



THIRTY-EIGHTH PARLIAMENT

REPORT 50

**JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

HOSPITAL PARKING FEES:

*QUEEN ELIZABETH II MEDICAL CENTRE (DELEGATED SITE)
AMENDMENT BY-LAWS (No. 2) 2011*

ROYAL PERTH HOSPITAL AMENDMENT BY-LAWS (No. 2) 2011

*WOMEN'S AND CHILDREN'S HOSPITALS AMENDMENT BY-LAWS
(No. 2) 2011*

FREMANTLE HOSPITAL AMENDMENT BY-LAWS (No. 2) 2011

OSBORNE PARK HOSPITAL AMENDMENT BY-LAWS (No. 2) 2011

Presented by Hon Sally Talbot MLC (Deputy Chair)

and

Mr Paul Miles MLA (Member)

August 2012

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed

28 June 2001

Terms of Reference

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

3. Joint Standing Committee on Delegated Legislation

- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness;
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause -
- “**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “**instrument**” means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
 - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “**subsidiary legislation**” has the meaning given to it by section 5 of the *Interpretation Act 1984*.

Members as at the time of this inquiry

Mr Joe Francis MLA (Chairman)

Hon Sally Talbot MLC (Deputy Chair)

Hon Alyssa Hayden MLC

Ms Janine Freeman MLA

Mr Andrew Waddell MLA

Mr Paul Miles MLA

Hon Jim Chown MLC

Hon Helen Bullock MLC

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RECOMMENDATIONS OF THE
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION
IN RELATION TO

HOSPITAL PARKING FEES:
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OSBORNE PARK HOSPITAL AMENDMENT BY-LAWS (No. 2) 2011

RECOMMENDATIONS

1 Recommendations are grouped as they appear in the text at page 15:

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Recommendation 1: The Committee recommends that the *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011* be disallowed.

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Recommendation 2: The Committee recommends that the *Royal Perth Hospital Amendment By-laws (No. 2) 2011* be disallowed.

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Recommendation 3: The Committee recommends that the *Women's and Children's Hospitals Amendment By-laws (No. 2) 2011* be disallowed.

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Recommendation 4: The Committee recommends that the *Fremantle Hospital Amendment By-laws (No. 2) 2011* be disallowed.

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Recommendation 5: The Committee recommends that the *Osborne Park Hospital Amendment By-laws (No. 2) 2011* be disallowed.

REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO

HOSPITAL PARKING FEES:

QUEEN ELIZABETH II MEDICAL CENTRE (DELEGATED SITE) AMENDMENT BY-LAWS (NO. 2) 2011

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OSBORNE PARK HOSPITAL AMENDMENT BY-LAWS (NO. 2) 2011

1 INTRODUCTION

1.1 The Parliament of Western Australia has delegated the role of scrutinising subsidiary legislation to the Joint Standing Committee on Delegated Legislation (**Committee**).

1.2 The Committee carefully scrutinises fees¹ imposed by subsidiary legislation to ensure that the fees imposed are authorised or contemplated by enacting legislation. One issue it considers is whether a cost recovery model used by a government department or agency provides a reasonable assurance that fees for services do not over recover the cost of providing the services for which they are imposed.

1.3 The following five amendment by-laws (**the instruments**) increase permit parking fees (**parking fees**) at six hospital sites:

- *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011 (QEII amendment by-laws);*
- *Royal Perth Hospital Amendment By-laws (No. 2) 2011;*
- *Women's and Children's Hospitals Amendment By-laws (No. 2) 2011 (which impose parking fees at Princess Margaret Hospital and King Edward Memorial Hospital);*
- *Fremantle Hospital Amendment By-laws (No. 2) 2011; and*
- *Osborne Park Hospital Amendment By-laws (No. 2) 2011.*²

¹ In this report, fees include charges. See paragraph 3.7 and Appendix 3.

² The instruments can be viewed at the Committee's website at www.parliament.wa.gov.au/del then choose Hospital Parking Fees 2012. The *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011* were gazetted on 9 December 2011. The other instruments were gazetted on 23 December 2011. All instruments were operational from 1 January 2012.

- 1.4 Department of Health (**DOH**) tables outlining the method of calculating the cost of providing parking at each site are attached at Appendix 1.
- 1.5 The Committee takes issue with the costing methodology relied on by DOH. The Committee's concerns were canvassed during a hearing with representatives from DOH on 26 March 2012³ and in correspondence with Hon Dr Kim Hames MLA, Minister for Health (**Minister for Health**), the State Solicitor's Office (**SSO**) and the Department of Treasury.⁴
- 1.6 The Committee also considered 2011 correspondence from Hon John Day MLA, Acting Minister for Health, provided in response to concerns the Committee raised about earlier increases in parking fees.⁵
- 1.7 The Committee is not persuaded that the costing methodology relied on by DOH demonstrates that parking fees do not over recover the cost of providing the parking service. In particular, the Committee does not accept the way in which capital costs are treated as an expense and recovered in full in parking fees in one financial year for the purposes of fee setting, when the benefit of the capital works extends over many years.
- 1.8 The Committee tabled its notice of motion to disallow the instruments in the Legislative Council on 17 May 2012. The Committee recommends that the instruments be disallowed for the reasons outlined in this report.

2 THE COMMITTEE'S ROLE – TERM OF REFERENCE 3.6(A)

- 2.1 The Committee's term of reference 3.6(a) authorises the Committee to inquire into whether the instrument '*is authorized or contemplated by the empowering enactment*'.
- 2.2 It is important to emphasise that the Committee may have regard to, but is not bound by, the law in exercising its function of scrutinising delegated legislation.
- 2.3 Term of reference 3.6(a) distinguishes between what is '*authorized*' and what is '*contemplated*' by the empowering enactment. These are different considerations. The term of reference authorises the Committee to express an opinion on what Parliament contemplated when passing legislation.

³ The transcript of the hearing on 26 March 2012 can be viewed on the Committee's website.

⁴ Further information provided by Hon Dr Kim Hames MLA, Minister for Health, Department of Health and Department of Treasury during the course of the Committee's inquiries can be viewed on the Committee's website.

⁵ The letter from Hon John Day MLA, Acting Minister for Health, 12 September 2011, can be viewed on the Committee's website.

- 2.4 On the distinction between the legal interpretation of what is unauthorised, or *ultra vires*, and the Committee's function, Hon Kim Chance MLC commented when the Committee's terms of reference were adopted:

*The new provision allows the committee to express an opinion about whether the regulation is one that Parliament would accept as a proper exercise of the power, but it does not have to go to the next step and declare whether the regulation is intra vires or ultra vires.*⁶

- 2.5 Hon Peter Foss MLC, when commenting on the distinction between 'authorized' and 'contemplated' in term of reference 3.6(a), emphasised that the Committee is only bound by the views of the House as to what is appropriate when he stated:

*[The House] is not bound by the law; it is bound by the views of the House of what is appropriate. A matter may be intra vires, but the committee may be of the view that it is not contemplated by the empowering enactment; it might be authorised by it due to the wide wording of the empowering legislation. It is possible for Parliament to enact legislation that has an enormous amount of coverage, which could make something intra vires. However, if the House decided that was not what the legislation intended, it would disallow the regulation.*⁷

3 THE INSTRUMENTS AND EMPOWERING LEGISLATION

- 3.1 The QEII amendment by-laws are made pursuant to section 20 of the *Queen Elizabeth II Medical Centre Act 1966 (QEII Act)*. Section 20(1a)(c) provides:

[T]he Trust^[8] may, with the approval of the Governor, make by-laws ... regulating the control, supervision and management of parking or standing areas, and in particular —

- (c) prescribing fees payable to the Trust by a person using, or in respect of a vehicle occupying, a parking or standing area and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those fees ...*

- 3.2 *The Royal Perth Hospital Amendment By-laws (No. 2) 2011, Women's and Children's Hospitals Amendment By-laws (No. 2) 2011, Fremantle Hospital Amendment By-laws (No. 2) 2011 and Osborne Park Hospital Amendment By-laws (No. 2) 2011 (the other*

⁶ Hon Kim Chance MLC, Leader of the House in the Legislative Council, *Parliamentary Debates (Hansard)*, 27 June 2001, p1444.

⁷ Hon Peter Foss MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 27 June 2001, p1447.

⁸ The Queen Elizabeth II Medical Centre Trust, a body corporate constituted under the *Queen Elizabeth II Medical Centre Act 1966*.

four instruments) are made pursuant to section 22 of the *Hospitals and Health Services Act 1927* (**HHS Act**). Section 22(1)(da)(i) provides:

(1) *A board,^[9] in respect of any public hospital under its control, may from time to time make by-laws, not inconsistent with this Act as to any of the following matters —*

(da) regulating or prohibiting the driving, use, standing or parking of vehicles on the ground attached to the public hospital or belonging to the board and regulating the control, supervision and management of parking or standing areas on that ground and in particular —

(i) prescribing charges payable to the board by a person using, or in respect of a vehicle occupying, a parking or standing area and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those charges ...

