

## CLAUSE NOTES

### *Tasmanian Health Service Bill 2018*

This Bill, the *Tasmanian Health Service Bill 2018*, repeals the *Tasmanian Health Organisations Act 2011*, under which the Tasmanian Health Service (THS) was established.

The Bill provides a new statutory framework to continue the THS under a new leadership structure and related arrangements, in line with Government commitments. The key commitments were that the THS continues as a separate legal entity, reporting directly to the Secretary of the Department with a THS Executive team maintaining a focus on state-wide planning. This structure, with the removal of the previous role of Chief Executive Officer and Governing Council, is designed to strengthen the ongoing objectives of a single state-wide health service while promoting effective local decision-making and service delivery.

The Bill continues key policy and transparency elements from the *Tasmanian Health Organisations Act* including a Ministerial Charter, renamed Service Agreement, powers and functions of the THS, annual reports and financial matters. In line with Government commitments, the Bill also provides for new elements.

The THS now reports to, and is subject to the direction of, the Secretary. The Bill provides the Secretary is responsible to the Minister for the performance of the THS and its Executive, and the Secretary is given statutory functions to support that role. The Bill also supports the intended decentralisation of the THS Executive and the establishment of appropriate local control while retaining statewide coordination of the health service. The Bill provides for the appointment of an Executive to manage the THS and provide for that statewide coordination role, and specifies the Executive's functions and responsibilities to the Secretary. The Bill also provides for the Secretary to establish advisory panels to provide advice to the Secretary or Executive.

#### PART I - PRELIMINARY

##### Clause 1

##### Short Title

This clause sets out the short title as *Tasmanian Health Service Act 2018*.

##### Clause 2

##### Commencement

This clause provides for the Act to commence on a day or days to be proclaimed.

##### Clause 3

##### Interpretation

This clause includes a number of definitions for the purpose of this Bill.

The clause continues a number of necessary definitions, such as 'health service' and 'health support service', from the *Tasmanian*

*Health Organisations Act 2011*.

The clause also provides for new definitions and cross-references, including advisory panels, employee, Executive, and Secretary.

## **PART 2 – MINISTERIAL CHARTER**

### **Clause 4**

#### **Minister to issue ministerial charter**

This clause provides that the Minister is to issue a ministerial charter. A similar provision is in the *Tasmanian Health Organisations Act 2011*, although the Bill's clause provides that the ministerial charter specifies the Minister's broad policy expectations for the Secretary as well as the THS. The Bill also provides that the ministerial charter may not extend or limit the functions and powers of the THS or Secretary, or prevent either from exercising their powers.

The ministerial charter must be tabled before each House of Parliament within 10 sitting days of being signed by the Minister.

### **Clause 5**

#### **When ministerial charter takes effect**

This clause provides for when the ministerial charter takes effect. It also provides that the THS and Secretary must be provided with a copy of a ministerial charter, or amendment or revocation to the charter, by the day the charter, amendment or revocation takes effect.

### **Clause 6**

#### **THS and Secretary to comply with ministerial charter**

This clause provides that the THS must conduct its business and affairs in a manner consistent with the ministerial charter.

It also provides and Secretary must carry out functions and powers under this Act in a way that is consistent with the ministerial charter.

The clause provides that the service plan under the Act will prevail to the extent of any inconsistency with the ministerial charter. The service plan under clause 9 is approved by the Minister, so is the most contemporaneous and specific statement of requirements for the THS.

## PART 3 – FUNCTIONS OF THE SECRETARY

### *Division 1 – General functions of the Secretary*

#### Clause 7

##### **Role of Secretary**

This clause provides that the Secretary's key role under the Act is responsibility to the Minister for the performance of the THS and Executive. The clause puts in context the Secretary's functions under clause 8.

