

HEALTH SERVICES AMENDMENT BILL 2021

Committee

Resumed from 1 December 2022. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: When we were last dealing with this matter, Hon Nick Goiran asked a couple of questions that I undertook to provide answers to. I have them with me now so I will provide those answers.

The first question was in respect of the volume of property transactions and property dealings that require the minister and director general's approval. I am advised WA Health has significant property holdings throughout the state. The WA Country Health Service—WACHS—alone owns 800 properties. Many of these properties are provided for housing and are leased to staff in regional areas. WACHS also leases properties from the private market to provide housing for staff posted to regional areas. During the past year, the Minister for Health, or the director general as her delegate, reviewed and approved 56 property transactions or dealings across WA Health. These transactions usually contain lengthy legal documents—100-plus pages—that need to be read and reviewed in detail. This is a time-consuming task. As the minister and director general of the largest government agency, this is considered a significant administrative burden that could be dealt with at a different level.

The second matter that the member raised was that we had made the point that some of the changes in the bill before us will rectify drafting errors in the Health Services Act 2016. I table a document headed “Table of Errors in the Health Service Act 2016 (As Passed) Corrected in the Health Services Amendment Bill 2021”.

[See paper [2006](#).]

Hon SUE ELLERY: If I may, this is in respect to the reinstatement of an answer provided to Hon Martin Aldridge. Following a briefing provided to him on the bill on 21 November, the Department of Health provided information on his query about the number of properties held by non-Health entities that did not transfer to the health ministerial body under the Health Services Act 2016. During his second reading contribution, he indicated that he would seek further certainty around land issues addressed in the bill. At the outset today, I will confirm the following for the honourable member. The department confirms that the number of freehold properties registered in the name of a non-Health entity—for example, the Crown or the state of WA—and that were not transferred to the health ministerial body is 49. The responsibility for these properties remains with the Department of Health.

The responses provided to the honourable member on 22 November, following a briefing on the twenty-first, indicated 49 freehold properties were held by non-Health entities—that is, the Crown or the state of WA. The Department of Health is named as the responsible agency for these properties. As the member stated on 30 November, the member was notified of subsequent revision of the number down to 41. The previous number of 49 quoted was based on reports from WA Health's lands and property information system, referred to as LAPIS. Following the provision of this number, the department noted that there were possible inconsistencies in the data. As such, it was thought it would be preferable to give a more conservative number of 41.

Over the parliamentary shutdown period, the department was able to thoroughly review each of the possible inconsistencies. All information in LAPIS was again reviewed and compared with Landgate information over recent months. The department can confirm that the number of properties registered in the name of a non-health entity—that is, for example, the Crown or the state of WA—that were not transferred to the health ministerial body is 49. As previously mentioned, the responsibility for these properties remains with the Department of Health. For completeness, as mentioned in the second reading speech, there are also parcels of land held by the minister in various other capacities—for example, in an executive or personal capacity or in the name of the minister for public health. These properties also did not transfer to the health ministerial body and are also the subject of these measures.

Hon MARTIN ALDRIDGE: I thank the minister for following up on that issue during the recess. The department is not filling me with confidence in that it cannot seem to understand or track how many properties it actually owns. Nevertheless, as I understand it, this bill will create a mechanism for a minister to make an order, so if that number becomes 53 or 64 or 37, the minister can deal with that without necessarily coming back to the Parliament and seeking some sort of legislative fix.

At the end of the minister's response just now she mentioned that there were other properties. Is she in a position to provide how many parcels of land might sit in that subset?

Hon Sue Ellery: We will see. While the advisers are looking for that, I might, just for ease, give the member a written copy of what I just read out.

Hon MARTIN ALDRIDGE: Okay.

Hon SUE ELLERY: I refer to WA health system's land and property that did not transition to the health ministerial body on 1 July 2016. For freehold properties, 146 out of 190 properties including 49 properties in the name of non-health entities did not transfer, so that is the number I previously confirmed.

Hon Martin Aldridge: That number includes the 49.

Hon SUE ELLERY: Yes. In respect of crown reserves, 200 out of 274 did not transfer to the health ministerial body. Therefore, 77 per cent of freehold land and 73 per cent of crown reserves did not transition to the health ministerial body. It is important to note that these amendments are administrative only, so the land and property is either all still held by the minister, or, if not held by the minister, is administered by the Department of Health. As the member has noted, the provisions on this in the bill before us will give the minister the power to make orders to change the tenure of the land to the health ministerial body.

Hon MARTIN ALDRIDGE: I thank the minister for that further information. One follow-up issue that we had an exchange about last year in the second reading debate, and it may have also featured in the very brief clause 1 debate we had on 1 December, was on the *Independent review of WA health system governance* report, which was finalised in August 2022 and publicly released in or about October 2022. At that point, the government was not in a position to provide a formal response to that governance review. Given that we are now in February, is the minister in a position to do so?

Hon SUE ELLERY: The department's view at this point is that there are no recommendations in the independent governance review that are inconsistent with the proposed amendment bill. However, the government is still considering its response to the recommendations of the independent governance review and it needs some time to do that in a comprehensive and diligent manner and to assess any implications for the WA health system. Any statutory changes that are agreed by government will be further considered as part of the statutory review of the Health Services Act, which will commence following the implementation of the amendments that are currently being debated.

The short answer for the honourable member is no. The department's position now is that there are no inconsistent recommendations. However, if it were to find some, it does not want to hold up the proceedings of this bill now. It will deal with those subsequently.

Hon MARTIN ALDRIDGE: I understand that the government is still contemplating the 55 recommendations contained in the governance review. The advice that the minister just read out suggested that there were no inconsistencies between the report's recommendations and the bill that is before us, but one issue that I raised in the second reading debate, and, indeed, was identified in my briefing by those who briefed me from the department, is proposed section 36D, which relates to the procurement of services on behalf of another health service provider. I do not know whether the minister recalls the debate back in December. In this area, the response from the government is that only one proposed amendment—proposed section 36D—has been identified as potentially not fully aligning with the recommendations of the independent governance review. The government is currently working through the recommendations of the independent governance review to understand and assess their implications for the WA health system.