3.3 The instruments provide that staff must obtain a parking permit to park at hospital sites and prescribe parking permit fees effective from 1 January 2012.¹⁰

3.4 The QEII amendment by-laws increase visitor parking and staff permit fees at the Queen Elizabeth II Medical Centre site (**QEII**)¹¹ as follows:

- Visitor parking fees have increased by 25 or 29.4 per cent, depending on the number of hours a person parks at the site, to \$2.20 or \$2.50 per hour.
- Staff permit parking fees have increased by 20.5 or 23 per cent, depending on how many days a staff member works, to the equivalent of \$4.10 per day.¹²
- Staff members who were registered ‘Green Commuters’ (carpoolers) now pay parking permit fees of \$4.10 per day at QEII, which is 105 per cent more than the \$2.00 per day fee previously paid.¹³

⁹ The *Hospital and Health Services Act 1927* defines ‘board’ to include the Minister for Health in relation to any public hospital controlled by him.

¹⁰ The instruments include discretion for the CEO or ‘authorised person’ not to charge the permit fee. The other four instruments make further amendments including amending modified penalties and introducing new methods of paying parking infringement notices that are not relevant for the purposes of this report.

¹¹ Department of Health documents often refer to the fees at Sir Charles Gairdner Hospital, rather than QEII or QEIIIMC.

¹² The QEII amendment by-laws increase permit parking fees for permit holders whose normal working hours are three days a week or less from \$10.00 to \$12.30 per week, and permit holders whose normal working hours exceed three days per week from \$17.00 to \$20.50 per week.

- 3.5 The other four instruments increase staff permit fees between 13.3 and 53.8 per cent. These instruments increase parking fees at:
- Royal Perth Hospital and Fremantle Hospital to \$4.10 per day;
 - King Edward Memorial Hospital and Princess Margaret Hospital to \$3.40 per day; and
 - Osborne Park Hospital to \$2.00 per day.
- 3.6 These parking fee increases are the second round of parking fee increases in the 2011-12 financial year. The first round of increases took effect on 1 July 2011.¹⁴ Parking fees have been significantly increased since 1 January 2011. DOH's table of fee increases notes that fees will continue to increase every six months until 1 July 2014 (see paragraph 4.4 and Appendix 2).
- 3.7 The Committee is of the view that the relevant provisions in the QEII Act and HHS Act (**the empowering enactments**) authorise a fee for service, even though section 22(1)(da)(i) of the HHS Act refers to the board '*prescribing charges*'. The Committee is not persuaded that anything arises from use of the word '*charge*' in the HHS Act for the reasons outlined in Appendix 3.
- 3.8 As the empowering enactments authorise a fee for service, the above fees must be set on a cost recovery basis to be authorised. It is clear to the Committee that this is what Parliament contemplated when passing the empowering enactments.

4 APPROACH TO SETTING PARKING FEES AND COSTING METHODOLOGY

- 4.1 DOH has approached the task of fee-setting from a policy rather than cost recovery perspective.¹⁵ The parking fees at the six hospital sites covered by the instruments form part of DOH's *Access and Parking Strategy for Health Campuses in the Perth Metropolitan Area* (July 2010) (**the Strategy**).

¹³ The 'Green Commuter' day rate is no longer available at QEII. From January 2012, all parkers on site are on the 'pay as you go' (PAYG) system: Electronic mail from Ms Emilie Young, Acting Senior Policy Officer, Department of Health, 6 February 2012, p1.

¹⁴ The costing tables at Appendix 1 relate to the 2011-12 financial year.

¹⁵ Letter from Mr Timothy Marney, Under Treasurer, Department of Treasury, 19 April 2012, and letter from Hon John Day MLA, Acting Minister for Health, 12 September 2011.

4.2 As the Department of Treasury observes, the Strategy is basically a ‘green’ scheme, with a sustainability and environmental focus, intended to provide benefits to the community by reducing the economic incentive to drive to work.¹⁶

4.3 The Strategy provides:

Research has identified that travel plans which address parking by restricting the number of staff entitled to park and introducing charges, achieve significant higher reductions in car usage^{10 [17]}.

Parking fees for employees will be applied on a site-by-site basis and be consistent with these principles:

- *Parking fees will be linked to the cost of travel by public transport. Wherever possible employees will be encouraged to use public transport rather than private vehicles ...*
- *Parking fees should be varied to reflect the accessibility of a health campus by modes other than private car. For example, a site with high public transport accessibility may have higher parking fees compared with a site with low public transport accessibility.*
- *Parking fees should be levied on a daily/hourly ‘pay-as-you-go’ basis, and be reviewed annually.¹⁸*

4.4 Under the Strategy, parking fees are based on the cost of a Transperth fare with the rate applied at each hospital based on public transport accessibility to the hospital. The DOH table noting six monthly increases in parking fees from 1 January 2011 to 1 July 2014 is attached at Appendix 2.¹⁹

¹⁶ Letter from Mr Timothy Marney, Under Treasurer, Department of Treasury, 19 April 2012, pp2, 3. The specific policy objectives and aims of the *Access and Parking Strategy for Health Campuses in the Perth Metropolitan Area* are set out in the Strategy and on the Department of Health’s website: Department of Health, *Access and Parking Strategy and Health Campuses in the Perth Metropolitan Area*, July 2010, p4, and www.health.wa.gov.au/parking/home/ (viewed on 15 May 2012).

¹⁷ The Strategy footnotes at footnote 10 ‘*Making travel plans work: research report, Department of Transport, UK, July 2002*’: Department of Health, *Access and Parking Strategy and Health Campuses in the Perth Metropolitan Area*, July 2010, p17.

¹⁸ Ibid.

¹⁹ The table is published on the Department of Health’s website at www.health.wa.gov.au/parking/home/docs.cfm, then choose ‘Parking Fees’ (viewed on 15 May 2012). The Department of Health’s website states that its Metropolitan Access and Parking Department contributes 20 per cent to hospital staff travel expenses if staff use a Corporate Smartrider Card. The *Access and Parking Strategy and Health Campuses in the Perth Metropolitan Area* anticipated the department selling travel passes at a 20 per cent discount, which the employer would pay: Department of Health, *Access and Parking Strategy and Health Campuses in the Perth Metropolitan Area*, July 2010, pp16-17. This discount is in addition to the Smartrider discount on Transperth fares.

- 4.5 The Minister for Health provided the Committee with SSO advice that argues that the parking fees imposed by the instrument are authorised on the authority of *Harper v The Minister for Sea Fisheries* (1989) 168 CLR 314 and *Queanbeyan City Council v ACTEW Corporation Ltd* (2009) 258 ALR 692. These cases deal with imposts for acquisition of or access to tangible property (abalone and water respectively) for commercial exploitation. SSO rely on these cases to assert that the parking fees are authorised so long as they represent the ‘*economic value of the provision of parking at public hospitals*’ and submit that ‘[i]n order for a fee to be characterised as a tax, it must bear no “discernible relationship” to the value of the privilege provided’.²⁰ The Committee does not accept SSO’s advice for the reasons outlined in Appendix 4.
- 4.6 It is the Committee’s view that the empowering Acts do not authorise fees set to achieve policy objectives, only a fee for service. Fees for service set for policy reasons may raise questions as to whether the fee reflects the actual cost of delivering the service. They are authorised if based on an appropriate cost recovery model.
- 4.7 It appears to the Committee that DOH representatives often refer to the Strategy to justify the parking fees imposed.²¹ There appears to be a lack of understanding that parking fees are authorised only if there is an appropriate cost recovery basis for the fees imposed, and are not authorised under the empowering provisions simply because they comply with policy documents approved by the Executive.
- 4.8 DOH contends, notwithstanding the parking fees policy basis, that the parking fees reflect cost recovery as parking fees are ‘*directly linked to outgoing expenditure by WA Health*’.²² Details of their methodology for determining costs are at Appendix 1.
- 4.9 Based on DOH cost calculations, the parking fees under recover the cost of delivering the parking service at each site. However, the total costs relied on include significant capital costs and capital costs being allocated in full (and recovered in fees) in one financial year. The Committee takes issue with the way capital costs are allocated.
- 4.10 Major redevelopment is occurring across hospital sites in the metropolitan area. Significant capital costs are being expended upgrading and improving parking

²⁰ Letter from Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor’s Office, to Department of Health, 3 April 2012, pp4-5.

