

CLAUSE NOTES

Tasmanian Health Organisations Amendment Bill 2012

- Summary** The Bill addresses urgent technical matters and necessary clarifications identified in implementation planning for the commencement of the *Tasmanian Health Organisations Act 2011*, to remove any doubt as to the operation of the Act through amendments in relation to transitional regulation making powers, contracts and occupation agreements in the Crown's name, and transfer provisions.
- Clause 1** **Short Title**
- Clause 2** **Commencement**
Provides for the Act to commence on Royal Assent.
- Clause 3** **Principal Act**
Defines the *Tasmanian Health Organisations Act 2011* as the Principal Act.
- Clause 4** **Section 79 amended (Regulations)**
Amends Section 79 of the Principal Act by including subsections (5), (6) and (7) to provide for the making of regulations of a savings or transitional nature.

This will allow emerging savings and transitional matters consequent on or for furthering the purposes of the Principal Act and the National Health Reform Agreement between the Commonwealth and the State to be dealt with where appropriate through the use of subordinate legislation.

A specific transitional and saving regulation power is commonly included in significant reform legislation.

To clarify this is only a power to address transitional purposes emerging in the first 12 months of the operation of Tasmanian Health Organisations, such regulations can only be made before 1 July 2013. While they may take effect on and from 1 July 2012, if necessary before publication in the Gazette, subsection (7) provides clarity as to the effect of such a notice.

Any subordinate legislation made under this power or any other power in the Principal Act remains disallowable by the Parliament if necessary, in the usual way.

Clause 5

Sections 81A and 81B inserted

Section 81A is inserted to provide that:

- for building and procurement contracts (as defined) held by the Crown, any loss or damage incurred by or suffered by a Tasmanian Health Organisation in relation to that contract is taken to be a loss or damage incurred by or suffered by the Crown and is recoverable by the Crown.
- the section applies to a relevant contract made, and any breach, repudiation or termination arising, before or after the commencement dates. This is to ensure existing contracts and matters arising are covered, as well as any future contracts made by the Crown. This amendment does not affect the existing statutory power of Tasmanian Health Organisations to enter contracts in their own name.
- the section does not apply to a contract to which a Tasmanian Health Organisation is a party, or to loss or damage incurred after a contract is transferred under clause 4 of Schedule 6. This is because if the Tasmanian Health Organisation is a party, it can take action in relation to its own loss or damage directly.
- a reference to the Crown in any indemnities or release given to the Crown in contracts is taken to be a reference to the relevant Tasmanian Health Organisation.

These provisions are required to ensure that loss and damage under Crown contracts that is suffered by a Tasmanian Health Organisation (not being a party to the contract) is still recoverable by the Crown as if it were a loss to the Crown.

Section 81B is inserted to provide that for an occupation agreement, for example a lease, held by the Crown for premises occupied by a Tasmanian Health Organisation, the Tasmanian Health Organisation in relation to that occupation agreement is taken to be part of the Crown.

This provision is required to ensure that the Crown does not breach any occupancy agreements, and that use of the premises by a Tasmanian Health Organisation is permitted under occupation agreements made by the Crown. It does not apply if an existing occupation agreement is transferred to a Tasmanian Health Organisation under clause 4 of Schedule 6, as the organisation will then hold the occupation agreement in its own name.

Section 81C provides that the provisions of the Principal Act that are inserted or amended by this Act are taken to have commenced on 1 July 2012, if not otherwise commenced by that date. Given the urgency and importance of the Bill's amendments, this is to ensure the provisions

affecting the Tasmanian Health Organisations, which are being established on 1 July 2012 by the Principal Act, are as clear as possible should passage of the Bill be delayed.

Clause 6

Schedule 6 amended (Transitional and Savings Provisions)

Amends Schedule 6 of the Principal Act to provide for, and clarify, arrangements in respect of transfers under clause 4 of that Schedule:

- clause 6(a) amends the definitions in clause 1 by providing necessary definitions of 'contract' and 'State tax'
- clause 6(b) substitutes existing clause 4(1)(a) with a new provision to clarify clause 4 extends to the transfer of contracts to which the Crown is a party
- clause 6(c) provides a necessary consequential amendment to clause 4(1)(b) by inserting the word 'contract'
- clause 6(d) inserts a new clause 4(1A) to provide for a transfer notice, if published by 1 July 2013, to be able to have effect on a date before publication of the notice, but not before 1 July 2012. This is to assist management of transitional matters in the first 12 months.
- clause 6(e) and (f) relate to the insertion of a new clause 4(2)(e), clarifying that the Crown ceases to be a party to a transferred contract unless the transfer notice provides otherwise.
- clause 6(g) inserts new subclauses (4), (5), (6) and (7) in clause 4 to clarify that:
 - a transferred contract is taken to have been made by the THO, and a reference to the Crown in such a contract is taken to be or include as appropriate a reference to the THO
 - a person party to a transferred contract is not entitled to terminate, claim there has been a breach or default, or claim any remedy, only by reason of the transfer of that contract, or of property, rights or obligations relevant to that contract.
 - no State tax is payable in respect of the transfer under clause 4 of any contract, property, right or obligation; or anything the Minister certifies as having been done as a consequence of that transfer.
 - the usual principle applies that a power to make a notice includes a power to amend or revoke a notice. This ensures an error or lack of certainty in a notice can be addressed, to provide certainty to the Crown, THOs and relevant parties.

Clause 7**Repeal**

Provides for automatic repeal of the Amendment Act.