#### Clause 8

##### **Functions of Secretary under this Act**

This clause provides for the functions of the Secretary under the Bill. These functions are designed to continue the State's role as managing the elements of the health system for which it is responsible. The Secretary's functions, combined with the powers of direction of the THS, provide a single point of accountability for the Minister in relation to public hospital performance, performance management and planning.

### *Division 2 – Service plans*

#### Clause 9

##### **Service plan**

This clause provides that the Secretary, after consultation with the THS, is to provide the Minister with a proposed service plan to apply to the THS for the following financial year. The Minister may approve the service plan or request the Secretary to alter the service plan and resubmit it. The Minister is to approve the proposed service plan before 30 June. As soon as practical after approval, the Minister must provide a copy to the Secretary and THS and a copy must be tabled in both Houses of Parliament within 10 sitting days of approval.

The clause simplifies the service agreement process that applied under the *Tasmanian Health Organisations Act 2011*.

#### Clause 10

##### **Contents of service plan**

This clause provides for the contents of a service plan. Similarly to the *Tasmanian Health Organisations Act 2011*, a service plan must include a schedule of services to be provided by or on behalf of the THS, the estimated funding, performance standards, standards of patient care and service delivery; reporting requirements, and the performance management process that must be in continuous operation in respect of the THS.

The clause also provides the Secretary may include provisions that the Secretary thinks fit, including to limit a function or power of the

THS or specify how the function or power is to be performed. This is subject to a safeguard requirement that the service plan may not prevent the THS from complying with the Act or from performing a function or power that the THS must exercise; and may not extend the functions and powers of the THS. This provision is to support the Secretary's specified role and functions in terms of directing the performance of the THS.

## Clause 11

### **Amendment of service plan**

This clause provides for a similar process to clause 10 in respect of the amendment of the service plan, in terms of consultation with the THS, the Minister's role in approving the plan, and the tabling requirements.

### *Division 3 – Management of THS performance*

## Clause 12

### **Directions**

As the THS continues to be a separate legal entity, the Bill provides a formal power of direction in relation to its functions and powers. This supports the Secretary's accountability for public hospital performance, by allowing for directions where necessary.

Similarly to the service plan provision in clause 10, a direction may limit the performance of the functions or powers of the THS. It has a similar safeguard provision to clause 10, in that a direction may not prevent the THS performing a function or power it is required by law to exercise, nor prevent it from complying with the law.

Similarly to the provisions for the ministerial charter, the service plan prevails over a Secretarial direction to the extent of any inconsistency. This is because the service plan, approved by the Minister and amended if required, is the overarching contemporaneous and specific statement of requirements for the THS.

The Secretary's directions may not refer to health care provided to a particular person unless the direction is in accordance with written advice from a medical practitioner that it is necessary for the person's health that an action be taken or not taken by the THS. This is a safeguard provision intended to be used rarely.

The power of directions in the Bill is expressed generally and would include any power of direction the THS could have been subject to under the *Tasmanian Health Organisations Act 2011*. The power also includes directions necessary for the Secretary to fulfil functions under the Act. Some specific examples of directions may include the Secretary directing the THS to develop or implement a certain policy, produce a performance improvement plan, or enter

into certain contracts or arrangements. Another type of direction would relate to what Departmental administrative services are utilised by the THS. For example, the THS is currently subject to such a direction under the current legislation, and uses a broad range of Departmental services including payroll, procurement, asset management and financial operations.

Clause 22 of the Bill specifies that the THS is bound to comply with the Secretary's directions.

#### *Division 4 – Advisory panels*

### Clause 13

#### **Advisory panels**

The clause provides that the Secretary may establish advisory panels. The panels consist of the members that the Secretary considers to be appropriate, and a chairperson. The panel is to provide the advice to the Secretary or Executive that the Secretary requests. Schedule 1 has effect in relation to members of the panels, such as the terms and conditions of appointment.