²¹ For example, by referring to the fact that the fees are set by the Strategy, the Minister for Planning and Minister for Health signed off on the Strategy, the aims of the Strategy and that the parking fees ‘*were set at a time when the WA Planning Commission and the Department of Health looked at those fees and made a determination about the incremental increase in those fees over time*’: Dr David Russell-Weisz, Chief Executive, North Metropolitan Area Health Service, Department of Health, *Transcript of Evidence*, 26 March 2012, pp 2, 11 and 12.

²² Department of Health, Explanatory Memorandums in relation to the *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011*, *Royal Perth Hospital Amendment By-laws (No. 2) 2011*, *Women’s and Children’s Hospitals Amendment By-laws (No. 2) 2011*, *Fremantle Hospital Amendment By-laws (No. 2) 2011* and *Osborne Park Hospital Amendment By-laws (No. 2) 2011*, p1.

facilities, restructuring current parking areas to increase the number of parking bays, building car parks and updating parking systems. As DOH advised:

*For many years we had infrastructure that was not adequate for staff, visitors and patients ... Over the last two to three years there has been an investment in relation to providing car parking across the sites in the metropolitan area ...*²³

*[At QEII] there is a huge amount of redevelopment on the site.*²⁴
[Costs have been] incurred in the replacement of on-site parking to offset the 1,200 lost bays.^[25] *[There is a] broader strategy to provide improved car parking amenities at the QEII MC site, which includes the provision of a Multi-Deck Car Park to deliver in excess of 3,000 bays.*²⁶

*[Also] a 'pay as you go' (PAYG) parking system has been implemented across all hospital sites, at considerable cost for installation and implementation.*²⁷

4.11 DOH explained its understanding of 'cost recovery' and its need to fund capital works as follows:

*Our understanding is that this exercise is about looking at costs to provide a car parking facility [including capital costs] in the period where the particular fee that is being set applies versus the revenue that will be generated during that period ...*²⁸

*[DOH are] sitting on work that needs to be done at the moment*²⁹ ...
The work at Fremantle Hospital is \$1 million. The building that the multi-storey car park is sitting in has got concrete cancer. That is the

²³ Dr David Russell-Weisz, Chief Executive, North Metropolitan Area Health Service, Department of Health, *Transcript of Evidence*, 26 March 2012, p2.

²⁴ Ibid, p4.

²⁵ The 1,200 bays were lost as a result of the significant capital works at the Queen Elizabeth II Medical Centre site: Letter from Hon Dr Kim Hames MLA, Minister for Health, 23 March 2012, p2.

²⁶ Ibid.

²⁷ Department of Health, Explanatory Memorandums in relation to the *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011*, *Royal Perth Hospital Amendment By-laws (No. 2) 2011*, *Women's and Children's Hospitals Amendment By-laws (No. 2) 2011*, *Fremantle Hospital Amendment By-laws (No. 2) 2011* and *Osborne Park Hospital Amendment By-laws (No. 2) 2011*, p1.

²⁸ Mr Wayne Salvage, Acting Executive Director, Resource Strategy, Department of Health, *Transcript of Evidence*, 26 March 2012, p5.

²⁹ Dr David Russell-Weisz, Chief Executive, North Metropolitan Area Health Service, Department of Health, *Transcript of Evidence*, 26 March 2012, p10.

*estimate of the repair, but I cannot get that money through the current system.*³⁰

- 4.12 The Director of the Metropolitan Access Parking Department (MAPD), DOH, added that what they capitalise in a year and get in revenue, they can spend; ‘[i]f we do not get it in, we cannot spend it ... I have to spend the money in the year that we earn it’.³¹
- 4.13 Further, at QEII the parking fees appear to be set based on a commercial arrangement between the Queen Elizabeth II Medical Centre Trust and Capella Parking. The Committee has not viewed the contract but has been informed that:

*The contract term enables the provider to recover all costs (i.e. rate x bays x years) associated with the construction and operation of the parking facility.*³²

*[T]he capital cost is being met by the private sector under that agreement, but with an expectation that the cost will be recovered over the life of the operation of that facility through the charging of people for parking on the site.*³³

*There is a need for us to structure fee increases going forward that reflect the arrangement that is being negotiated between the state and Capella in relation to the car parking fees that will be charged in that facility.*³⁴

*[The] broader strategy ... includes ... the need for staff and visitor parking rates on the campus to be set at a level that is consistent with the financial arrangements [to build the multi-deck car park].*³⁵

- 4.14 In contrast to the above position, DOH advised that they have regard to the Department of Treasury’s *Costing and Pricing Government Services: Guidelines for use by agencies in the Western Australian Public Sector* (April 2007) (**Treasury Guidelines**). Treasury Guidelines, which are not mandatory, comment that when

³⁰ Mr Russell Bance, Director, Metropolitan Access and Parking, Department of Health, *Transcript of Evidence*, 26 March 2012, p10.

³¹ Ibid.

³² Letter from Mr Timothy Marney, Under Treasurer, Department of Treasury, 19 April 2012, p4.

³³ Mr Wayne Salvage, Acting Executive Director, Resource Strategy, Department of Health, *Transcript of Evidence*, 26 March 2012, p5.

³⁴ Ibid, p12.

³⁵ Letter from Hon Dr Kim Hames MLA, Minister for Health, 23 March 2012, p2.

carrying out a costing exercise ‘*the primary aim should be to focus on the services rather than the processes and/or relationships to the organisation’s structure*’.³⁶

- 4.15 The Committee takes issue with DOH’s approach to setting parking fees and calculating cost recovery.
- 4.16 The Committee is of the view that organisational processes, difficulties in obtaining money for capital projects and contractual arrangements are influencing DOH’s approach to parking fees.
- 4.17 Statements by DOH officers indicate that parking fees are used to raise revenue to pay for capital expenditure required or undertaken in the fee period. Fees should appropriately reflect the cost of delivering a service in the period the fee relates to, which does not involve fee payers paying for capital items in full when they are incurred.
- 4.18 The Committee is of the view that it is not appropriate to use and justify fees to fix an infrastructure problem. The appropriate approach is to ask the Minister for capital money to pay for infrastructure projects. Arguably, by recovering the capital money for infrastructure projects in one year, DOH is effectively taxing people.
- 4.19 The Committee takes issue with the methodology used to determine the cost of the parking service at each hospital site and, in particular the way in which capital costs are allocated to be recovered in one financial year.
- 4.20 To clarify, the Committee is of the view that capital expenses can be allocated to determine the cost of providing a service, but objects to the extent to which capital costs are allocated by DOH.
- 4.21 The approach taken by DOH recovers costs from one set of users, those parking within the relevant financial year, for services provided to a wider range of users, those using this service in the following years. The Committee has a long history of viewing such measures as unauthorised.³⁷
- 4.22 On the subject of allocating capital costs to determine the ‘full cost’ of providing a service, the Treasury Guidelines state:

There are two aspects relating to the use of government-owned assets in the delivery of a service that must be considered in any analysis of full cost:

³⁶ Department of Treasury and Finance, *Costing and Pricing Government Services: Guidelines for use by agencies in the Western Australian Public Sector*, Fifth Edition, April 2007, p6. Also, letter from Mr Timothy Marney, Under Treasurer, Department of Treasury, 19 April 2012, p1.

³⁷ Parliament of Western Australia, Joint Standing Committee on Delegated Legislation, Report 51, *Liquor Licensing Amendment Regulations (No 3) 1999*, 24 May 2000.

- *the determination of an appropriate depreciation charge for non-current physical assets; and*
- *recognition that the funds invested in the assets have alternative uses and therefore some allowance should be made for a rate of return on those assets (otherwise known as the opportunity cost of capital).*³⁸

Costing calculations

- 4.23 The cost calculations at Appendix 1 divide costs into operating and maintenance costs (or ‘*Running Costs*’) and ‘*Other Costs*’, which include capital costs.
- 4.24 Between 58 per cent and 78 per cent of the total cost of providing the parking service at each site are ‘*Other Costs*’ (not running costs). Capital costs are a significant component of this category and therefore represent a significant portion of the total costs DOH rely on in its claim that parking fees reflect the cost of delivering the service. A few cost items of concern are noted below.
- 4.25 The QEII costing table includes the cost of \$959,648 for building Car Park 7A. DOH describes this line item as follows:

Conversion of Remnant Bushland to formal Car park 7A ... clearing of bushland to create an at-grade car park of 118 bays in Stage 1. Costs incurred to date. Stage 2a and 2b to create an additional 20 bays post May 2012.

