HEALTH LEGISLATION AMENDMENT BILL 2004

Explanatory Memorandum

LONG TITLE

The *Health Legislation Amendment Bill* is a Bill for:

> "An Act to amend the –
> - *Health Act 1911*;
> - *Health Services (Quality Improvement) Act 1994*;
> - *Hospitals and Health Services Act 1927*
> - *Queen Elizabeth II Medical Centre Act 1966*,
>
> to make provision in relation to the management of certain hospitals under the *Queen Elizabeth II Medical Centre Act 1966*, and for related purposes."

PURPOSE

The Bill is to make amendments to various Acts administered under the health portfolio. An explanation as to the amendments of each Act follows.

PART 2 - AMENDMENTS TO HEALTH ACT – DEFINITION OF NUISANCE

The Parliamentary Select Committee on Perth Air Quality reported in 1998 recommending, amongst other things, that local government should be given the power to resolve complaints about smoke nuisance associated with domestic wood fires.

In response, the (then) Government undertook to amend section 182(11) of the *Health Act* to bring smoke emissions from the chimneys of residential dwellings within the scope of the Health Act's definition of "nuisance".

Part VII of the *Health Act* deals with controls over nuisances and offensive trades. Relevantly, section 184 of the Act empowers local government to issue an order requiring the abatement of a nuisance. Failure by the owner or occupier of the relevant premises to comply with the order has the following consequences:

- An offence is committed[1] (section 184 (3)); and
- Local government is empowered to conduct remedial work, the cost of which is recoverable from the owner or occupier concerned (section 184(4)-(5)).

[1] Penalty for the offence is a fine of $500. Minimum penalties are prescribed: $50 for a first offence; $100 for a second offence; $250 for third or subsequent offence (s.360(1), *Health Act 1911*).

Section 182 defines what is a nuisance for the purposes of the Act. Relevantly section 182 (11) provides that a nuisance is created:

> "where any chimney (not being the chimney of a private dwelling-house) sends forth smoke in such quantity or of such a nature as to be offensive to the public, or injurious or dangerous to health;"

Smoke emissions from the chimneys of residential dwellings are therefore currently outside the scope of what constitutes a nuisance for the purposes of the *Health Act* and local government cannot invoke the Act's nuisance powers to deal with complaints about smoke emissions from residential chimneys.

The Bill brings smoke emissions from the chimneys of residential dwellings within the scope of what constitutes a nuisance for the purposes of the *Health Act*.

PART 2 - AMENDMENTS TO HEALTH ACT – REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES

Clauses 5 and 6 of the Bill reflect the recommendations of the 2003 review of Part IXB of the *Health Act*.

Clause 5 of the Bill repeals section 289F(4) of the *Health Act*. The effect of the repeal of this subsection is that Burswood Casino will be required to comply with regulations with respect to smoking in enclosed public places. An exemption from the prohibition on smoking in enclosed public places will continue to exist in relation to the Casino's international gaming room.

Clause 6 of the Bill amends section 289I to require periodic reviews of the Act to be carried out – the next review will be within four years of the tabling of the 2003 report (which occurred on 25 June 2003) and then there will be a review every four years thereafter. Without this amendment the statutory requirement for this part of the *Health Act* to be periodically reviewed would end.

PART 3 - AMENDMENTS TO HEALTH SERVICES (QUALITY IMPROVEMENT) ACT

The purpose of the *Health Services (Quality Improvement) Act* is to encourage health service personnel to participate in quality improvement activities in order to promote the attainment and maintenance of high standards of health care. The Act provides statutory protection in relation to information gathered for the purposes of quality improvement committees that are approved by the Minister for Health ("approved QI committees").

The principal forms of statutory protection are as follows:

- Section 9 – members, employees and persons associated with approved QI committees are prohibited from disclosing information to which they gain access through their membership etc of the relevant committee, and commit an offence if they fail to observe this prohibition. The prohibition does not apply to disclosures that occur in connection with the performance of the relevant committee's functions, in reports to the committee's

governing body, or with the written consent of the person to whom the information relates;

- Section 10 – a person who is, or who has been, a member of an approved QI committee cannot be compelled to:
  - produce a document that was created by, or at the request of, an approved QI committee before a court, tribunal, board or person; or
  - divulge or communicate to any court, tribunal, board or person any matter or thing that came to the person's attention through his or her membership of the committee.