The intention is that advisory panels may be used for any purpose, either specifically for the purposes of functions under the Act or more broadly on matters relevant to the Secretary and THS. For example, the Secretary may decide to establish advisory panels to fulfil the function in clause 8 of ensuring appropriate mechanisms for consultation and engagement between the THS and interested persons. A broader example is that the Secretary may decide to establish an advisory panel to review a particular health service planning issue.

### Clause 14

#### **Provision of information to advisory panels**

An advisory panel may involve consideration of confidential information, and may not be able to effectively fulfil its function unless there is a facilitative clause in relation to information and confidentiality. This clause provides such a clause, based on examples in other legislation, enabling persons to provide such confidential information and requiring panel members them to maintain the confidentiality of such information, subject to consideration of the functions of the panel or matters prescribed in the regulations.

## PART 4 – TASMANIAN HEALTH SERVICE

### *Division 1 – Continuance of THS*

#### Clause 15 **Tasmanian Health Service continued**

This clause provides that the Tasmanian Health Service established under the *Tasmanian Health Organisations Act 2011* is continued as a body corporate of the same name following the repeal of that Act. The clause also continues the body corporate provisions in that Act, for example the THS has perpetual succession, may sue or be sued in its corporate name, and represents the Crown.

### *Division 2 – Purposes, powers and functions of THS*

#### Clause 16 **Purposes of THS**

This clause provides that the primary purposes of the THS are to promote and maintain people's health in Tasmania; and to ensure provision of care and services to people with health problems in Tasmania. The THS is to perform its functions and powers other than for financial gain. These purposes are continued from the *Tasmanian Health Organisations Act 2011*.

The clause also provides for the intention that the THS may perform its functions or powers outside Tasmania if permitted under the approval of the Minister for Health and the Treasurer. These approvals are granted under clause 20. For example, the THS is involved in health service delivery to Antarctica, and the clause will be used to confirm contractual arrangements with the Commonwealth.

#### Clause 17 **Functions of THS**

This clause sets out the specific functions of the THS. The key functions are listed first, being to achieve the ministerial charter's policy expectations and provide the services the THS is required to provide under the service plan. The remaining functions are drawn from the functions of the THS under the *Tasmanian Health Organisations Act 2011*. They include conducting and managing public hospitals, health institutions, health services and health support services under THS control, managing the THS budget, providing training, undertaking research and development, collecting and providing health data, and any other statutory functions or functions listed in the regulations.

#### Clause 18 **Performance of certain functions not mandatory**

This clause provides for the intention that the functions of the THS

are not to be taken as mandatory in their nature, or the manner in which they are performed, if:

- the Act does not expressly say the function must be performed, or performed in that way; or
- the function is not required under the service plan; or
- the function would be in contravention of a direction to the THS given by the Secretary under any Act; or
- the function would be in contravention of another requirement of any Act.

The reason for this clause is that the functions of the Act are expressed broadly to accommodate the changing requirements of service plans from year to year, and the requirements of the State as expressed through the Secretary's power of direction.

Therefore, it may be the case that in a given year the THS will need to prioritise some functions over others, and perform those functions in a manner consistent with the service plan and any directions given to it.

#### Clause 19

#### **Powers of the THS**

This clause provides for the powers of the THS. They are typical of the powers of a body corporate and drawn from the *Tasmanian Health Organisations Act 2011*.

#### Clause 20

#### **Limitations on powers of THS**

This clause imposes limits on the powers of the THS that it may need to exercise in accordance with clause 19. These limits are mainly drawn from the *Tasmanian Health Organisations Act 2011*, and provide for the necessary oversight of the Crown in relation to significant matters.

The clause provides some matters must be approved jointly by the Minister for Health and Treasurer, such as dealing with real property, indemnifying people from liability, and registering trusts. A new provision refers to providing services outside Tasmania's territorial boundaries if approved. For example, the THS is involved in health service delivery to Antarctica, and the clause will be used to approve contractual arrangements with the Commonwealth relating to those services.