- 4.26 The cost of this one item represents 28 per cent of total cost of providing the parking service at QEII. This is in the context of DOH tables noting that QEII parking fees cost recover 98 per cent of the (inflated) costs.
- 4.27 DOH explained that they allocated this cost to one financial year because:

*[I]t is a cost to the state that the state has had to incur this year in order to provide that temporary facility in the context of the redevelopment of the Sir Charles Gairdner Hospital.*³⁹

³⁸ Department of Treasury and Finance, *Costing and Pricing Government Services: Guidelines for use by agencies in the Western Australian Public Sector*, Fifth Edition, April 2007, p18. Also, Australian Accounting Standard AASB 116, which under section 62 of the *Financial Management Act 2006* applies to accountable authority’s annual reports unless the Treasurer determines otherwise, prescribes an estimated useful life for plant and equipment: See Department of Treasury, Treasury Instruction 1101(14) and *Model Annual Report for the year ended 30 June 2012*, p31.

³⁹ Mr Wayne Salvage, Acting Executive Director, Resource Strategy, Department of Health, *Transcript of Evidence*, 26 March 2012, p5.

- 4.28 The Committee noted with interest that DOH advised that this site will be used for between 18 months and two years, then part of the site will be turned into where the Ronald McDonald house will be (privately) built and at least two thirds of the bays will remain.⁴⁰
- 4.29 Of further concern, it appears that DOH intends to continue to fully allocate car park capital costs in one financial year as the multi-deck car park at QEII is built. DOH advised:
- [B]y the time we get to next year, stage one of the multi-storey car park will have been acquired and the fees that we will be looking to set next year will be related to the financing of the new car park on the site.⁴¹
- 4.30 The QEII table also includes the cost item ‘*C Block Government Vehicle Compound*’ in the amount of \$109,622 which DOH adds relates to ‘*creation of temporary car park for 45 bays for Government Vehicles*’ and costs ‘*associated with drainage ... an accumulation of costs that we have spent on that area*’.⁴²
- 4.31 ‘Pay as you go’ (PAYG) costs for PAYG hardware, machinery and upgrades alone account for between 9 and 44 per cent of total costs at all sites except Princess Margaret Hospital.⁴³
- 4.32 PAYG costs at QEII include ‘*Web Site Production and Management*’ costs (to enable staff to credit money onto their parking card) of \$64,000.⁴⁴ DOH advised that the system at one site cannot be used at other hospital sites because the health information network does not allow DOH to ‘push and pull’ information across websites so this needs to be located on site.⁴⁵

⁴⁰ Dr David Russell-Weisz, Chief Executive, North Metropolitan Area Health Service, Department of Health, *Transcript of Evidence*, 26 March 2012, p4.

⁴¹ Mr Wayne Salvage, Acting Executive Director, Resource Strategy, Department of Health, *Transcript of Evidence*, 26 March 2012, p5. The Department of Health advised at the Legislative Assembly 2012-13 Budget Estimates Hearing that the multi-deck car park is progressing and the first stage will be completed in October 2012, when 876 bays will be available. The next stage, to be completed in April 2013, will ‘probably’ add an additional 800 bays. The multi-deck car park is expected to be completed and functional by mid 2014: Dr David Russell-Weisz, Chief Executive, North Metropolitan Area Health Service, Department of Health, *Parliamentary Debates (Hansard)*, 30 May 2012, E247.

⁴² Mr David Mulligan, Executive Director, Clinical Planning and Redevelopment, Department of Health, *Transcript of Evidence*, 26 March 2012, p9. One hundred and two vehicles are authorised to use this car park: Letter from Hon Dr Kim Hames MLA, Minister for Health, 7 June 2012, p2.

⁴³ ‘Pay as you go’ (PAYG) hardware and machinery costs are one-off costs. Other PAYG costs are recurrent: Letter from Hon Dr Kim Hames MLA, Minister for Health, 7 June 2012, pp2-3.

⁴⁴ A portion of the \$64,000, approximately \$34,000, is an ongoing license fee for the software: Ibid.

⁴⁵ Mr Russell Bance, Director, Metropolitan Access and Parking, Department of Health, *Transcript of Evidence*, 26 March 2012, p7. Also, letter from Hon Dr Kim Hames MLA, Minister for Health, 7 June 2012, pp2-3.

- 4.33 The Committee is concerned that it appears that DOH cannot use the software developed for use at QEII at other hospital sites because they *‘cannot utilise what the trust has developed; that is a trust cost and it would not be open to us’*.⁴⁶
- 4.34 In addition to significant PAYG costs, all hospital sites (except QEII) also include costs for *‘Boomgates and wiring’* of between approximately \$18,000 and \$85,000.
- 4.35 This item alone at Fremantle Hospital (where \$85,171 is allocated) represents 5.5 per cent of total costs at this site. Also, *‘Additional Security Cameras’* and *‘Relocation of site bays’* at Fremantle Hospital (total \$375,301), further capital expenses, comprise another 24 per cent of the total cost at this site. This is in the context of DOH tables noting that Fremantle Hospital parking fees cost recover nearly 97 per cent of the DOH cost, which includes these capital costs.
- 4.36 Also, the tables allocate signage and light costs (*‘Signage Alterations’*, *‘Signage Installation’* and/or *‘Signage and new lights’* costs) of between approximately \$20,000 and \$85,000 at all sites.
- 4.37 In relation to Royal Perth Hospital, DOH passes onto fee payers City of Perth licence fees (levies) in the amount of \$1.3 million, being 38 per cent of the costs at this site, which in the Committee’s view is authorised.
- 4.38 At Royal Perth Hospital, Wilson management fees of \$562,364 (16 per cent of total costs) are also allocated. This is in addition to the \$300 per bay staff costs allocated at this site.
- 4.39 Further, the Committee is not persuaded that all running costs (that is, operating and maintenance costs) in the tables are appropriate. In particular, it is curious that exact figures — \$300, \$200 and \$100 — are allocated as per bay costs for particular running costs, even allowing for the fact that DOH guestimate such costs.
- 4.40 It is the Committee’s duty to ensure that departments are not taxing agents and departments and agencies impose a fee for a service based on an appropriate cost recovery model.
- 4.41 Essentially, the Committee does not accept the DOH methodology and therefore the parking fees imposed. The Committee does not accept DOH’s submission that parking fees cost recover as the costing totals are comprised of inappropriate allocations.
- 4.42 The concern of the Committee is that today’s fee paying permit holders are paying the full cost of significant infrastructure and equipment that other fee payers will benefit from for many years.

⁴⁶ Ibid.

- 4.43 In the Committee's view, capital costs of building a car park should be allocated over many years in a fee for service cost recovery model.
- 4.44 Also, departments and agencies often increase fees by CPI on a 'base cost'. When this base cost has not been determined based on an appropriate costing methodology, future fees continue to be unauthorised and may, year after year, as CPI is applied, over recover the cost of the service effectively taxing the fee payer.
- 4.45 For each hospital site, DOH submit that the fee is determined on a cost recovery basis, with different percentages of cost recovery at each site, as demonstrated by its tables. As the Committee is not persuaded that DOH's costing methodology is appropriate, the Committee does not accept the parking fees based on this costing methodology.
- 4.46 In the Committee's view, Parliament, in passing the empowering enactments, did not authorise and did not contemplate the methodology used by DOH to determine costs relating to a fee for service.

5 CONCLUSIONS

- 5.1 The Committee is of the view that the instruments offend its term of reference 3.6(a) in that by-laws are not authorised by the empowering enactments for the reasons noted in this report.
- 5.2 Further, the instruments offend the Committee's term of reference 3.6(a) in that parking fees based on the DOH methodology were not contemplated by Parliament when it passed the empowering enactments.
- 5.3 The Committee does not accept the DOH costing methodology and the manner in which capital costs are allocated in full and recouped in one financial year.
- 5.4 The Committee is not persuaded that parking fees reflect cost recovery.
- 5.5 The Committee does not accept, and is of the view that Parliament should not accept as a proper exercise of the power provided to the Executive, DOH fully allocating parking capital costs in one financial year as an appropriate costing methodology.
- 5.6 It appears to the Committee that there is a lack of understanding that a fee for service is only authorised if authorised by Parliament in the empowering legislation. A fee for service is only authorised if there is an appropriate cost recovery basis for the fee imposed. The Committee is of the view that there is clearly not an appropriate cost recovery basis for the parking fees imposed.
- 5.7 The Committee recommends that the instruments be disallowed for the reasons outlined in this report.

6 RECOMMENDATIONS

Recommendation 1: The Committee recommends that the *Queen Elizabeth II Medical Centre (Delegated Site) Amendment By-laws (No. 2) 2011* be disallowed.

Recommendation 2: The Committee recommends that the *Royal Perth Hospital Amendment By-laws (No. 2) 2011* be disallowed.

Recommendation 3: The Committee recommends that the *Women's and Children's Hospitals Amendment By-laws (No. 2) 2011* be disallowed.

Recommendation 4: The Committee recommends that the *Fremantle Hospital Amendment By-laws (No. 2) 2011* be disallowed.