From the comments I made in my second reading contribution, members will know that my personal view does not strongly align with recommendation 46 either. I think that I gave some examples of taking a one-size-fits-all approach to the procurement of service provision across a sector as large as health. The government has not yet formed a position on the review. Can I confirm that the government will continue with proposed section 36D in its current form, notwithstanding it is still contemplating recommendation 46?

Hon SUE ELLERY: Notwithstanding the recommendation from the independent governance review, the government is of the view that there is benefit to the WA health system in health service providers being able to act as agents for each other, and that the ability to act on behalf of each other is not limited by the type of procurement that health support services are responsible for. I have some examples; I cannot remember if I gave these the last time we were talking about this in the house. An example of when it may be beneficial for one provider to contract on behalf of another is that the Child and Adolescent Health Service has expertise in child health-related matters that other health service providers may wish to leverage off. Another example is that one health service provider could coordinate the clinical placement of students across health service providers. Contracts with Aboriginal health NGOs that are managed through WA Country Health Service might deliver services into the metropolitan area that other health service providers might be able to benefit from, as well. The current thinking is that, irrespective of what the government's review has said, for all practical and operational reasons, the department's view is that it is worth continuing to allow them to act as agents for each other.

Hon NICK GOIRAN: The independent governance review of the Health Services Act 2016 report was tabled in October last year. The government has had this report since August last year. The minister indicated that the government has done some preliminary analysis over the summer recess, that that analysis has concluded, and that, at this stage, none of the recommendations are inconsistent with the bill that is presently before the house. Are any of the recommendations urgent?

Hon SUE ELLERY: While I am getting advice, honourable member, I am not sure that is pertinent to the bill before us. The only point at which we have been asked questions about where there might be an interception was during the matter that I was just discussing with Hon Martin Aldridge. I am not sure if I can get the member more information about where we are with the IGR from the advisers here with me, but I will just check. I am advised that none are urgent.

Hon NICK GOIRAN: Of the 55 recommendations, in the sense of the point the minister made about whether they are relevant to the bill that is present before the house, not all of them will be pertinent. Not all of them will be calling for an amendment to the legislation. For those that are not calling for an amendment to the legislation, they need not be considered by us at the present time. How is it that those recommendations calling for an amendment to the act—of which the minister's advice was that none are urgent—are not then inconsistent with the bill before the house?

Hon SUE ELLERY: I am not sure that I am going to be able to help the member beyond the exchange that has already happened between me and Hon Martin Aldridge. We had a conversation about one of the recommendations, which, on the face of it, might seem to present some form of conflict or overlap with what we are talking about now. We have talked about that already.

In respect of the remainder of the recommendations in the IGR, the people who are here with me now are able to assist me only on the bill that is before the chamber now. I am not sure I can take that much further in respect of the other elements of the IGR. There was a proposition put that the IGR, on the face of it, had one point of overlap. We have talked about that already. I am not sure I can take it much further.

Hon NICK GOIRAN: As the minister would be aware, the bill before us consists of some 99 clauses. Clauses 3 through to 85 deal with amendments to the Health Services Act 2016. What I am trying to ascertain is how many of the 55 recommendations are seeking amendments to the Health Services Act 2016. I then, in due course, want to find out which of those pertain to the sections that we are presently seeking to amend.

Hon SUE ELLERY: I am not trying to be difficult, and I understand the point that the honourable member is making. I do not have with me at the table, or available quickly, information on the other elements of the IGR. That is because that matter is still being considered by government. If it is helpful to the honourable member, I will give him an undertaking to raise that question with the Minister for Health. However, I am not here to debate something that is not in the bill and that may, at some point in the future, need an amendment to legislation once government has given full consideration to how it would respond to the independent governance review. I just do not think I can take it much beyond that. I understand why the member would be asking that. The government has made a decision that we want to proceed to make these changes now. We will consider the matters in the independent governance review in due course. If further changes are required as a result of that, we will give that consideration and the house may see a bill before it for that as well. However, I cannot provide the member information about what is not in the bill before us now.

Hon NICK GOIRAN: Perhaps I can explain it to the minister this way: there are 55 recommendations in the *Independent review of WA health system governance*, as is the title of the review document, from August last year. The analysis that has been conducted by one or more persons over the summer recess has concluded that there is nothing in the 55 recommendations that is inconsistent with the very substantial piece of legislation that is presently before us. Now, what I am wanting to test here is the notion that there is nothing in the 55 recommendations that is inconsistent with the bill that is before us. In my view, one can come to that conclusion only if they have read the 55 recommendations and have identified that none of the 55 change any of the provisions that are presently before us. That might be an explanation. I am seeking confirmation of whether the explanation is that all 55 have been considered and that none of them seek to amend any of the provisions that this bill seeks to amend.

That could be one reason why we are saying that the bill is not inconsistent. Another reason might be that, actually, one of the recommendations does seek to amend one of the provisions, but the recommendation is entirely consistent with what this bill is trying to do. I am trying to identify which of those two reasons then justifies the conclusion that there is nothing in this 55-recommendation review that is inconsistent with the bill.

Hon SUE ELLERY: I was originally asked whether there was anything that might be inconsistent with what is in the bill, and one matter was identified. Hon Martin Aldridge and I have already discussed that. I cannot get the member any other information. The member says that he wants to test it a different way. I appreciate that that is

what he wants to do. I am not in a position to provide or conduct the test for him. The question was asked, and the answer has been provided. I cannot take it any further.

Hon NICK GOIRAN: The preliminary analysis that has been conducted over the summer recess that came to this conclusion has obviously been useful and appreciated. When is it expected that the final analysis will be done, and when will we be in a position to know the outcome?

Hon SUE ELLERY: The matter is currently before government. I cannot give the member a timetable on when that will be concluded. I do not know.

