

# Health Services (Metropolitan Hospitals) Bill

## EXPLANATORY MEMORANDUM

### Outline

The Bill makes various amendments to the **Health Services Act 1988**.

### Clause Notes

*Clause 1* sets out the purposes of the Bill.

*Clause 2* is the commencement provision.

*Clause 3* states that the **Health Services Act 1988** is the Principal Act referred to in the Bill.

*Clause 4 (a)* changes the definition of Chief General Manager in section 3 of the Principal Act to mean the Secretary to the Department of Health and Community Services.

*Clause 4 (b)* inserts a definition of “metropolitan hospital” into the Principal Act.

*Clause 4 (c)* amends the definition of “public hospital” in the Principal Act to include a metropolitan hospital.

*Clause 5* adds the words “Schedule 3” to section 8 of the Principal Act to allow Schedule 3 to be amended.

### Part 2A—Medicare Principles and Commitments

*Clause 6* inserts a new Part 2A into the Principal Act.

Section 17AA (1) establishes the Medicare Principles and Commitments as guidelines for the delivery of public hospital services to eligible persons in Victoria.

Section 17AA (2) sets out the Medicare Principles and Commitments.

Section 17AA (3) states that nothing in the new Part 2A gives rise to any action or legal right not existing before the commencement of this Act.

Section 17AA (4) states that in the new Part 2A the terms “eligible person” and “public patient” have the same meaning as in the Health Insurance Act 1973 (Commonwealth).

*Clause 7* amends section 36 (3) of the Principal Act to bring it into line with reporting requirements under the **Financial Management Act 1994**.

*Clause 8* inserts a new Division 4A into Part 3 of the Principal Act.

Section 40A provides for the incorporation of metropolitan hospitals.

Section 40B states that a metropolitan hospital does not represent the Crown.

Section 40C outlines the objects of a metropolitan hospital. These are the same as currently exist for public hospitals.

Section 40D (1) provides that there shall be a board of directors of each metropolitan hospital. This is a name change from board of management in the current Health Services Act.

Section 40D (2) provides the functions of the board of directors of a metropolitan hospital. The functions are designed to give metropolitan hospital boards a more corporate nature.

Section 40D (3) gives a board of directors of a metropolitan hospital such powers as are necessary to carry out its functions.

Section 40E (1) states that a board of a metropolitan hospital shall consist of not less than six and not more than nine members. All members are appointed by Order in Council acting on the recommendation of the Minister.

Section 40E (2) provides that the **Public Sector Management Act 1992** does not apply to a member of a board of a metropolitan hospital.

Section 40E (3) states that the board of a hospital that becomes a metropolitan hospital continues to be the board until an appointment under section 40E (1). This is designed to allow all board members to continue to serve even if, at the time of a hospital becoming a metropolitan hospital, there were more than nine board members of that hospital.

Section 40E (4) is a transitional provision providing that other specific provisions of the Principal Act continue to apply to a board that continues in existence under section 40E (3).

Section 40F (1) states that a board member is appointed for a period of up to three years and may be re-appointed.

Section 40F (2) provides that board members may be reimbursed for expenses incurred in holding office and may receive remuneration for their efforts.

Section 40G (1) allows a director to resign his/her position by notice in writing to the Governor in Council.

Section 40G (2) allow the Governor in Council to remove a director.

Section 40G (3) provides the grounds for the removal of a director.

Section 40H (1) states that the Chief Executive Officer of a metropolitan hospital must, at the direction of the board, convene an annual general meeting.

Section 40H (2) states that the CEO of a metropolitan hospital does not have to convene an annual general meeting within the first 12 months after an aggregation.

Section 40H (3) outlines notice requirements in relation to an annual general meeting.

Section 40H (4) outlines that the board of a metropolitan hospital must report on at its annual general meeting. These include reports prepared in accordance with the **Financial Management Act 1994** and the health services provided in the past year.

Section 40I states that the procedure of the board of a metropolitan hospital is at the discretion of the board.

Section 40j provides an immunity for board members for acts done in good faith in performance of any function or power bestowed on the board. Such an immunity presently exists for board members of public hospitals.

Section 40k states that acts or decisions of the board are not invalid by reason of a defect in the appointment of a board member or a vacancy on the board.

Section 40L provides that each metropolitan hospital is to establish at least two advisory committees. One such committee is to be comprised of community representatives. Another is to be comprised of health service professionals.

*Clause 9* ensures that any aggregation of a metropolitan hospital within twelve months of the commencement of the new division 9A must take place under Division 9A. The effect of this is that section 64 of the Principal Act cannot apply to a metropolitan hospital for twelve months after the commencement of this Act.

*Clause 10* inserts a new Division 9A into the Principal Act.

Section 65A is a definition section.

Section 65B states that it is the intention of the Parliament that the operation of this division should include, as far as is possible, operation outside Victoria.

Section 65C contains a procedure for the aggregation of metropolitan hospitals. This procedure will only apply for twelve months from the commencement of the Act.

An aggregation is effected by Order in Council acting on the recommendation of the Minister. This Order may provide for any matter necessary or expedient to effect the aggregation.

Section 65D states that a new metropolitan hospital created by an Order made under Section 65C is the successor in law of the aggregated hospitals. It provides that all of the property, rights and liabilities of the aggregated hospitals become the property, rights and liabilities of the new hospital. This is intended to include trust property, as this section is designed to ensure that a trust made in favour of an amalgamating hospital does not fail just because of the aggregation, but rather is to operate as if it was made in favour of the new hospital.

Section 65E provides that the new hospital is substituted for an aggregated hospital in any agreement to which the aggregated hospital was a party.

Section 65F states that an old instrument continues to have effect after an aggregation as if a reference to an aggregated hospital in the instrument is a reference to the new hospital.

Section 65G states that a new hospital created by an aggregation is substituted for the aggregated hospitals in any proceedings to which the aggregated hospitals were a party.

Section 65H states that any interest in land held by an aggregated hospital becomes an interest of the new hospital.

Section 65I provides for any amendment of the Register of Titles that is necessary as the result of the operation of the new Division 9A in Part 3.

Section 65J states that no stamp duty or other tax is payable in respect of any transaction arising under the new Division 9A.

Section 65K ensures that evidentiary material continues to be admissible after an Order under section 65c aggregating hospitals has been made.

Section 65L provides for the transfer of all staff of an aggregated hospital to the new hospital. It is designed to ensure continuity of service and ensures that all employees are employed by the new hospital on the same terms and conditions as previously and with all accrued benefits intact as at the date of transfer.

Section 65M states that nothing in section 65L prevents the terms and conditions of an employee transferred to a new hospital being varied after an aggregation has taken place.

Section 65N relates to the validity of things done under the new Division 9A. It provides that nothing effected or suffered under the new Division 9A is to be regarded as making any person guilty of a civil wrong or action which would amount to a breach, termination or frustration of a contract or instrument or cause the release of any person from any obligation under a contract or instrument.

Section 65O states that the operation of the new Division 9A is not subject to any form of review.

*Clause 11* inserts a new section 157C into the Principal Act. It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining an action, proceedings or an application referred to in sections 17AA, 40J or 65O.

*Clause 12* removes certain hospitals from the list contained in Schedule 1 to the Principal Act. These hospitals are to be placed in the new Schedule 3.

*Clause 13* inserts a new Schedule 3 into the Principal Act. This Schedule lists the metropolitan hospitals. These hospitals are the hospitals removed from Schedule 1.