



HOSPITALS AND HEALTH SERVICES AMENDMENT BILL 2002

Explanatory memorandum

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PURPOSE

The purpose of the *Hospitals and Health Services Amendment Bill 2002* ("**Hospitals Amending Bill**") is to address an uncertainty in the operation of the *Hospitals and Health Services Act 1927* ("**Hospitals Act**") which potentially impacts on the operations of PathCentre.

BACKGROUND

The *Hospitals Act* was amended in 1994 to enable agencies to be established:

*"... for the purpose of carrying out any duty or function conferred on the Minister by or under the [Hospitals and Health Services Act 1927]."*¹

Since this amendment was made, PathCentre is the only agency that has been established under the *Hospitals Act*.²

The *Agencies (PATHCENTRE) Notice 1995* ("**the Notice**") defines PathCentre's objects and powers in broad terms. Relevantly, clause 5(e) of *the Notice* identifies it as an objective of PathCentre to provide forensic science services, reflecting the long-standing involvement in forensic work of one of PathCentre's predecessor organisations.³

The *Hospitals Amendment Act 1994* also conferred a general power on the Minister for Health:

*"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"*⁴

¹ S.7B(1), *Hospitals and Health Services Act 1927* inserted into the Act by s.17 of the *Hospitals Amendment Act 1994*.

² PathCentre was established by the *Agencies (PATHCENTRE) Notice 1995* which was published in the Government Gazette on 3 March 1995.

³ PathCentre was formed from the amalgamation of the State Health Laboratory Service, which previously formed part of the Department of Health, and two separate pathology services on the site of the Queen Elizabeth II Medical Centre, one of which was operated by Sir Charles Gairdner Hospital, the other of which was operated by the University of Western Australia.

⁴ S.7A(1)(ba), *Hospitals and Health Services Act 1927* inserted by s.16 of the *Hospitals Amendment Act 1994*.

Advice by the Crown Solicitor's Office (CSO) has explored the use of the terms "duty", "power", and "function" as those terms are used in the *Hospitals Act* and has concluded that the terms have distinct meanings. As a consequence, while the Minister for Health has a broadly defined power to provide diagnostic and related services, this power cannot be exercised on his behalf by PathCentre because, as an agency, PathCentre is confined in what it can do to the performance of duties and functions that the Minister has under the *Hospitals Act*.

The Minister's duties are defined by section 5A(1) of the *Hospitals Act* as the provision of hospital accommodation, hospital services and health services. As a consequence CSO's advice has raised uncertainty regarding the proper scope of PathCentre's service provision role.

The Bill addresses this uncertainty by clarifying that agencies established under the *Hospitals Act* may be established to carry out a power, as well as a duty or function, that is conferred on the Minister by or under the *Hospitals Act*.

NOTES ON CLAUSES

Clause 1 – Short title

Self explanatory.

Clause 2 – Commencement

Provision is made for the *Hospitals Amending Bill* to come into operation on the day it receives Royal Assent.

Clause 3 – The Act amended

Self explanatory.

Clause 4 – Section 7 amended

This amendment is consequential upon the distinction made in the *Hospitals Act* between powers, duties, and functions.

Section 7 provides for the Minister for Health, acting in an incorporated capacity, to be vested with responsibility for the management and control of public hospitals in respect of which no board of persons is appointed by the Governor or whose board of appointed persons is abolished.

When acting in this capacity, this Minister has, pursuant to section 7(2), all the powers and duties of a hospital board. The amendment adds "functions" to the duties and powers that the Minister already has in this capacity. The functions of hospital boards are described in section 18 of the *Hospitals Act*.

Clause 5 – Section 7A amended

Section 7A of the *Hospitals Act* defines the general powers of the Minister.

The power found at section 7A(1)(ba) enables the Minister to provide diagnostic and related services. This subsection is deleted and an alternative description of the Minister's power in relation to pathology service provision is inserted. This alternative description has been discussed with PathCentre. It includes reference to PathCentre's forensic role, including its involvement in the preparation of DNA profiles.

Section 7A(2) is amended to insert reference to powers alongside duties and functions consequential upon the distinction made in the *Hospitals Act* between these terms.

Clause 6 – Section 7B amended

Section 7B(1) defines the purpose for which agencies may be established under the *Hospitals Act*, namely to carry out a duty or function conferred on the Minister by or under the *Hospitals Act*.

The amendment brings the exercise of the Minister's powers under the *Hospitals Act* into the scope of what agencies may be established to do.

Clause 7 – Section 18 amended

Section 18(1) of the *Hospitals Act* defines the functions of hospital boards, and enables hospital boards to perform additional duties and functions that may be prescribed for the purposes of the *Hospitals Act*.

The amendment made by clause 7 adds powers to the matters that may be prescribed consequential upon the distinction made in the *Hospitals Act* between powers, duties, and functions.

Clause 8 – Validation

Clause 8 is intended to put beyond doubt that the past actions of PathCentre are as valid as would be the case had the amendments made by the *Hospitals Amending Bill* been in effect for the duration of PathCentre's existence.