Hon NICK GOIRAN: Is it normally the case that there might be some form of target, date or deadline that people are working towards? I just note that it was tabled in August 2022. I do not say that in a critical way. We are now in February. It is a substantial piece of work. There may be the view that there needs to be a substantial period of further time. However, to what extent does the time then become unreasonable? If we get to the point that we are in August 2023 and we are still waiting, one year later, it starts to make a mockery of the system, in my view.

Is there a target date? Is there some kind of deadline that people are working towards?

Hon SUE ELLERY: Not that I am advised. The honourable member would appreciate that the things that I have been advised on, and the advice that I have available to me at the table, are the matters that are in the bill before us now. I cannot provide any other information about the time line for consideration of that matter, other than the information that I have already provided in the exchange I had with Hon Martin Aldridge.

Hon NICK GOIRAN: Thanks, but the minister did say that some analysis has been undertaken over the summer recess. There is a person—at least one person in government—who has turned their mind specifically to the 55 recommendations. They have specifically then advised the minister or the Leader of the House or both that these matters are not inconsistent with the bill, save for the one matter that Hon Martin Aldridge and the minister have already discussed. There is a person in government who has had to give this some consideration. I think it is reasonable to assume that that person is doing this as part of an ongoing piece of work, because eventually the government is going to have to respond. In all of the circumstances, it seems reasonable that the government would know when it expects this piece of work to be done. We can then move on. Is that information available?

Hon SUE ELLERY: I will give it one more crack, and then I might seek your assistance, Mr Deputy Chair. I am the representative minister. I am dealing with the bill that is before the chamber. The advisers who are sitting with me are here to advise me on the matters that are in the bill. I do not have information about the timetable for consideration of the independent governance review. I am happy to give the member an undertaking that I will ask the Minister for Health whether she would like to give him some more information about that. What we are debating and dealing with now is the bill that is before the chamber.

Hon NICK GOIRAN: I think the minister will agree that part of the policy behind the Health Services Amendment Bill 2021 is to strengthen the governance arrangements that are in place for health service providers in Western Australia. I draw the minister's attention to recommendation 9, which is one of the 55 recommendations in the *Independent review of WA health system governance*. It states —

That the Act is amended to strengthen corporate governance and accountability so that HSP CEs are employed by their HSP board, with appointment and termination decisions requiring the concurrence of the Department of Health Director General.

Will this bill do that?

Hon SUE ELLERY: I cannot add anything to what I have already said. I am not in a position to provide the honourable member or the chamber with any detail about the matters that are contained in the independent governance review other than those that I have already canvassed.

The DEPUTY CHAIR (Hon Steve Martin): Hon Nick Goiran, I believe the Leader of the House has been very clear on that matter.

Hon NICK GOIRAN: Yes. Thanks, Deputy Chair.

The minister indicated that she does not have that information available to her at this time. With regard to recommendation 9, which seems to be consistent with what this bill is seeking to do, is the minister in a position to seek advice from the minister at some stage and report back on whether this bill will in fact implement that recommendation?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: I take it that the position will be the same for the other recommendations set out in this review that call for amendments to the Health Services Act?

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: I take it that the minister who has carriage of the bill before us does not have this information presently available, which is entirely fair and reasonable, because she is acting in a representative capacity. I take it also that the minister in her representative capacity will not seek that information from the minister, which I respectfully suggest is an unreasonable position. That said, no doubt the minister will have a different view.

I note that recommendations 1, 6, 9, 10, 14 and 45 call for amendments to be made to the act. That is six out of the 55 recommendations in the independent review. The government will not tell us whether any of those recommendations will be implemented by this bill. The independent review is directly relevant to the matters before us. The people responsible for progressing this legislation have presumably spent hours, weeks or maybe months preparing for this debate, keeping in mind that this matter not only has been with us in this Parliament, but also had its genesis in the previous Parliament. I find it odd that those people do not know whether recommendations 1, 6, 9, 10, 14 and 45 will be implemented by this bill. Nevertheless, as the minister said, that position will not change no matter how much time is spent interrogating those particular recommendations.

Minister, during the summer recess of Parliament, was any further consultation undertaken with any stakeholders?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: When was the last time stakeholders were consulted on this bill, which, as I have noted, had its genesis in the previous Parliament?

Hon SUE ELLERY: I cannot give the member the precise timing, but the advice that is available to me now, without people having to go back and check records, is that there was no further consultation beyond the 2019 version, because all the consultation had been done in the lead-up to that and there was nothing of substance in the changes between 2019 and 2021 that required further consultation.

Hon NICK GOIRAN: That is fair. I think that when we last sat, the minister tabled a document that set out the changes between the 2019 bill and the one that is before us. To the best of my recollection, those changes could be described as clerical or minor matters. There were no substantive matters. Therefore, it is reasonable that there was no specific consultation on those matters. When the last substantive consultation was concluded, did one or more of the stakeholders still have unresolved concerns?

Hon SUE ELLERY: No-one at the table is aware of any, so none that we are aware of.

Clause put and passed.

Clause 2: Commencement —

Hon MARTIN ALDRIDGE: Clause 2 outlines when the act will come into operation. Proposed paragraph (b) applies to —

the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Why is it that provision necessary?

Hon SUE ELLERY: I can advise that additional time is required to ensure that appropriate administrative arrangements are in place and regulations are prepared prior to the commencement of the substantive parts of the amendment act. I can give the member some examples. Reserve orders to change the management body of the WA health system's crown reserves are required to be drafted prior to the commencement of the transitional provisions in part 2 of the amendment act. The minister's Health Services (Fees and Charges) Order 2016, made under section 56 of the act, will need to be amended before the commencement of amendments found in clauses 29 to 31. Regulations will need to be made to replace the Queen Elizabeth II Medical Centre trust by-laws before part 5 can commence. Service agreements between the department's CEO and health service providers will need to reflect the amendments being made. The Health Services (Information) Regulations 2017 will need to be reviewed and amended prior to the commencement of the relevant provisions to ensure consistency between the act and the regulations.