Recommendation 5: The Committee recommends that the *Osborne Park Hospital Amendment By-laws (No. 2) 2011* be disallowed.

7 KALEEYA HOSPITAL AND SHENTON PARK

- 7.1 The *Fremantle Hospital Amendment By-laws (No. 2) 2011* also increase parking fees at Kaleeya Hospital⁴⁷ and the *Royal Perth Hospital Amendment By-laws (No. 2) 2011* amend the prescribed parking fees at the Shenton Park site⁴⁸ (**the two sites**). However, after questioning these amendments, the Committee was informed that no parking fee is charged at the two sites pursuant to DOH policy.⁴⁹
- 7.2 After the Committee raised these drafting errors, the Minister for Health gave an undertaking to amend the *Fremantle Hospital By-laws 1992* and *Royal Perth Hospital By-laws 2009* (**the principal by-laws**) to state that no fee is payable at the two sites.⁵⁰

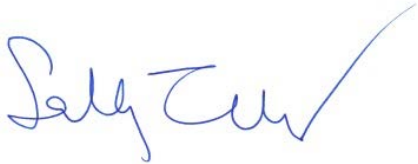
⁴⁷ The *Fremantle Hospital Amendment By-laws (No. 2) 2011* increase parking fees at Kaleeya Hospital prescribed in the *Fremantle Hospital By-laws 1992* from \$2.00 per day, which the Committee understands was not in fact charged at Kaleeya Hospital, to \$4.10 per day.

⁴⁸ The *Royal Perth Hospital Amendment By-laws (No. 2) 2011* make minor amendments to how parking fees at the Shenton Park site are prescribed in the *Royal Perth Hospital By-laws 2009*. The principal by-laws previously prescribed \$2.00 per day, which the Committee understands was not in fact charged at Shenton Park. The *Royal Perth Hospital Amendment By-laws (No. 2) 2011* inserted '\$2.00 (for each day the permit holder is permitted to park a vehicle on the site, up to a maximum of \$10.00 per week'.

⁴⁹ Letter from Hon Dr Kim Hames MLA, Minister for Health, 23 March 2012, pp3-4.

⁵⁰ Ibid.

- 7.3 If the Legislative Council disallows the five instruments as recommended in this report, the principal by-laws will continue to prescribe fees at the two sites. If the instruments are disallowed, the Committee assumes that the Executive will proceed to amend the principal by-laws to provide that no fee is payable at the two sites.
- 7.4 The Committee commends its report to the House.



Hon Sally Talbot MLC
Deputy Chair

16 August 2012

APPENDIX 1

DEPARTMENT OF HEALTH TABLES

QEIMC Budget Calculations 2011/2012											
Annual Revenue Calculations	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Totals
STAFF PARKING REVENUE	\$141,882	\$141,882	\$112,200	\$112,200	\$112,200	\$112,200	\$123,000	\$123,000	\$123,000	\$123,000	\$1,470,564
VISITOR - Short Term Parking	\$16,800	\$16,800	\$21,000	\$16,800	\$16,800	\$11,200	\$16,800	\$16,800	\$21,000	\$16,800	\$204,400
VISITOR - Long Term Parking	\$166,005	\$166,005	\$167,344	\$133,875	\$133,875	\$119,000	\$133,875	\$133,875	\$167,344	\$133,875	\$1,722,823

Total Revenue \$ 3,397,787

OVERALL METHODOLOGY: Number of Fee Paying Bays x Average Fee Received x Bay Turnover (per day) x Effective Days per Week x Effective Weeks per Annum

TOTAL BAYS ON SITE											
Staff	1845.0	1846	1443	1365	1405	1475	1068	1009	1123	1123	1123
Visitor Bays (both Short & Long Term)	775.0	775	710	710	710	588	588	688	716	700	700
Total Operating Costs *	\$155,888	\$155,888	\$128,033	\$123,414	\$125,793	\$122,700	\$88,493	\$99,742	\$104,619	\$108,426	\$1,440,822

* Total Revenue Generating Bays x Average Annual Running Costs per Bay - "cashflowed" monthly
 * More detail regarding total operating cost is provided in the section titled "Annualised Running Costs per Bay based on Financial History"

Total Other Costs Incurred (More detail provided in the section titled "Other Costs Breakdown")	\$2,021,168
Total Costs	\$3,461,990

Highlighted Examples of Methodology Used to Calculate Revenue:

STAFF BAYS	Jan-11	Feb-11
Working days in Month (a)	22	21
Daily Fee (b)	\$ 4.10	\$ 4.10
Turn Over per Bay (c)	1.28	1.42
Number of Staff Bays (d)	1,088.00	1,009.00
Total Revenue a*b*c*d	\$ 123,000	\$ 123,015

JANUARY 2011 - SHORT TERM VISITOR BAYS	
Number of Bays	100
Average Fee per Entry	\$ 2.45
Turn Over per Bay	2.21
Effective Days	31.00
Total Revenue a*b*c*d	\$ 16,799

JANUARY 2011 - LONG TERM VISITOR BAYS	
Number of Bays	488
Average Fee per Entry	\$ 5.35
Turn Over per Bay	1.67
Effective Days	31.00
Total Revenue a*b*c*d	\$ 134,874

Annualised Running Costs Per Bay *	Annualised
Maintenance Costs (averaged per bay)	\$ 200.00
Repairs (resurfacing, painting, parts for boomgates etc)	\$ 10.00
Landscaping/footpaths (lawnmowing, weeding etc)	\$ 1.50
Pest Control (6 annual spray)	\$ 0.12
Light Globe Replacement (average cost of labour plus bulb per bay)	\$ 1.70
Maintenance Contract on Boom Gates/Swipe Card Readers (the boomgates and operating system are of Fire Compliance Check - each car park requires fire compliance clearance by FESA annual check)	\$ 24.00
Cleaning	\$ 300.00
Operating Costs (averaged per bay)	\$ 500.00
Staff Management, Call Centre, Traffic control, Revenue Collection, Admin) SEE STAFF BREAKDOWN	\$ 100.00
Security 24/7	\$ 40.00
Car park management System (IT) to support "pay as you go" parking	\$ 12.00
Printing Car Park Permits/ Postage	\$ 0.20
IT Running cost	\$ 4.00
Provision of Swipe Card	\$ 0.20
Water	\$ 20.00
Power	\$ 713.72
Totals Average Running Cost per bay per annum	\$ 713.72

Other Costs # see descriptions below	\$\$\$
1. PAYG Breakdown detail (P/S of page)	\$348,565
2. Signage and new lights	\$52,316
3. Bankside Drive Car Park Upgrades	\$288,000
4. Conversion of Remnant Bushland to formal Car park 7A	\$959,648
5. W & L Block Temp Parking	\$252,808
6. Monash/Winthrop Temporary Car Park	\$10,209
7. C Block Government Vehicle Compound	\$109,622
Total Other Costs	\$2,021,168

Description of Other Costs	
1. PAYG Breakdown	
2. Due to movement of Car Parks new way finding and signage required	
3. Bankside Upgrades - Upgrade to existing Car Park 7 to maximise bay configuration - generated additional 30 bays.	
YTD Not total costs as not fully delivered at this point. Full delivery post CEP handover tunnel stages	
4. Remnant Bushland - clearing of bushland to create an all-grade car park of 118 bays in Stage 1.	
Costs incurred to date. Stage 2a and 2b to create an additional 20 bays post May 2012.	
5. W&L Block - early demolition of buildings to create temporary car parks before specific site redevelopment occurs in late 2012/early 2013.	
Total approx 180 bays. final design to be confirmed post demo U block. Cost incurred YTD only Not Total Costs	
6. Monash/Winthrop - utilisation of southern buffer of site (and NCH footprint) to maximise bays in short term. 170 bays initially, now 80 after handing partial site to NCH.	
7. C Block car park - creation of temporary car park for 45 bays for Government Vehicles.	

