendment Act 2014* receives Royal Assent.

The proposed section 57 sets out that the operation of Part 6 or a transfer order cannot be regarded as a breach, give rise to remedy or cause any contract or instrument to be void.

The proposed section 58 sets out that the *Interpretation Act 1984* applies to the repeal of any enactment made by the *Alcohol and Drug Authority Amendment Act 2014*.

PART 3 – OTHER ACTS AMENDED

Clause 14 – *Constitution Acts Amendment Act 1899* amended

Deletes reference to the Western Australian Alcohol and Drug Authority in the *Constitution Acts Amendment Act 1899*.

Clause 15 – *Coroners Act 1996* amended

Amends the definition of ‘person held in care’ contained within section 3 of the *Coroners Act 1996* by deleting ‘Drug Authority’ and replacing with ‘Other Drugs’.

Clause 16 – *Financial Management Act 2006* amended

Amends Schedule 1 of the *Financial Management Act 1996* by deleting the reference to ‘Western Australian Alcohol and Drug Authority’.

Clause 17 – *Public Sector Management Act 1994* amended

Amends Schedule 2 of the *Public Sector Management Act 1998* by deleting item 58.

Clause 18 – *Spent Convictions Act 1988* amended

Amends Schedule 3 clause 1(7) table item 1(d) of the *Spent Convictions Act 1988* by deleting ‘Drug Authority’ and replacing with ‘Other Drugs’.