The clause provides some matters must be approved by the Minister for Health, such as waiving fees, and entering into agreements with other Governments. These are the more routine matters of the THS and therefore do not also require the Treasurer's approval. Ministerial Approvals may be granted for particular matters, classes of matters, or in respect of particular

persons or classes of persons, or both. This is expressed broadly, given the nature of matters subject to approval such as fee waivers. For example, the Minister may approve the THS waiving any fee charged to any person suffering financial hardship.

**Clause 21                    Delegation**

This clause provides a power for the THS to delegate any of its functions and powers (other than this power of delegation) by an instrument in writing.

**Clause 22                    THS subject to direction of Secretary**

This clause provides that the THS must comply with Secretarial directions given under this Act (such as clause 12) or any other Act.

**Clause 23                    Employees**

This clause provides that the THS may make arrangements with the Secretary for State Service Officers or State Service employees of the Department to be made available to the THS by arrangement between the THS and Secretary.

**Clause 24                    Volunteers**

This clause supports the use of volunteers by the THS.

**Clause 25                    THS to be local hospital network**

This clause provides that the THS is intended to be a local hospital network for the purposes of the National Health Agreement, as amended from time to time.

*Division 3 - Executive*

**Clause 26                    Appointment of persons to constitute Executive**

This clause provides for appointment by the Secretary of one or more employees as members of the Executive. A person appointed holds membership of the Executive in conjunction with State Service employment. The Secretary may terminate the appointment of a person to be a member of the Executive – this is not a reference to termination of the person’s employment as that is governed by the *State Service Act 2000*.

For example, this clause may be used so that the small number of senior officers responsible for the operational performance of the THS form the statewide Executive leadership of the THS.



**Clause 27****Role of Executive**

This clause provides for the role of the Executive. The Executive is responsible to the Secretary for administration and management of the THS, the performance by the THS of its functions and powers, and compliance of the THS with directions given under this Bill. This clause also states that when the Executive does anything on behalf of the THS, that action is taken to have been made by the THS.

**Clause 28****Functions of Executive**

This clause sets out the functions of the Executive. They include administering and managing the THS and performing its functions and powers. The Executive must ensure the THS carries out its service plan, and report to the Secretary on the administration and performance of the THS. The Executive must establish appropriate management and administrative structures for the THS, which will be used for purposes including enabling local management and control. For example, these structures will support the operational effectiveness of the THS at both the statewide and local level. Finally, the Executive has any other functions specified by the Secretary.

**Clause 29****Liability**

This clause provides personal protection from liability for members of the Executive acting in good faith.

**Clause 30****Annual Report**

This clause provides for the Executive to prepare an annual report for the Minister to table in Parliament by 31 October. The provision includes typical requirements of an annual report, including a report on operations, performance and inclusion of audited financial statements. The clause provides for the Minister to provide the annual report to the Clerk of a House of Parliament if the House is not sitting by the required tabling date.

***Division 4 – Financial matters*****Clause 31****Funds of the THS**

This clause provides for the THS funds. It includes the types of funds, and that they are to be applied for remunerating employees and payments of expenses incurred by the THS in the performance of its powers. This provision is based on a similar provision in the *Tasmanian Health Organisations Act 2011*.

- Clause 32**                    **Authorised deposit-taking institution accounts**
- This clause provides the THS may set up and operate bank accounts with approval in writing from the Treasurer. This provision is based on a similar provision in the *Tasmanian Health Organisations Act 2011*.
- Clause 33**                    **Accounting records**
- This clause provides the THS is to keep correct accounting records for a period of 7 years from transaction dates (or longer if the Treasurer requires), and for the Treasurer to give directions as to how these accounting records are presented and kept. This provision is based on a similar provision in the *Tasmanian Health Organisations Act 2011*.
- Clause 34**                    **Effect of *Financial Agreement Act 1994***
- This clause provides that the THS must comply with any requirement of the Treasurer under section 5(1) of the *Financial Agreement Act 1994*, in relation to doing or not doing anything for the purpose of implementing the Agreement. This provision is based on a similar provision in the *Tasmanian Health Organisations Act 2011*.
- Clause 35**                    **Notification to Secretary and Ministers of certain developments**
- This clause provides that the Executive is to notify the Secretary as soon as practicable of developments that in the Executive's opinion may significantly affect the financial position of the THS or operating ability of the THS. This provision is based on a similar provision in the *Tasmanian Health Organisations Act 2011*.
- Similarly, the Secretary must also notify such matters to the Minister for Health and the Treasurer.