It is anticipated that the relevant proclamation dates will be soon after assent for parts 3, 4 and 6, and some parts of part 2. It will take around three months from the date of the passage of the bill for some of part 2 and all of part 5 in order for subsidiary legislation to be drafted to support those changes.

Hon MARTIN ALDRIDGE: Thanks, minister. The minister anticipated some of my subsequent questions in that answer. I would expect the department to be at an advanced stage of preparedness, given the long gestation of this bill. Based on what the minister just said, are we talking about a period of up to three months after royal assent for all the provisions in the bill to be proclaimed?

Hon Sue Ellery: It is about that, honourable member.

Hon MARTIN ALDRIDGE: The minister mentioned something about orders being drafted prior to proclamation to allow for the transitional provisions. What would prevent the orders from being drafted after proclamation? I understood that this was a power that would be still available to the minister if, for example, 49 parcels of land grew to 50.

Hon SUE ELLERY: The first example that I gave the honourable member involved reserve orders to change the management body. They have to be drafted prior to commencement of the transitional provisions in part 2. I think that is the work the member was asking about, so that should answer his question.

Hon Martin Aldridge: Yes.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 6 amended —

Hon NICK GOIRAN: Clause 4 amends the terms used in section 6 of the Health Services Act 2016. One of the terms being substituted is “contracted health entity”. Will any non-government entities be captured under this provision?

Hon SUE ELLERY: The answer is deceptively simple because the definition in the bill states “non-government entity”. Is there something I am missing in the honourable member’s question?

Hon Nick Goiran: We are just warming up.

Hon SUE ELLERY: Excellent. I have been waiting for—how long were we off?

Hon Nick Goiran: For 75 days.

Hon SUE ELLERY: Of course the honourable member knows that!

Hon NICK GOIRAN: Which non-government entities are likely to be captured?

Hon SUE ELLERY: I can give the member some examples, but I am told that they are numerous. I do not have a comprehensive list. An example of the type of contract entered into might be one with the Midland Health Campus—no, that does not help. The member is asking about non-government entities. Large contracted health entities such as St John of God at Midland Health Campus are captured as contracted health entities. I do not really have a list, but it could include the following: entities that provide health services to inmates in correctional facilities; operators of drug and alcohol clinics funded by the Mental Health Commission; entities that provide social services pursuant to contracts under section 15 of the Children and Community Services Act; and entities that provide health services in the context of disability services.

Hon NICK GOIRAN: Earlier the minister indicated that it is a large number. Is the actual number known?

Hon SUE ELLERY: No. I am sure that someone has that information somewhere, but it is not available to me now. Frankly, honourable member, it will change from time to time.

Hon NICK GOIRAN: I was interested to know what the current number is, if it was available, but I acknowledge that it is not. We can at least proceed on the basis that whatever the number is, it is a large number.

Hon SUE ELLERY: We do not know. I am not able to tell the member that, but if the member casts his mind to the types of contractual arrangements entered into, the one with Silver Chain comes to mind. There may be hundreds, but I do not know.

Hon NICK GOIRAN: As I mentioned earlier, the definition for “contracted health entity” is being substituted. When we compare and contrast what exists at the moment in the 2016 act and what this bill will put in place, particularly if we have a copy of the blue bill handy, we notice one curiosity: the definition will be changed to include the Premier. Why is that so?

Hon SUE ELLERY: I am advised it is because some contracts with the Premier already exist. In the example I gave just a few moments ago, the Midland Health Campus has a contract between the Premier and the respective organisation.

Hon NICK GOIRAN: Is the Leader of the House in a position to indicate whether there are very many of these? It seems somewhat unusual. It is not immediately clear why the contract would be with the Premier, irrespective of who that would be at any particular point in time. Is that, if you like, an anomaly, and are we just making sure we are capturing that, or is it intended to be something that we would see as reasonably prevalent?

Hon SUE ELLERY: I am not sure that I can give the member a reason. It certainly goes back beyond the life of this government, because it would have been the previous government, for example, in respect to Midland. Just

based on my experience as a minister, from time to time contracts, as I recall, are entered into by Treasury on behalf of government, but it might be that the respective agency is responsible for the operation and enforcement of that contract even though Treasury signs it off.

I do not think I can give the honourable member a more fulsome explanation than that. I do not have any further information available to me, but the best I can tell the member is that it is not new.

Hon NICK GOIRAN: Do we know the prevalence of this? The Leader of the House mentioned the Midland one as an example; that could possibly be the only example.

Hon SUE ELLERY: I am advised that in respect to health contracts, it is not a widespread practice. It is done to ensure that it captures Midland Health Campus, obviously. Beyond that part of government, I cannot offer anything further.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Section 7A inserted —

Hon NICK GOIRAN: To assist you, deputy chair, I can at least foreshadow that between my colleague and I we have questions on clauses 6, 7, 8, 9 and 10.

Regarding clause 6, just one question arises, and that is about the notion of successor health service providers being declared.

Hon Sue Ellery: Sorry, honourable member, start again.

Hon NICK GOIRAN: Successor health service providers will be declared as a result of clause 6. Is there an exhaustive or even a non-exhaustive list of which successor health service providers will be declared?

Hon SUE ELLERY: I do not have a list, but if it assists the honourable member, the provision is there for two purposes. In the first instance, it is to determine the health service provider that is responsible for producing the records and information required under section 216(a). That section provides a process for how the department and health service providers will respond to court orders or other requests of information directed to the department CEO. The second bit is in respect to compensable services and which of the HSPs has a responsibility for recovering the money, basically. That is the purpose. I am sorry, honourable member, I do not have a list of them here. In fact, the list might change. It could change, because different parts of the hospital might be responsible for different elements of the two functions that I just described.

Hon NICK GOIRAN: Are these declarations intended to be made before the entire set of amendments become operational?