Clause 8 of the Bill amends section 9 of the *Health Services (Quality Improvement) Act*. The effect of section 9 is that if a person acquires information as a result of a committee performing its functions that person is prohibited from disclosing the information except in certain circumstances. Under the current provision the prohibition is limited to a person who is a member, employed by or associated with a committee. The protection provided by section 9 and more particularly section 10 does not adequately cover the fact that much of the work of an approved QI committee is carried out by persons who are not members of such committees - other clinical experts provide reports and present information to committees and administrative staff prepare, copy, collate and store papers related to the committees. It is not possible or practicable for committee members to compile all the data or prepare all other documents related to a committee's functions. The protection provided by the *Health Services (Quality Improvement) Act* will be extended by this amendment to cover persons who are not members of a committee but who act under the instruction or at the request of committee members.

Clause 9 of the Bill amends section 10 of the *Health Services (Quality Improvement) Act* which provides that a person who acquires information solely as a result of a committee performing its functions is not compellable in civil proceedings to disclose that information. Under the current provision the protection is limited to a person who is or has been a member of a committee. This amendment will ensure that persons who may have provided or have access to otherwise protected material (eg administrative staff, hospital administrators, medical records staff) will not be compelled to disclose the information in court and other proceedings.

Clause 10 of the Bill amends section 12 of the *Health Services (Quality Improvement) Act* to ensure consistency between section 12(1) and section 12(3) so that the same class of persons protected under section 12(1) (including the people now being covered in the extended Sections 9 and 10) are also indemnified under section 12(3).

PART 5 - AMENDMENTS TO QUEEN ELIZABETH II MEDICAL CENTRE ACT

Section 16 of the QEII Medical Centre Act deals with the composition of the managing body (ie hospital board) of Sir Charles Gairdner Hospital and of that hospital's medical staff Appointments Committee.

The QEII Medical Centre Act requires amendment to address the fact that section 16 of the Act has not been able to be complied with since individual hospital boards were abolished and the hospitals brought in under the Metropolitan Health Services Board (MHSB).

Relevantly:

- section 16(2) of the Act prescribes a role for the Senate of the University of Western Australia ("the Senate") in nominating not less than one fifth of the members of the managing body of Sir Charles Gairdner Hospital;
- section 16(4) prescribes roles for the hospital's managing body and the Senate in determining the membership of an Appointments Committee for the purpose of advising the Hospital on the appointment of medical staff to the hospital.

These provisions clearly contemplate that there is a board of persons appointed under section 15 of the *Hospitals and Health Services Act 1927* having responsibility for the management and control of Sir Charles Gairdner Hospital.

No such board of appointed persons has existed solely in relation to Sir Charles Gairdner Hospital since the former board of the hospital was reorganised with the boards of other metropolitan hospitals to form the MHSB on 16 July 1997. On abolition of the MHSB, the management and control of Sir Charles Gairdner Hospital was vested in the Minister for Health acting in an incorporated capacity, so no board of appointed persons exists at the present time in relation to the hospital.

Hence the relevant provisions of section 16 of the *QEII Medical Centre Act* have not been complied with since the MHSB was established. The Sir Charles Gairdner Hospital now falls within the North Metropolitan Health Service. Under the Reid Report the site will fall under the proposed Northern Metropolitan Area Health Service.

Clause 15 of the Bill sets aside the application of the relevant requirements of section 16 of the Act during such times as the management and control of Sir Charles Gairdner Hospital is vested in a board which has responsibility for more than one public hospital or is vested in the Minister.

Clause 16 of the Bill provides a statement of validation to resolve any legal uncertainty arising from non-compliance with section 16 of the *Queen Elizabeth Medical Centre Act* since the establishment of the Metropolitan Health Services Board.

NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1

Self explanatory

Clause 2

Clause 2 provides for commencement of the Bill on Royal Assent.

PART 2 – HEALTH ACT 1911

Clause 3

Self explanatory

Clause 4

Clause 4 amends section 182 (11) of the *Health Act 1911*. As amended, section 182(11) will provide the authority for local governments to manage smoke nuisance from domestic wood fires and wood heaters within their municipality.

Clause 5

Clause 5 repeals section 289F(4). The effect of the amendment will be to remove the current exemptions for Burswood Casino that allows the Casino unrestricted smoking in enclosed public places. The exemption that exists in relation to the Casino's international gaming room will remain but otherwise the Casino will be subject to the same regulatory regime under the 2003 smoking regulations as other hotel and entertainment venues.

Clause 6

Clause 6 amends section 289I to provide that a review of the Act is to be carried out 4 years after the tabling of the 2003 report and every 4 years thereafter. The second part of the amendment requires the review to be finalised within 12 months of the review dates.

PART 3 – HEALTH SERVICES (QUALITY IMPROVEMENT) ACT 1994

Clause 7

Self explanatory

Clause 8

Clause 6 amends section 9 of the *Health Services (Quality Improvement) Act 1994*.