PAYG Cost Breakdown	Cost Each	GEI Number	Total Cost
Articulated Arms with weak link protection	\$3,300	8	\$26,400
PXU Lane Reader with Nedap Interface	\$6,600	8	\$52,800
Long Range Reader (one entry one Exit)	\$4,750	8	\$38,000
Management System	\$32,000	1	\$32,000
Web Site Production and Management	\$94,000	1	\$94,000
Interactive Kiosks	\$12,000	4	\$48,000
Command Intercom Server	\$21,000	1	\$21,000
Relay Server and Computers	\$5,600	4	\$22,400
Installation Bot down commissioning and	\$3,500	8	\$28,000
Tower Installation	\$5,500	0	\$0
Project Management		1	\$15,985
TOTAL COSTS			\$348,565

Royal Perth Wellington Street	Jul 2011-Dec 2011	Jan 2012-June 2012	Total Revenue 2011/12
Existing Revenue			
Enter total number of bays	1567	1567	
Average Fee paid per hour or per entry	3.40	4.10	
Average Number of hours ("1" if daily fee)	1.00	1.00	
Average Turn over of bays ¹	2.0	2.0	
Equivalent number of days per week ²	5	5	
Equivalent number of weeks per year ³	26	26	
Budget Estimate Total	\$1,355,809	\$1,634,945.83	\$2,990,755
Actuals	\$1,402,287		
NB turn over is based on average across 7 days, weekend bays under utilised hence turn over appears low.			
	Costs per 6 months (11/12)	Costs per 6 months(11/12)	Totals
Maintenance Costs (averaged per bay) Per annum			
Repairs/Maintenance to bays	RPH		
Landscaping/Footpaths	\$200		\$32000
Pest Control	\$10		\$ 9000
Light Globe Replacement	\$1.50		\$15000
Maintenance Contract on Boom Gates/Swipe Card Readers	\$0.12		\$22,300
Fire Compliance Check	1.70		\$12323
Cleaning	0.30		\$ 15540
	\$10		\$ 30500
Operating Costs (averaged per bay)			
Staff (Management, Call Centre, Traffic control, Revenue Collection, Administration)	RPH		\$2500
Security 24/7	\$300		
Printing Car Park Permits/ Postage	\$100		\$8500
IT Running cost	\$12		\$22,500
Provision of Swipe Card	\$0.20		\$12,800
Water	\$4		\$27000
Power	\$0.20		\$4550
Totals	\$660.22	\$517,282.37	\$1,034,564.74
Other Costs			
City of Perth Levy			\$1,304,187.00
Depreciation on Multideck			\$84,000.00
PAYG			\$320,000.00
Wilson - Management Fees			\$562,364
Signage Alterations			\$68,456
Boom gates and wiring re PAYG			\$85,171.00
Total Costs			\$3,458,742.70

Princess Margaret Hospital	Jul 2011-Dec 2011	Jan 2012-June 2012	Total Revenue 2011/12
Existing Revenue			
Enter total number of bays	187	187	
Average Fee paid per hour or per entry	3.00	3.40	
Average Number of hours ("1" if daily fee)	1.00	1.00	
Average Turn over of bays ¹	1.5	1.5	
Equivalent number of days per week ²	5	5	
Equivalent number of weeks per year ³	26	26	
Budget Estimate Total	\$109,095	\$123,641	\$232,736.55
Actuals	\$111,285		
	Costs per 6 months (11/12)	Costs per 6 months(11/12)	Totals
Maintenance Costs (averaged per bay) Per annum			
Repairs/Maintenance to bays	PMH		
Landscaping/Footpaths	\$200		
Pest Control	\$10		
Light Globe Replacement	\$1.50		
Maintenance Contract on Boom Gates/Swipe Card Readers	\$0.12		
Fire Compliance Check	1.70		
Cleaning	0.30		
	\$10		
Operating Costs (averaged per bay)	PMH		
Staff Management, Call Centre, Traffic control, Revenue Collection	\$200		
Security 24/7	\$100		
Printing Car Park Permits/ Postage	\$12		
IT Running cost	\$0.20		
Provision of Swipe Card	\$4		
Water	\$0.20		
Power	\$17		
Totals	\$557.22	\$52,100	\$104,200
<div style="border: 1px solid black; padding: 5px;"> <p>HE42125: Total Repairs 187*\$200=\$37400 Repairs to pot holes staff car park 7 \$6580 Repaint bays main entrance and resurface bays \$8300 Reallocation of bays to visitors and move staff bays to multideck (boomgate move) \$12500 Consultancy Cost re traffic Flow Main Car Park pending creation of new entrance 2012/13 \$10,240</p> </div>			
Other Costs			
City of Perth Levy			\$130,104.00
Signage Alterations			\$20,032.20
Boom gates and wiring			\$18,909.00
Total Costs			\$273,245

King Edward Memorial Hospital		Jul 2011-Dec 2011	Jan 2012-June 2012	Total Revenue 2011/12
Existing Revenue				
Enter total number of bays		240.00	240.00	
Average Fee paid per hour or per entry		3.00	3.40	
Average Number of hours ("1" if daily fee)		1.00	1.00	
Average Turn over of bays ¹		1.58	1.58	
Equivalent number of days per week ²		5.00	5.00	
Equivalent number of weeks per year ³		26.00	26.00	
Budget Estimate Total		\$147,888	\$167,606	\$315,494
Actuals		\$154,354		
		Costs per 6 months (11/12)	Costs per 6 months(11/12)	Totals
Maintenance Costs (averaged per bay) Per annum	KEMH			
Repairs/Maintenance to bays	\$200			
Landscaping/Footpaths	\$10			
Pest Control	\$1.50			
Light Globe Replacement	\$0.12			
Maintenance Contract on Boom Gates/Swipe Card Readers	1.70			
Fire Compliance Check	0.30			
Cleaning	\$10			
Operating Costs (averaged per bay)	KEMH			
Staff (Management, Call Centre, Traffic control, Revenue Colle	\$300			
Security 24/7	\$100			
Printing Car Park Permits/ Postage	\$12			
IT Running cost	\$0.20			
Provision of Swipe Card	\$4			
Water	\$0.20			
Power	\$17			
Totals	\$657.22	\$78,866	\$78,866	\$157,733
Other Costs				
PAYG				\$153,105.00
Signage Alterations				\$36,458
Boom gates and wiring re PAYG				\$20,790.00
Lease of land at Railway parade				\$96,896.00
Total Costs				\$464,982

HE42125:

Total Repairs \$200*240=

Drainage Alterations to comply with Councils Regs

Repainting of Car Parks 1 and 3

Patch and Repair Car Park 1

\$56000

\$10800

\$8200

Fremantle		Jul 2011-Dec 2011	Jan 2012-June 2012	Total Revenue 2011/12
Existing Revenue				
Enter total number of bays		890	890	
Average Fee paid per hour or per entry		3.40	4.10	
Average Number of hours ("1" if daily fee)		1.00	1.00	
Average Turn over of bays ¹		1.7	1.7	
Equivalent number of days per week ²		5	5	
Equivalent number of weeks per year ³		26	26	
Budget Estimate Total		\$683,384	\$824,080	\$1,507,463.98
Actuals		\$6,851,816		
NB turn over is based on average across 7 days, weekend bays under utilised hence turn over appears low.				
Costs per 6 months (11/12)		Costs per 6 months(11/12)		Totals
Maintenance Costs (averaged per bay) Per annum	Freo			
Repairs/Maintenance to bays	\$200	HE42125: Total Repairs \$200*890=\$178000 Access Control Door to Multi Deck \$13800 Repair and Patch Car Park 3 \$54,456 Resurface and create 4 new bays Car Park 1 \$14230 Line Marking Addition to No Standing Area \$3400 Tree Removal to Central Car Park due to Root Damage and make good, whole car park resurfaced \$67000 Re paint bays Multi Deck 500 bays @\$10 per bay(p) \$5000 Reallocation,resurface and Paint Mental Health Bays \$12240 Additional 4 bays Mental Health Area \$14000		
Landscaping/Footpaths	\$10			
Pest Control	\$1.50			
Light Globe Replacement	\$0.12			
Maintenance Contract on Boom Gates/Swipe Card Readers	1.70			
Fire Compliance Check	0.30			
Cleaning	\$15			
Operating Costs (averaged per bay)	Freo			
Staff (Management, Call Centre, Traffic control, Revenue Collection)	\$300			
Security 24/7	\$100			
Printing Car Park Permits/ Postage	\$12			
IT Running cost	\$0.20			
Provision of Swipe Card	\$4			
Water	\$0.20			
Power	\$20			
Totals	\$665.02	\$295,934	\$295,934	\$591,868
Other Costs				
Depreciation on Multideck		\$24,000.00		
PAYG		\$358,000.00		
Signage Alterations		\$85,678		
Boom gates and wiring re PAYG		\$85,171.00		
Relocation of on site bays		\$227,301.00		
Additional Security Cameras		\$148,000.00		
Lease of Bays with Freo Council		\$36,540		
Total Costs		\$1,556,558		

