

Health and Hospitals Network Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Geoff Wilson MP

Short Title

Health and Hospitals Network Bill 2011

Objectives of the amendments

The main objective of the amendments is to make minor amendments to the Bill in response to issues raised by stakeholders. Amendments include modifying how the Objects of the Act are to be achieved, adding additional Guiding Principles, and clarifying networks' obligations to give effect to consumer and community engagement strategies, clinician engagement strategies, and protocols with 'Medicare Locals'.

Amendments are also made to the Bill to support the transition to the new organisational arrangements and to make minor modifications to the Bill's regulation-making power.

The objective of the amendments to the *Tobacco and Other Smoking Products Act 1998* (Tobacco Act) is to ensure that hoteliers can continue to have one or more tobacco product vending machines and/or one over-the-counter point of sale at the same licensed premises.

The Social Development Committee's recommendation in its 2010 report on *Chronic Diseases in Queensland*, which was subsequently supported by the Government, was to ban displays of smoking products in the retail setting. Although the bans on advertising and display of smoking products are intended to apply to tobacco product vending machines, it was not intended to restrict the number of vending machines at licensed premises or to prevent licensed premises from having a vending machine in addition to a (single) over-the-counter point of sale.

Achievement of policy objectives

The objectives of the amendments will be achieved by making the minor amendments specified in the Notes on Provisions section of these Explanatory Notes.

The proposed amendments to the Tobacco Act will exclude tobacco product vending machines from the application of the single point of sale requirement introduced in the Bill. This amendment will not affect the application of other display restrictions applying to vending machines, such as mandatory signage and restricting the display of smoking products from those machines. Furthermore, hoteliers will continue to be subject to the same restrictions for over-the-counter sales of smoking and related products as all other smoking product retailers, including having only one (over-the-counter) point of sale.

Estimated Cost for Government Implementation

There are no costs associated with these amendments.

Consistency with Fundamental Legislative Principles

Amendment 13 raises a fundamental legislative principle issue by allowing a transfer notice to have effect retrospectively. As stated in the Explanatory Notes for the Bill, one of the key purposes of the transfer notice will be to protect the rights and obligations of all parties to existing contracts and agreements by maintaining the status quo, in practice, in terms of these rights and obligations. The ability to issue a transfer notice after 1 July 2012, if needed, will ensure a smooth transition to the new arrangements.

Consultation

Submissions were invited on the Bill when it was tabled in Parliament.

The amendments to the Tobacco Act correct an issue raised by stakeholders following introduction of the Bill.

Notes on Provisions

Amendment of Clause 5 (Object)

Amendment 1 modifies how the Object of the Act is to be achieved. This amendment inserts a reference to local clinician engagement, which is an important feature of the Bill.

Amendment of Clause 13 (Guiding principles)

Amendment 2 adds an additional Guiding Principle in the Bill. This additional Guiding Principle emphasises the importance of public sector health services working with private sector health services to achieve coordinated, integrated health service delivery.

Amendment 3 adds an additional Guiding Principle to the Bill that emphasises the importance of a positive workplace culture based on mutual trust and respect.

Amendment 4 modifies the Guiding Principle in the Bill that relates to engagement processes in planning, developing and delivering public sector health services. This amendment adds engagement with consumers, community members and local primary healthcare organisations in these activities.

Amendment of Clause 40 (Engagement strategies)

Amendment 5 states that networks must give effect to consumer and community engagement strategies, and clinician engagement strategies, in performing their functions under the Act.

Amendment of Clause 42 (Protocol with primary healthcare organisations)

Amendment 6 states that networks must give effect to protocols with local primary healthcare organisations in performing their functions under the Act.

Amendment of Clause 75 (Exclusion of certain matters from review under other Acts)

Amendment 7 makes a typographical amendment necessary for amendment 8.

Amendment 8 omits paragraph 75(5)(c) as this matter is addressed in the *Industrial Relations Act 1999*.

Amendment of Clause 282 (Regulation-making power)

Amendment 9 modifies the regulation-making power in the Bill. This amendment will enable regulations to be made to preserve the entitlements of employees who move between the department and a network, for example, as a result of applying for an executive position in a network.

Amendments 10 to 12 modify the regulation-making power in the Bill to enable regulations to be made for the movement of health executives employed in the department, as well as health executives employed in networks.

Amendment to Clause 307 (Transfer notice)

Amendment 13 allows a transfer notice to have retrospective effect to a day not earlier than the day the section commences. (See Consistency with Fundamental Legislative Principles).

New Clauses 316A and 316B

Amendment 14 inserts two new transitional provisions – clause 316A (When chief executive may decide service agreement) and clause 316B (When consultation on health service directive not required). Clause 316A allows the initial service agreements to be determined solely by the Director-General if, in exceptional circumstances, there is inadequate time to negotiate the agreement with a network's Governing Council prior to 1 July 2012. This agreement must be for a period of no longer than 1 year. Clause 316B waives the requirement to consult with networks on the initial Health Service Directives if, in exceptional circumstances, there is inadequate time to consult prior to 1 July 2012.

Amendment of Clause 321 (Amendment and relocation of s 20 (Supplier must display particular signs))

Amendment 15 omits section 20(2) of the *Tobacco and Other Smoking Products Act 1998* (Tobacco Act), which currently specifies that the point of sale signage requirements do not apply to a tobacco product vending machine. As the definition of *point of sale* is being amended (in Amendment 18) to exclude vending machines, this subclause is no longer necessary.

Amendment 16 renumbers new subsection 20(1A) as subsection (2), to reflect the removal of the current section 20(2) in Amendment 15.

Amendment 17 omits the renumbering of current sections 20(2) and (3), which is no longer necessary after the removal of the current section 20(2) in Amendment 15.

Amendment of Clause 329 (Amendment of schedule (Dictionary))

Amendment 18 amends the definition of *point of sale* in the Tobacco Act to exclude tobacco product vending machines from the meaning of a point of sale. The term *point of sale* is used throughout the Tobacco Act in relation to retail settings. As the statutory requirements for tobacco product vending machines are prescribed separately in the Act, it is not necessary to include vending machines in the definition of point of sale.

Tobacco product vending machines will be subject to the same bans on advertising and display of smoking products that will apply to retailers. The practical effect of Amendment 18 is to exclude tobacco product vending machines from the application of the single point of sale requirement introduced in Clause 319 of the Bill. This will retain the ability of an hotelier to have an over-the-counter point of sale (such as a selling from the bar or a bottle shop) and one or more tobacco product vending machines located at the same licensed premises.