Hon SUE ELLERY: That is one of the elements that we expect to become operational very soon after assent, honourable member.

Clause put and passed.

Clause 7: Section 8 amended —

Hon NICK GOIRAN: Clause 7 amends the term “day hospital facility” under section 8 of the act. The amendment covers one particular scenario. What has brought about the necessity for this scenario to be captured?

Hon SUE ELLERY: It is a tricky question but I have quite a simple answer. In the original act, the provision at paragraph (b) goes to the powers that the minister has to do things related to people who are provided a health service determined by the minister. By inserting proposed paragraph (b)(ii), that power will be extended so that the minister can exercise that power with respect to people who will be provided a health service when that health service is not yet operational but it is planned or in the process of being developed or whatever. It will give the minister the power to do certain things before the service is opened. The existing provision is effectively what is stated at paragraph (b)(i) and can be used only for existing facilities that meet the definition of a day hospital facility.

Hon NICK GOIRAN: As the explanatory memorandum provides on clause 7, it will enable a new hospital to be placed under the responsibility of a health service provider prior to the arrival of the first patient. But for the inclusion of this new provision and the new definition of “day hospital facility”, who would, otherwise, be responsible? Would it remain with the minister?

Hon SUE ELLERY: I am advised that there was no explicit power for the minister before a day hospital facility opened, only once it had opened. That was identified as an operational impediment and that is why these provisions are being put in place.

Hon NICK GOIRAN: What has been the practice? Are we enshrining the existing practice or are we enabling a new practice to emerge?

Hon SUE ELLERY: I will not get the advisers to scroll through history to give the answer. They are not aware of whether this provision will enshrine a power that was used just because it was used. I cannot give an example nor can I explicitly confirm that it was a practice for the minister to exercise a power, but I can tell the member that it was deemed to be an impediment to the necessary exercise of a power by the minister as there was nothing in place—not explicitly that they could or explicitly that they could not. This provision will make it clear.

Hon NICK GOIRAN: Was the identification of that impediment as a result of a particular episode?

Hon SUE ELLERY: No, honourable member. Without going back through history, none of the advisers is aware of a specific example of a day hospital about which someone sought to exercise power but was precluded from doing so.

Hon NICK GOIRAN: Perhaps this question could be responded to by way of interjection if that is convenient. To round this out, to the best of the government's understanding that has been relayed to the chamber, and therefore the chamber's understanding at this point in time, a day hospital facility has not been delayed, had encumbrances put on it or about which problems have emerged that has then necessitated the amendment before us. To the best of our knowledge and understanding that is not the scenario and this is more of a general tidy up. Someone has identified this technical impediment and decided that while we are doing all of this, we can tidy it up. Is that a reasonable summary of this provision?

Hon Sue Ellery: Yes, it is.

Clause put and passed.

Clause 8: Section 11 amended —

Hon MARTIN ALDRIDGE: At least one member is supporting the government today! That is why Hon Pierre Yang was the Whip, deputy chair.

I probably need some assistance initially to understand the concept of the health ministerial body. There are lots of references to the HMB throughout the act, but it is certainly not a concept that I am familiar with. I think a number of sections from section 10 onwards relate to the establishment of the HMB as a body corporate and provisions relating to it. What is the health ministerial body and what is its primary function?

The DEPUTY CHAIR: While the minister is deliberating, I point out to members that contrary to usual practice, the microphones are being left on, so you might want to keep the rustling to a minimum.

Hon Martin Aldridge: That is why I am using my paper to cover it.

Hon SUE ELLERY: I am keen to help the honourable member. The information I have been provided is not much beyond what is written in the blue bill. It is a body corporate. It is there for when the minister needs to use a body corporate as opposed to any other form of executive decision-making. Perhaps if the member can tell me if he is looking for something in particular, I might be able to give him more fulsome advice.

Hon MARTIN ALDRIDGE: Yes. One of the things we have been talking about is land. The land of the health portfolio is held in the health ministerial body as opposed to by the minister. I think that is maybe one of those examples. I was trying to understand that effectively it is a body corporate or, in other words, another name for the minister by way of a body corporate. It is not a body in that it is a body of committee members or —

Hon Sue Ellery: It is a legal entity.

Hon MARTIN ALDRIDGE: It is a legal entity. Clause 8 seeks to amend section 11 of the act to allow the minister to delegate powers or actions. For example, section 11(1) states —

The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act that can more conveniently be performed by a body corporate than an individual.

This bill will insert —

the Minister, or a person to whom a function of the Minister is delegated under section 15(1),

I am wondering what problem we are trying to solve here by allowing the minister to delegate this function to another person. I have some follow-up questions about that.

Hon SUE ELLERY: The honourable member will recall the conversation we were having earlier in the committee process. It might have been one of the answers I gave when we first started. It was about the minister, for example, in one year having to sign 56—or something like that—transactional arrangements. That is one of the functions that will be captured by this body. We are trying to streamline the exercise of that power so that it is done through

this body and not through the minister who at this point in time wears a range of different legal hats at various times. I suppose that is the simplest way to describe it. This is about simplifying the process so that those land-related transactions will be done through this board and not the minister, but it will do other things as well.

Hon MARTIN ALDRIDGE: I am not sure whether that is technically right because if the minister were to exercise this power, she would be delegating the function to another person. The ministerial body is the ministerial body, and then the other person is defined under section 15(1). The bill will insert a number of classes of people —

- (a) the Department CEO; or
- (b) a person employed or engaged in the Department; or
- (c) a staff member of a health service provider; or
- (d) a health service provider; or
- (e) a prescribed person or class of person.

It is really quite broad. If the minister decides she does not want to sign 50 leases every year because it is a waste of her time and she needs to focus on the big stuff, she could literally delegate that function to any number of people in that list, because I suspect there would be tens of thousands of people who would be eligible under proposed section 15(1)(a) to (e). They would be exercising a delegated function. They would not necessarily be acting as the ministerial body, would they?