Osborne Park Hospital		Jul 2011-Dec 2011	Jan 2012-June 2012	Total Revenue 2011/12
Existing Revenue				
Enter total number of bays		200	200	
Average Fee paid per hour or per entry		1.30	2.00	
Average Number of hours ("x" if daily fee)		1.00	1.00	
Average Turn over of bays ¹		0.8	0.8	
Equivalent number of days per week ²		5.00	5.00	
Equivalent number of weeks per year ³		26.00	26.00	
Budget Estimate Total		\$26,627.64	\$40,968.20	\$67,595.84
Actuals		\$25,283		
		Costs per 6 months (11/12) Costs per 6 months(11/12)		
Maintenance Costs (averaged per bay) Per annum				
Repairs/Maintenance to bays	OPH			
Landscaping/Footpaths	\$200			
Pest Control	\$10			
Light Globe Replacement	\$1.50			
Maintenance Contract on Boom Gates/Swipe Card Readers	\$0.12			
Fire Compliance Check	1.70			
Cleaning	0.30			
	\$10			
Operating Costs (averaged per bay)				
Staff (Management, Call Centre, Traffic control, Revenue Colle	OPH			
Security 24/7	\$250			
Printing Car Park Permits/ Postage	\$50			
IT Running cost	\$12			
Provision of Swipe Card	\$0.20			
Water	\$4			
Power	\$0.20			
	\$16			
Totals	\$556.22	\$55,622.00	\$55,622.00	\$111,244.00
Other Costs				
PAYG				
Signage Installation				\$220,000.00
Boom gates and wiring re PAYG				\$85,456
Total Costs				\$83,269.00
				\$499,969.00

HE42125:

Total 200 * \$200 = \$40000

Compact Rear Car Park and instal roadbase \$29500
 New Footpath to rear car park \$ 14000
 Chain Link fence and coppers logs \$9230

APPENDIX 2

PARKING FEE INCREASES TO 1 JULY 2014

Attachment . Current and proposed future staff carparking fees at metropolitan hospitals										
Category	Hospital Name	Current								
		(May 09)	1-Jan-11	1-Jul-11	1-Jan-12	1-Jul-12	1-Jan-13	1-Jul-13	1-Jan-14	1-Jul-14
		Daily Charge	Daily Charge	Daily Charge	Daily Charge	Daily Charge	Daily Charge	Daily Charge	Daily Charge	Daily Charge
A	Royal Perth Hospital Wellington St Campus	\$2.45	\$2.70	\$3.40	\$4.10	\$4.80	\$5.50	\$6.20	\$6.90	\$7.50
	Sir Charles Gairdner hospital (QEII/MC Site)	\$1.50	\$2.70	\$3.40	\$4.10	\$4.80	\$5.50	\$6.20	\$6.90	\$7.50
	Fremantle Hospital	\$0.96	\$2.70	\$3.40	\$4.10	\$4.80	\$5.50	\$6.20	\$6.90	\$7.50
	New Fiona Stanley Hospital	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	New Midland Health Campus	\$0.00	NA	NA	NA	NA	NA	NA	NA	NA
	New Childrens Hospital (QEII/MC Site)	\$0.00	NA	NA	NA	NA	NA	NA	NA	NA
	Joondalup Hospital*	NA	NA	NA	NA	NA	NA	NA	NA	NA
B	Princess Margaret Hospital	\$1.44	\$2.50	\$3.00	\$3.40	\$3.80	\$4.20	\$4.60	\$5.00	\$5.40
	King Edward Memorial Hospital	\$1.44	\$2.50	\$3.00	\$3.40	\$3.80	\$4.20	\$4.60	\$5.00	\$5.40
	Osborne Park Hospital	Current (May 09)	11-Apr-11	1-Jul-11	1-Jan-12	1-Jul-12	1-Jan-13	1-Jul-13	1-Jan-14	1-Jul-14
		\$0.00	\$0.60	\$1.30	\$2.00	\$2.70	\$3.40	\$4.10	\$4.80	\$5.40
C	Kaleeya Hospital	Current (May 09)	1-Jan-11	1-Jul-11	1-Jan-12	1-Jul-12	1-Jan-13	1-Jul-13	1-Jan-14	1-Jul-14
	Graylands Hospital	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60
	Armadale Hospital	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60
	Rockingham Hospital	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60
	Swan District Hospital (current location)	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60
	Bentley Hospital	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60
	Royal Perth Hospital Shenton Park Campus	\$0.00	Under Review	Under Review	\$0.50	\$1.00	\$1.50	\$2.00	\$2.50	\$3.60

* Note that Joondalup hospital and Peel Health Campus are privately contracted facilities. WA Health cannot set fee levels, nor impose increases unilaterally. Rather, fees and fee increases will be included in contract negotiations with these sites.

APPENDIX 3

THE EMPOWERING ENACTMENTS IMPOSE A FEE FOR SERVICE

1. The Committee is of the view that the empowering enactments authorise a fee for service, even though section 22 of the HHS Act refers to the board ‘*prescribing charges*’ (not ‘*fees*’).
2. The Department of Treasury expressed the view that ‘*there is a legal distinction between fees, charges and taxes*’, adding that ‘*a fee is limited to cost recovery whereas a charge is not subject to the same limitation*’.⁵¹ SSO did not raise this point despite referring to ‘*the proposed charges*’ in its advice.
3. The *Interpretation Act 1984* does not define either ‘*fee*’ or ‘*charge*’.⁵² The words ‘*fee*’ and ‘*charge*’ are not used consistently in Western Australian legislation. Nothing in the HHS Act suggests that ‘*charge*’ is intended to impose anything other than a fee for service.⁵³
4. In the Committee’s view, when Parliament legislates for a fee or charge, in the absence of any express statement to the contrary, it contemplates this to mean a fee for service that shall not over recover the cost of providing the relevant service.
5. Generally, whether primary legislation provides power to impose a ‘*fee*’ or power to impose a ‘*charge*’ is irrelevant to the legal consideration of whether an impost is a fee for service or a tax. For example, in the classic definition of a fee for service in the leading case of *Air Caledonie International v Commonwealth* (1988) 165 CLR 462, the High Court of Australia refers to ‘*a fee or charge* [Committee emphasis] *exactd for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment*’.⁵⁴
6. Also, in considering whether an impost was authorised in the case *Epic Energy (WA) Nominees Pty Ltd & Another v Dr Kenneth Comninos Michael, Western Australian Independent Gas Pipeline Access Regulator* (2003) 27 WAR 515 nothing turned on the fact that the legislation empowered imposition of a ‘*charge*’ rather than a ‘*fee*’.
7. The Committee is not persuaded that anything arises from use of the word ‘*charge*’ in the HHS Act.

⁵¹ Letter from Mr Timothy Marney, Under Treasurer, 19 April 2012, p2. The Department of Treasury’s *Costing and Pricing Government Services Guidelines* states that ‘[c]harges, unlike fees, are for services that are discretionary from the point of view of the consumer’ but its *Model Annual Report 2012* refers to Treasury Instruction 810 which states that ‘[c]harges are usually imposed for compulsory services’: Department of Treasury and Finance, *Costing and Pricing Government Services Guidelines*, Fifth Edition, April 2007, p4, and *Model Annual Report for the year ended 30 June 2012*, p48.

⁵² Section 45A of the *Interpretation Act 1984* provides that ‘*fee*’ includes ‘*charge*’ in that section.

⁵³ The Second Reading Speech made when section 22(1) was inserted into the *Hospitals and Health Services Act 1927* does not suggest or imply that ‘*charge*’ is intended to impose anything other than a fee for service: Hon John Williams MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 1 December 1983, p5778.

⁵⁴ (1988) 165 CLR 462 at 470.

APPENDIX 4

COMMITTEE COMMENT ON STATE SOLICITOR'S OFFICE ADVICE

1. The Minister for Health provided the Committee with advice from SSO to support the view that the parking fees imposed are authorised. The Committee does not accept this advice.
2. SSO relies on the cases of *Harper v The Minister for Sea Fisheries* (1989) 168 CLR 314 and *Queanbeyan City Council v ACTEW Corporation Ltd* (2009) 258 ALR 692 which deal with imposts for acquisition of or access to tangible property (abalone and water) for commercial exploitation to assert that the parking fees are authorised so long as they represent the 'economic value of the provision of parking at public hospitals'.

3. In SSO's view:

The provision of parking on hospital property involves the car owner in acquiring a privilege or a licence to park his or her vehicle there. In order for a fee to be characterised as a tax it must bear no "discernible relationship" to the value of the privilege provided ...

*Charging the economic value of the provision of parking at public hospitals does not mean the fee will have no discernible relationship to the value of the parking provided. The cost of providing the parking is not determinative but relevant.*⁵⁵

4. In 2011, Hon John Day MLA, Acting Minister for Health, informed the Committee, in response to Committee questions regarding the first round of parking fee increases in the 2011-12 financial year, that the 'discernible relationship' test:

*Appears to look beyond the costs to government, and instead assesses whether there is any discernable relationship between the fee paid and the value of what is acquired. The Courts now consider not only the inherent value of the service but also the underlying value vested in the commodity (Queanbeyan City Council v ACTEW Corporation Ltd ...)*⁵⁶

5. The Acting Minister for Health acknowledged that this 'distinctively low threshold' requires 'a charge to be simply "related to" the right acquired'.⁵⁷ Based on this threshold, the Committee

⁵⁵ Letter from Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor's Office, to Department of Health, 3 April 2012, pp4-5.