The effect of the amendment is that if a person acquires information, directly or indirectly, as a result of a committee performing its functions that person is prohibited from disclosing the information except in certain circumstances. Under the current provision the protection is limited to a person who is a member, employed by or associated with a committee.

Clause 9

Clause 9 amends section 10 of the *Health Services (Quality Improvement) Act 1994* by substituting two new subsections, (1) and (1a) to replace the existing subsection (1) and adding a new subsection (3).

The effect of the new subsection (1) is that a person who acquires information solely as a result of a committee performing its functions is not compellable in civil proceedings to disclose that information. Under the current provision the protection is limited to a person who is or has been a member of a committee.

Subsection (1a) protects documents created by or at the request of a committee, or solely for the performance of a committee's functions, from being discoverable in civil proceedings.

Subsections (1) and (1a) do not apply to:

- a report or information made available to a Committee which does not disclose the identity of an individual;
- a requirement made in proceedings in respect of any act or omission by a Committee or by a member of a Committee as a member.

Clause 9 also adds a new subsection (3) to section 10. This clarifies that section 10 does not limit section 9.

Clause 10

Clause 10 amends section 12 to ensure that section 12(1) and 12(3) are consistent and that the same class of persons protected under section 12(1) for the purposes of personal liability are indemnified under section 12(3).

PART 4 - HOSPITALS AND HEALTH SERVICES ACT 1927

Clause 11

Self explanatory

Clause 12

Clause 12 adds a definition of "hospital service provider which encompasses public and private hospitals including psychiatric hostels.

Clause 13

The clause repeals Section 18A of the Act which made provision for data from public hospitals to be provided to the Department (the new definition encompasses them in the new provisions of Part 111C

Clause 14

The clause inserts a new Part 111C which covers the purpose of proposed data collection, how it might be requested and protection from liability for releasing it to the Department.

New Section 26R provides that information may be collected for management of public hospitals, regulation of the private sector hospitals and hostels, planning and evaluation of services and analysis and research.
(Private hospitals and hostels are required to be licensed under the Act and presently provide information as a condition of their licence.)

New Section 26S(1) allows the Director General of the Department of Health to require a hospital service provider (as defined in Clause 12 above) to give him specified information.
(the Bill refers to Commissioner but this title is being changed by the Machinery of Government Bill currently before Parliament)

Subsection 26S(2) provides that the information provided as well as being statistical and operational may also include personal information (the current data collection program includes personal information in relation to the clients/patients of the public and private hospitals. While the interpretation of "information" would include personal information this has been inserted to address any concerns at the effect of the Privacy Act 1988.

Subsection 26S(3) is a fetter on the extent of the Director-General's powers in that the information requested must relate to services provided to clients/patients by the provider and is considered by the Director-General as consistent with the purposes set out in new Section 26R.

Subsection 26S(4) allows the direction to hospitals to specify classes of information and the form in which it is provided. Most information is provided electronically at present as it can be extracted from the information held in the hospital computer systems.

Subsection 26S(5) requires the providers to comply with the direction (this addresses the effect of the Privacy Act by making the provision of information "required by law")

Subsection 26S(6) enables the Director-General to collect information held by hospitals prior to this Bill being passed and the Act coming into effect. As hospitals are currently continuing to provide the information this may not need to be used.

Section 26S(7) provides some flexibility in the way in which directions to provide information are given. The different roles and specialisations of different hospitals could result in different data being collected from the different providers or different data being collected in different areas of the state.

Section 26S(8) defines personal information (for the purposes of subsection 26S(2) in a manner reasonably consistent with definitions of personal information in privacy and FOI legislation.

Clause 15

The clause increases the general penalty for non-compliance with the Act from $100 to $1000.

PART 5 – QUEEN ELIZABETH II MEDICAL CENTRE ACT 1966

Clause 16

Self explanatory

Clause 17

Clause 17(1) makes a minor amendment to Section 16(3) of the Act

Clause 17(2) sets aside the requirements of section 16 of the Act in relation to appointments to the Board or Appointment Committee where the management and control of Sir Charles Gairdner Hospital is vested in a board which has responsibility for more than one public hospital. Since 1989 the Sir Charles Gairdner Hospital has not had a separate Board having been integrated into the Metropolitan Health Services Board arrangements with a number of other hospitals. By virtue of the Hospitals and Health Services Act it now falls under the Minister and operates within the North Metropolitan Health Service.

Section 17(3) insets two new definitions in Section 16 of the Act - a definition of "managing body" which includes a hospital board or the Minister.

Clause 18

Clause 18 is a validation provision to resolve any legal uncertainty arising from non-compliance with section 16 of the *Queen Elizabeth II Medical Centre Act* relating to the establishment and actions of the MHSB and subsequent changes in the management arrangements of the Hospital.