## **PART 5 - MISCELLANEOUS**

- Clause 36**                    **Certain instruments not statutory rules**
- This clause provides that certain instruments, including Secretarial directions under this Bill, and ministerial charters and service plans, are not statutory rules within the meaning of the *Rules Publication Act 1953* and are not of legislative character for the purposes of section 38A of the *Acts Interpretation Act 1931*. This provision is adapted from a similar provision in the *Tasmanian Health Organisations Act 2011*.

Clause 37

**Transitional and savings provisions**

This clause provides for a number of transitional and savings provisions. It includes definitions to facilitate the transition clauses about decisions, service agreements, financial statements and annual reports relating to the THS under the *Tasmanian Health Organisations Act 2011*.

Clause 38

**Employees under former Act transferred**

This clause provides for the transfer of current THS employees to the new entity at the commencement of this section as if they had been assigned under Section 23 of the Bill. This provides continuity for existing employees.

Clause 39

**Liabilities, &c., in respect of certain contracts**

This clause is required to ensure that loss and damage under Crown contracts that is suffered by the THS (not being a party to the contract) is still recoverable by the Crown as if it were a loss to the Crown. The clause is adapted from a similar provision (s.81A) in the *Tasmanian Health Organisations Act 2011*.

The clause provides that for building and procurement contracts (as defined) held by the Crown, any loss or damage incurred by or suffered by the THS in relation to that contract is deemed to be a loss or damage incurred by or suffered 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 THS to enter contracts in its own name.

The section does not apply to a contract to which the THS is a party. This is because if the THS 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 THS.

Clause 40

**Application of certain occupation agreements**

This provision is required to ensure that the Crown does not breach any occupancy agreements, and that use of the premises by the THS is permitted under occupation agreements made by the Crown. The clause is adapted from a similar provision (s.81B) in the *Tasmanian Health Organisations Act 2011*.

The clause provides that for an occupation agreement, for example a lease, held by the Crown for premises occupied by the THS, the THS in relation to that occupation agreement is taken to be part of the Crown.

The clause does not apply to any existing occupation agreements that were transferred under the *Tasmanian Health Organisations Act 2011* as the THS already holds any transferred occupation agreements in its own name.

#### Clause 41

##### **Regulations**

This clause provides broad powers for the making of regulations under this Bill, including any savings or transitional matters. This provides the ability to address any savings and or transitional issues not provided for in clause 37. Such matters can operate from a date before the date of publication in gazette, subject to the safeguard restrictions in the clause.

#### Clause 42

##### **Administration of Act**

This clause provides that until an order is made under the *Administrative Arrangements Act 1990*, the administration of the Act is assigned to the Minister for Health and the responsible Department is the Department of Health and Human Services. It is anticipated that Department will be separated into two Departments on 1 July 2018, in which case the Administrative Arrangements Order is expected to clarify the responsible Department is the Department of Health.

#### Clause 43

##### **Legislation repealed**

This clause provides that the legislative specified in Schedule 2 (the *Tasmanian Health Organisations Act 2011*) is repealed.

#### Schedule 1

##### **Advisory Panels**

This Schedule supports clause 13 of the Bill, in providing for membership and meetings of advisory panels.

#### Schedule 2

##### **Legislation Repealed**

This Schedule gives effect to clause 43, by listing the *Tasmanian Health Organisations Act 2011* as the Act repealed by that clause.