⁵⁶ Letter from Hon John Day MLA, Acting Minister for Health, 12 September 2011, p3.

⁵⁷ Ibid. The Minister for Health has also referred to this 'distinctively low threshold': Letter from Hon Dr Kim Hames MLA, Minister for Health, 23 March 2012, p3. The Minister for Health also expressed the view that 'there is clearly a very strong relationship between the daily parking rates and the "value" being acquired by the user in gaining convenient and proportionally discounted parking space': Letter from Hon Dr Kim Hames MLA, 23 April 2012, p2.

questions what fees it is suggested would be valid. A fee that over recovers by 10, 30 or 50 per cent?

6. The cases relied on by SSO can clearly be distinguished from the present case involving parking fees. SSO rely on passages in judgements that state that in valuing a natural resource, the government is entitled to realise the underlying value of a scarce resource, as well as actual cost of making it available.
7. *Harper v The Minister for Sea Fisheries*, a High Court of Australia case, involved a fee for a licence to fish abalone. The facts on which the judges reached their conclusion are not present in respect of the parking fees. As explained by Justice Brennan:

[The licence in question conferred] *a right of fishing in another's waters to the exclusion of the public ...*

A limited natural resource which is otherwise available for exploitation by the public can be said truly to be public property whether or not the Crown has the radical or freehold title to the resource. A fee paid to obtain such a privilege is analogous to the price of a profit à prendre;^[58] it is a charge for the acquisition of a right akin to property. Such a fee may be distinguished from a fee exacted for a licence merely to do some act which is otherwise prohibited (for example, a fee for a licence to sell liquor) where there is no resource to which a right of access is obtained by payment of the fee.⁵⁹

8. In *Harper v The Minister for Sea Fisheries*, Chief Justice Mason and Justices Deane and Gaudron used slightly different reasoning, relying on the nature of the licensing scheme found in the relevant legislation (which is distinguishable from the parking fee scheme):

The right of commercial exploitation of a public resource for personal profit has become a privilege confined to those who hold commercial licences. This privilege can be compared to a profit à prendre. In truth, however, it is an entitlement of a new kind created as part of a system for preserving a limited public natural resource in a society which is coming to recognize that, in so far as such resources are concerned, to fail to protect may destroy and to preserve the right of everyone to take what he or she will may eventually deprive that right of all content.

In that context, the commercial licence fee is properly to be seen as the price exacted by the public, through its laws, for the appropriation of a limited public natural resource to the commercial exploitation of those who, by their own choice, acquire or retain commercial licences.⁶⁰

⁵⁸ Profit à prendre is a right to take something off another person's land, or to take something out of the soil of that land; *Australian Softwood Forests Pty Ltd v A-G (NSW)* (1981) 148 CLR 121: LexisNexus Australia, *Encyclopaedic Australian Legal Dictionary*, January 2011.

⁵⁹ *Harper v The Minister for Sea Fisheries* (1989) 168 CLR 314, per Brennan J at 335.

⁶⁰ Ibid, per Mason CJ, Deane and Gaudron JJ at 325.

9. *Queanbeyan City Council v ACTEW Corporation Ltd* involved two imposts – a water abstraction charge (**WAC**) imposed by the Australian Capital Territory (**ACT**) on ACTEW Corporation Limited (an ACT government-owned statutory corporation) as a condition for water taken under licence from the ACT for supply to its customers, and a utilities tax imposed by the ACT on ACTEW in respect of its water distribution network situated on ACT land. ACTEW passed on both these imposts to its customers, which included Queanbeyan City Council.
10. In this case, a Full Court of the Federal Court of Australia decision, two of the three judges found that water charges were not a tax as they were ‘valued’ on the basis of water scarcity. The judges were not prepared to question this approach to ascertaining the value of a natural resource as they considered valuation of natural resources a political, not legal, matter. The third judge, Justice Perram, found that the attributed ‘value’ should be questioned. In addition to being a divided judgement, the Queanbeyan decision on policy has little relevance because the question of valuing a natural resource in a monopoly situation is a different exercise to valuing the cost providing access to parking or parking services.
11. There is a clear factual distinction between the nature of the WAC and the licence fee paid for the licence to take water and imposing a fee for access to park at a hospital site.
12. Further, *Queanbeyan City Council v ACTEW Corporation Ltd*, which SSO refer to, was appealed to the High Court of Australia who affirmed the majority decision, that the imposts were not a tax, on a different basis and did not endorse the reasons of the Federal Court judges.
13. The value of fish or water cannot be calculated in the same way that the cost of providing access to a parking bay can be calculated.
14. SSO does not identify the nature of the impost authorised by the empowering Acts, that is, whether it is a licence fee, privilege fee or fee for service. Instead SSO finds that parking ‘involves’ acquisition of a privilege or licence to park. No argument is made as to how a fee that involves access to park a car equates to a fee for access or privilege to take a natural resource/commodity for commercial purposes.
15. SSO’s assumption that the fees represent the ‘*economic value*’ of providing parking appears to be no more than uncritical acceptance of DOH’s fee costing methodology — a methodology that the Committee does not accept. Also, SSO assumes that the fees are based on the ‘*economic value*’ of providing parking, without addressing the fact that the fees are based on policy objectives in the Strategy.
16. Even if the legal arguments of SSO were correct, SSO makes no attempt to deal with the Committee’s objection — which is not that there has been a capital allocation, but the extent to which capital costs have been allocated in one financial year. SSO states in assessing the ‘*true cost*’ of providing parking on public hospital property a ‘*component of that charge can reflect*

*the cost of providing future parking bays through capital works and associated facilities’.*⁶¹
This is not the Committee’s issue.

17. Factors peculiar to the legislation under consideration are critical to various judgements. As previously stated, in the Committee’s view, the instruments’ empowering enactments authorise fees for services. SSO makes no real attempt to establish why the Committee is incorrect in taking the view that the imposts are fees for services.
18. SSO repeatedly state that the test of the impost being unauthorised is the ‘*no discernible relationship*’ to the value test. However, SSO does not refer to the fact that a higher court, the High Court of Australia in *Air Caledonie International v Commonwealth*, in a case that involved a fee for service, limited this test to particular circumstances and stated that the discernible relationship test was only one element that may indicate that a charge is a fee for service.
19. Judgements in the High Court of Australia case *AirServices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 require a ‘*reasonable relationship*’, rather than a ‘*discernable relationship*’, between the cost of providing a service and the fee when there is no question of conferral of a privilege or right to a natural resource and/or in a monopoly situation where market value cannot be ascertained.
20. In *AirServices Australia v Canadian Airlines International Ltd*, Justice McHugh referred to the *Marsh v Shire of Serpentine-Jarrahdale* (1966) 120 CLR 572 decision and stated:

*This passage suggests that, in the context of the taxation/fee for services dichotomy, a charge must bear a reasonable relationship to the cost of providing the service in order to be characterised as a fee for service.*⁶²
21. In *AirServices Australia v Canadian Airlines International Ltd*, Chief Justice Gleeson and Justice Kirby also opined:

*In this case: the charges were not imposed to raise revenue; the charges were undoubtedly charges for the provision of services and facilities; the charges were imposed to recover the cost of providing such services and facilities across the entire range of users; **the charges for categories of services were reasonably related to the expenses incurred in relation to the matters to which the charges related** [Committee emphasis]; the services and facilities were, of their nature, part of an activity which must be highly integrated in order to be effective; there was a rational basis for such discrimination between users as existed.*

⁶¹ Letter from Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor’s Officer, to Department of Health, 3 April 2012, p5. The Department of Treasury simply repeated SSO’s view that ‘*the capital costs of proving future parking bays can be included in determining cost*’ and did not address the Committee’s issue being the extent of capital cost recovery in one financial year: Letter from Mr Timothy Marney, Under Treasurer, Department of Treasury, 19 April 2012, p3.

⁶² *AirServices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133, per McHugh J at 233.

*In those circumstances, there is no warrant for concluding that the charges amounted to taxation on the ground that they exceeded the value to particular users of particular services or the cost of providing particular services to particular users.*⁶³

22. As the Auditor General of Western Australia commented in his *Second Public Sector Performance Report 2010*:

*The term “fee” has been legally interpreted to mean a payment intended to achieve cost recovery for the good or service. Treasury guidelines state that “if a fee is set at a level beyond what would reasonably be expected to recover costs, in practice it may have become a tax”. If the enabling legislation only provides for a fee, making it a tax would invalidate it.*⁶⁴

⁶³ Ibid, per Gleeson CJ, Kirby J at pp178-9.

⁶⁴ Auditor General of Western Australia, *Second Public Sector Performance Report 2010*, Report 12, November 2010, p9.