Hon SUE ELLERY: If we read amended sections 11 and 15 together, the minister could delegate her powers to any of those people listed in proposed section 15(1)(a) through to (e). The amendment will widen the minister's delegation powers. Expanding the minister's power to delegate to officers other than the director general will provide greater flexibility and relieve administrative burdens from the minister and the director general when performing functions of the minister and the health ministerial body. That is the answer.

Hon MARTIN ALDRIDGE: Section 11(3) refers to “ministerial officers”. The purpose of this subsection is not quite clear to me, but potentially it is a carve-out to say that a ministerial officer cannot act as the ministerial body or cannot delegate a function of the ministerial body. I do not know whether that assumption is right, but I am struggling to understand the purpose of section 11(3). Could the minister delegate a ministerial body function to a ministerial officer?

Hon SUE ELLERY: That is not a new component; that is an existing arrangement. I am not sure. It does not go to the health ministerial body delegation power at all. As I am reading it, it says that if someone is working in the minister's office under the Public Sector Management Act for the purpose of assisting the minister, then they are not an organisation for the purposes of this act. I think that is all that is saying.

Hon Martin Aldridge: Of that act—the Public Sector Management Act.

Hon SUE ELLERY: Yes, and neither is the ministerial body, but it is not a new provision.

Hon MARTIN ALDRIDGE: They may be completely unrelated matters.

Hon Sue Ellery: Yes.

Hon MARTIN ALDRIDGE: My question is: could the minister delegate the ministerial body function to a ministerial officer?

Hon SUE ELLERY: No. The minister can delegate to only those people set out in proposed section 15(1)(a) to (e). Proposed section 15(1)(e) says “a prescribed person or class of person”, so, I suppose, technically, it could be anyone. But there is no intention to delegate it to ministerial staff—none.

Hon MARTIN ALDRIDGE: I thank the minister for that clarification and confirmation of that point. Is there any intention at this point to prescribe any person or class of person for the purposes of delegation?

Hon SUE ELLERY: No, there is not, and this is the bit that Hon Nick Goiran adores about how we write legislation. It is there as a catch-all.

Hon MARTIN ALDRIDGE: I thought that might be the case. I refer to delegating a function of the ministerial body, and keep in mind that I do not have a complete list or understanding of all these things. Signing off on trivial leases sounds like a fairly administrative matter, but I would expect that, in a health portfolio, there are much more considerable matters—perhaps even life or death matters—that are considered and authorised by the ministerial body. In situations in which the minister delegates a function to a staff member of a health service provider, is there any protection? I mean, in effect, the staff member is a subordinate of the health service provider board if it is board governed or the chief executive if it is chief executive governed, which is an issue we will come to later in the bill. The concern I have is that, potentially, somebody who is a subordinate of the board or the CEO would effectively no longer be subject to direction because they would be delivering a function for the ministerial body, or, in effect, the minister. Is there not the potential for a conflict, or even a concern that the chief executive or the

board may not know of the delegation? Is there a requirement for the delegation to be published or at least made known in those circumstances?

Hon SUE ELLERY: Certainly, the expectation is that employees of health service providers will act within the scope of their practice and function. However, with the control measures that are in place, the delegations made by the minister will be consistent with the current departmental authorisations and delegation schedule, which outlines the monetary tiers for contracts and other transactions that can be approved by different officers of the Department of Health. It is anticipated that delegations will primarily be used under the minister's power to deal with land and property, which we have already canvassed. Delegates will be required to comply with the requirements of the Infrastructure (Asset Management) policy framework issued by the department CEO, which is designed to ensure responsible and accountable use of financial resources by authorised officers. It also ensures that decision-makers are able to explain their decisions and actions to external reviewers and that the management of resources is well documented and reported on in a clear, consistent and accurate manner.

Hon NICK GOIRAN: Earlier, I think in the response to the debate on clause 1, and perhaps in the minister's introductory remarks earlier today, the minister mentioned the number of properties that are held. It is quite a vast number of properties. If we look at proposed section 11 of the act in conjunction with proposed section 15, this ministerial body that is known as the health ministerial body will be able to, pursuant to section 13(2), "acquire, hold, manage, improve, develop, dispose of and otherwise deal in property". Is all the land and property held by Health held by the health ministerial board, or is some held by the board and some held by other entities?

Hon SUE ELLERY: The honourable member just read out section 13(2) of the act, which is not new. Those are the existing arrangements. The existing arrangements for freehold land is that it can currently be held by the health ministerial board, the minister in another capacity or the state of Western Australia or the Crown. Similarly, the management body of crown reserves can be held by the HMB, the minister in another capacity or the state or the Crown. The amendment in the bill before us now will put all those into the health ministerial body.

The member is looking confused. Currently, the land can be held by the health ministerial body, the minister in another capacity or the state or the Crown. The proposition before us is to put it all into the health ministerial body.

Hon NICK GOIRAN: In other words, the health ministerial body currently owns land, and once this bill passes, the health ministerial body will own more land. Is it the case that if any of the land owned by the health ministerial body is to be disposed of, it can be done only with the consent, authority or approval of the minister?

Hon SUE ELLERY: That is correct; moreover, land that is held by health service providers can be disposed of only with the approval of the minister.

Hon NICK GOIRAN: In any event, whatever amount of land is owned by the health ministerial body, if it wants to dispose of land, it can do so only with the say-so of the minister of the day. That will change once these provisions come into effect; that is, the changes to sections 11(1) and 15(1). Is it the case that, for example, the director general of Health will be able to dispose of property owned by the health ministerial body?

Hon SUE ELLERY: Yes, honourable member—any of those listed in paragraphs (a) through to (e) exercising the delegation that is set out in proposed section 15.

Hon NICK GOIRAN: The director general of the Department of Health, who is captured by proposed section 15(1)(a) is, shall we say, other than the Minister for Health, the most senior person in Health in Western Australia.

Hon Sue Ellery: No—perhaps the Chief Health Officer. It depends on your point of view.

Hon NICK GOIRAN: A class of persons is listed, we may say, in some form of cascading order, all of which is to say that they are more junior than the director general of the Department of Health and, of course, the Minister for Health. One of these classes of persons is a person employed by the Department of Health. That could be any person who is employed in the Department of Health. It also refers to a person who is engaged in the department. What is intended to be the distinction between a person who is employed and a person who is engaged? Will the engaged person be subjected to all the same governance and misconduct arrangements as the employed person?

Hon SUE ELLERY: On plain reading, the interpretation is that the difference is that someone who is employed is employed by the Department of Health. Someone who is engaged might be a secondee or a contractor, but for the purpose of carrying out the functions that are captured here, those people will be held to the same accountability and control measures that are in place for anybody else while they carry out their functions, as delegated, in accordance with this provision of the act.

Hon NICK GOIRAN: We are dealing with a significant change to the existing system because, as the minister outlined earlier, part of the rationale for the change is that, in effect, it has been somewhat onerous on the minister of the day to deal with all these transactions. One person has had to deal with all of this, notwithstanding the resources available to them. This delegation goes far beyond that. It will change from one person taking on these, let us call them, onerous administrative functions. We are not stopping and saying, "In fairness to the Minister for Health, who's a very busy person with huge responsibilities, let's allow the director general to come into this and have this

delegated responsibility.” The bill goes well beyond that because proposed section 15(1)(b) refers to “A person employed or engaged in the Department”. Does the minister have readily available an indicative figure of how many persons are employed by the department and how many persons are engaged in the department?

Hon SUE ELLERY: We are not going down this path, honourable member. This is about delegation powers for matters set out in the act. It has been envisaged that, from time to time, people who are not direct employees of the Department of Health are engaged by the Department of Health and they may work inside the department alongside people who are employed by the department, but the nature of their contractual arrangement might be that they are a contractor or have been seconded from another government agency, which happens regularly in a big agency like Health. I cannot give the member a list of the numbers. This is about powers that can be exercised for things that are set out when these powers can be used. It is not about everything in the Department of Health; rather, it is about land, property et cetera. I cannot give the numbers, honourable member. It is not unusual, particularly in professional services, for example, to engage people by way of a contract for their specific technical expertise who might be required, from time to time, to exercise these powers. Frankly, in the current labour market, it is not unusual for government agencies to second people and move them around as they deal with particular matters. That is what is intended. It is a very precise set of powers that will be able to be delegated, and anybody exercising those powers, however captured in proposed section 15(1)(a) to (e), will be covered by the same controls and accountability measures as the person who they may be sitting next to who is a direct employee of the Department of Health.

Hon NICK GOIRAN: I do not dispute that it is common practice that from time to time the department will engage the services of a person as opposed to employing them. I also do not dispute the point that the minister quite rightly made that the delegation that will be allowed for under this bill will be limited or restrained in scope. The point is that the quantum of persons to whom the delegation can be provided will be unlimited. If we include proposed section 15(1)(e) as the catch-all—as the minister referred to it earlier in response to Hon Martin Aldridge—effectively an unlimited number of persons will be eligible to receive this delegated authority. This is not a trivial delegation of authority. This is work that is currently undertaken by the Minister for Health. This proposed subsection will give the Minister for Health the capacity to shift to another person responsibility for something that she is doing at the moment. As I said earlier, if proposed section 15(1) were to stop at paragraph (a), I would have no further questions about that, because it would be evident that the delegation would be limited to one person; that is, the director general of the Department of Health. This proposed section will go miles beyond that to include a person employed or engaged in the department, a staff member of a health service provider, or a health service provider, and then the infamous catch-all in paragraph (e). I appreciate that the minister will not be in a position this afternoon to tell us how many staff members might be captured by paragraph (c), namely a staff member of a health service provider. However, does the minister have readily available the number of health service providers?

Hon SUE ELLERY: There are seven. I reiterate the point that I made before. It will be a narrow scope of powers. Proposed section 15(1) sets out that the minister may delegate any function of the minister under the provisions of this act to the department CEO or “a” person. There will need to be an instrument of delegation. That instrument of delegation will set out the terms of what that person can do in carrying out that delegation. I would not want members of this chamber, or anyone else listening to the debate, to be concerned that all of a sudden 10 000 people, or whatever—pick a number—will be delegated ministerial responsibility. The delegation will be narrow in scope. It will be a precise delegation that will be set out in an instrument.

Hon NICK GOIRAN: I accept that, minister. As I said earlier, there is no dissent from me about paragraph (a), which refers to the director general. I can even make a case for paragraph (d), which refers to a health service provider, because, as the minister indicated, at this time that is limited to no more than seven providers, and, because the health service provider is an entity, there will automatically be some form of restraint or a governance process and structure around any decisions that are made by a particular provider. However, that is radically changed when we consider paragraphs (b) and (c), which refer to any person employed or engaged in the department or any staff member of a health service provider. That means that literally any one of the thousands of staff members of those seven health service providers could be delegated this particular authority to undertake tasks that are currently undertaken not even by the director general of Health but by the minister themselves.

We can consider this in the context of some fairly recent infamous cases that are before the Corruption and Crime Commission. The minister will be aware of a very high profile matter in the Department of Communities in which a particular individual grossly breached their, shall I say, delegated authority—whether it was delegated at that particular time—and has quite rightly been brought to account for their multiple transgressions. If my memory serves me correctly, there has also been a fairly recent episode with North Metropolitan Health Service. It is with recent Western Australian history in mind that I express some concerns about how far we are going in proposed section 15(1)(a) to (e).

I have made that point and have expressed my concern, and that is now on the record. I appreciate that there will be no appetite to change any of these provisions or to delete paragraph (e), so I will not even bother to ask the minister whether we could knock on the door of the Minister for Health and seek for that to be done, because I acknowledge that that will not be the case. Can the minister provide some indication to the chamber about the framework or the

guidelines that will set out how this delegation power will be used? As I said, it would be very different if the minister were choosing to delegate this power to the department CEO as opposed to some of those other classes of persons.

Hon SUE ELLERY: I think I read this out a while ago with respect to control measures. The delegation will be consistent with the current departmental authorisations and delegation schedule, which outlines the monetary tiers for contracts and other transactions that can be approved by different officers of the Department of Health. That is what I was referring to when I talked about the scope of their practice, if you like, to use the term that is generally used for clinical matters. Delegates will also be required to comply with the requirements of the Infrastructure (Asset Management) policy framework issued by the department CEO, which is designed to ensure responsible and accountable use of financial resources by authorised officers. The honourable member is right to raise those recent examples and practices. Policies have certainly changed as a consequence of the revelations about what occurred in those circumstances.

Hon NICK GOIRAN: The minister indicated that the persons who will receive this delegated authority will be expected to comply with a framework. Is the document about the tiers of authority something that can be provided to the chamber at this time?

Hon SUE ELLERY: I do not have it here. That might be a public document; I do not know. I am happy to ask the minister whether she would consider that, but I will do that at a later stage.

Hon NICK GOIRAN: I am obliged to the minister for taking that on notice because it will go some way towards clarifying to what extent this delegation power will occur in practice. Despite the fact that the proposed legislation will in effect allow for an unrestricted capacity to delegate, at least the minister of the day will find themselves constrained by this tiered system. It would be of benefit to see exactly what the nature of that tiered system is. Therefore, if that could be taken on notice, I would appreciate it.

Clause put and passed.

Clause 9: Section 13 amended —

Hon NICK GOIRAN: With respect to joint arrangements, have concerns been raised that the minister does not presently have the power to enter into a joint arrangement with a health service provider?

Hon SUE ELLERY: I am advised of two reasons or drivers. The minister currently has the power to enter into joint arrangements. In the first instance, the change is that we are moving the definition. It clarifies that the minister or the health ministerial body may enter into an arrangement with an HSP involving the use of health property. The key purpose is to make clear that the minister may enter into a joint arrangement with a health service provider. While section 13(2)(c) provides that the minister may do all things necessary or convenient, section 13—as it currently exists—does not expressly provide that the minister may enter into joint arrangements with HSPs. I think the way that the member phrased his question was if someone had brought this to the attention of the minister—not someone individually. In the process of cleaning up the arrangements, it was deemed appropriate to do.

Hon NICK GOIRAN: Did I hear it correctly that the minister does not currently —

Hon Sue Ellery: She does.

Hon NICK GOIRAN: — have the power to enter into a joint arrangement with a health service provider? Or has the power to enter into a joint arrangement —

Hon Sue Ellery: Joint arrangements, full stop. That is correct.

Hon NICK GOIRAN: — which could include a health service provider?

Hon SUE ELLERY: It currently could include HSPs. This makes it explicit. The expression of HSPs is not within the provisions of the current arrangements. This makes it explicit that it includes HSPs.

Hon NICK GOIRAN: To the extent that there is an existing power to enter into joint arrangements and how that has been used, this is not changing that. It is making it clearer and more explicit. However, it is not widening the scope of joint arrangements that can be made by the minister, nor is it narrowing them. Is that the intention?

Hon SUE ELLERY: That is as I am advised, honourable member.

Hon NICK GOIRAN: What has been the prevalence of these joint arrangements?

Hon SUE ELLERY: On the commencement of the act, each health service provider—of which there are seven—entered into a joint arrangement with the health ministerial body. By way of example, East Metropolitan Health Service entered into a joint arrangement in which it was given control and management of the Royal Perth Hospital site.

Clause put and passed.

Clause 10: Section 15 amended —

Hon NICK GOIRAN: We are up to the proposed change to section 15 of the Health Services Act 2016—by necessity we have touched on this earlier due to its intersection with section 11(1) of the act. This matter is also captured by the question taken on notice. We will see what happens when we are shortly interrupted for the taking of questions without notice, and whether the information might possibly be able to be provided.

In the interim, is the minister in a position to indicate to us what is intended in terms of training for those who will be delegated these new functions that are currently carried out by the minister? I accept that the minister has already indicated that it will be expected that these people must comply with that framework. However, is it intended that there be any specific form of training for these persons who will undertake the minister's current duties?

Hon SUE ELLERY: No, it is not. There is no proposal to do some kind of widespread training arrangement in respect of the proposed changes to the provisions of the act. The people who are currently providing advice to the minister on how she deals with the property and land are the people who will become delegated. Those people are already acting within that scope and are already covered by the control mechanisms that are in place. Of course, there are new employees who take positions. That is what happens. Now they get inducted with relevant training on what they are supposed to do. The difference will be that those people providing advice now will be able to exercise delegation in respect of what they would have provided before as advice.

Hon NICK GOIRAN: The minister's role there is, of course, an important check and balance on that being the final decision-maker. There is a distinction between providing advice and being responsible for making a decision. In terms of that hierarchy, is it intended then, that these people who will be delegated as decision-makers will in turn, have people providing advice to them?

Hon SUE ELLERY: Yes.

Clause put and passed.

Clause 11: Section 19 amended —

Hon MARTIN ALDRIDGE: At clause 11, I reflect on the *Independent review of WA health system governance*. In part 1 of the report, "Strengths of WA's health system governance", one of the first bolded titles states —

The WA devolved governance model established under the Health Services Act is appropriate and should be retained

It goes on to state —

The devolved system stood up under pressure during the pandemic

...

There are strong examples of collaboration to deliver key reforms

It also states —

Devolved financial responsibility has ensured expenditure growth is more sustainable

My question at clause 11 is: to what extent are we changing, or perhaps impacting upon, that devolved governance model by providing more oversight or more power to the system manager, being the departmental CEO?

Committee interrupted, pursuant to standing orders.

[Continued on page 30.]