

Mater Public Health Services Bill 2008

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Mater Public Health Services Bill 2008*.

Policy Objectives

The main objective of the *Mater Public Health Services Bill 2008* (the Bill) is to provide a statutory framework for arrangements between Queensland Health and Mater Misericordiae Health Services Brisbane Ltd (the Mater) about the delivery of health services to public patients (public patient services) at the Mater hospitals at South Brisbane, and the funding of the services.

The Bill also:

- facilitates the exchange of patient information between Queensland Health and the Mater where access to that information by health professionals is necessary for the care or treatment of the patient to whom the information relates;
- amends the *Private Health Facilities Act 1999* to provide for the licensing of the Mater public hospitals; and
- amends the *Child Protection Act 1999* to remove a barrier to the Mater receiving information from other service providers which affects its ability to provide an effective service to children in need of protection.

Reasons for the Policy Objectives

The Mater currently operates three public hospitals and three private hospitals at the Mater's South Brisbane campus. Queensland Health provides funding to the Mater for the delivery of public patient services at the Mater public hospitals.

Since 2002, the funding arrangements for public patient services have been governed by a 20 year agreement between the parties and an annual health service agreement which specifies the funding level for each financial year and the specific undertakings, strategies and measures that apply to the delivery of public patient services by the Mater during the year.

Queensland Health and the Mater are committed to preserving and reinforcing their special relationship regarding the provision of public patient services at the Mater hospitals. This can be effectively achieved by establishing a statutory framework for the arrangements between the parties.

Mater health professionals providing health services to public patients who received care at a Queensland Health hospital often need to have access to Queensland Health patient information to assist in the care or treatment of the patient. However, the confidentiality provisions in Part 7 of the *Health Services Act 1991* limit the ability of Queensland Health to disclose this information to Mater health professionals. Similarly, Commonwealth privacy legislation limits the ability of the Mater to disclose to health professionals engaged by Queensland Health information about patients who received health services at the Mater hospitals.

Amendments to the *Private Health Facilities Act 1999*

The Mater private hospitals are licensed under the *Private Health Facilities Act 1999* but the Mater public hospitals are not. Although the Mater public hospitals treat public patients they are not operated by the State and therefore are 'private hospitals' under the *Private Health Facilities Act 1999*. Licensing of the Mater public hospitals will acknowledge their status as private hospitals under the *Private Health Facilities Act 1999* and ensure that licensing standards apply to all the Mater hospitals at South Brisbane.

Amendments to the *Child Protection Act 1999*

Chapter 5A of the *Child Protection Act 1999* promotes coordination of service delivery to children and authorises the exchange of relevant information concerning children at risk of harm between 'prescribed entities' (primarily government service providers) and other service providers. It also affords protection from liability (eg. for breach of confidentiality) to service providers who, acting honestly, give relevant information to a prescribed entity.

The Mater, through its Children's Hospitals, provides significant services to children and has played an active role in child protection for many years. Some health service providers, such as general practitioners and other private hospitals, are reluctant to give the Mater child safety-related information. This is because, as the Mater is not a prescribed entity, the service providers do not have protection from liability for giving the information. This adversely affects the Mater's ability to provide an effective service to children in need of protection.

How the Policy Objectives will be achieved

The policy objectives of the Bill will be achieved by:

- providing for the arrangements about the funding and delivery of public patient services at the Mater hospitals to be governed by a written agreement made between Queensland Health's chief executive and the Mater;
- providing for the existing agreements made between the parties about the funding and delivery of the services to continue in force after the Bill commences;
- authorising the disclosure of patient information to health professionals engaged by Queensland Health or the Mater, as the case may be, if the disclosure is for the care or treatment of the patient to whom the information relates;
- amending the *Private Health Facilities Act 1999* to clarify that the Mater public hospitals are 'private hospitals' under that Act and to provide for a new single licence to be issued for the Mater public and private hospitals at South Brisbane to replace the existing licences for the Mater private hospitals; and
- amending certain provisions in Chapter 5A of the *Child Protection Act 1999* include the chief executive officer of the Mater as a 'prescribed entity' under those provisions.

Alternatives to the Bill

Maintaining the status quo was considered as an option in relation to the arrangements about the funding and delivery of public patient services at Mater hospitals. However, it is considered that a regulatory approach is the most effective means of preserving and reinforcing the special relationship between Queensland Health and the Mater.

Non-regulatory approaches were not considered appropriate for the other matters addressed in the Bill.

Estimated administrative cost to the Government for Implementation

Implementation of the Bill will not involve any significant costs to the Government.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

The Mater was consulted on an exposure draft of the Bill.

Results of Consultation

The Bill is supported by the Mater and key government stakeholders.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 states that the Act may be cited as the *Mater Public Health Services Act 2008*.

2 Commencement

Clause 2 provides for the Act to be commenced on a day to be fixed by proclamation.

3 Main object

Clause 3 outlines the Act's main object and specifies the matters that Parliament intends to be recognised and taken into account in relation to the arrangements about the delivery of public patient health services by the Mater hospitals and their funding. The corporate governance and public accountability requirements of the Mater referred to in paragraph (d) of clause 3(2) would include, for example, the Mater's directors' obligations under the *Corporations Act 2001* (Cwlth) and the Mater's reporting requirements under that Act.

4 Guiding principles

Clause 4 sets out the principles that are intended to guide the achievement of the Act's object.

5 Definitions

Clause 5 states that particular words used in the Act are defined in the Schedule.

Part 2 Agreement

6 Authority to enter into agreement

Clause 6 specifies that the chief executive, acting on behalf of the State, and the Mater may enter into an agreement for the arrangements about the delivery of public patient health services by the Mater hospitals and their funding. The clause also sets out the matters that the agreement may include and clarifies that this does not limit the matters that may be included in the agreement. Clause 6(4) allows a regulation to prescribe matters that must be included in the agreement relating to funding that the department must provide for the purpose of staff entitlements.

Part 3 Disclosure of information

7 Definitions for Pt 3

Clause 7 contains definitions for terms used in Part 3. The definitions of ‘confidential information’, ‘designated person’ and ‘health professional’ are referenced to the definitions of those terms in section 60 of the *Health Services Act 1991*.

8 Who may disclose information

Clause 8 allows information to be disclosed in specified circumstances to health professionals engaged by Queensland Health or the Mater.

The authorisation in clause 8(1) allows a designated person to disclose confidential information about an individual to a Mater health professional if the disclosure is for the care or treatment of the individual. Disclosure of this information is currently restricted by section 62A of the *Health Services Act 1991*. However, disclosure of information under clause 8(1) will fall within section 62B of the *Health Services Act 1991* which excludes the application of section 62A to a disclosure that is required or permitted by law.

Clause 8(2) allows an officer of the Mater to disclose personal information about a Mater hospital patient to a health professional engaged by Queensland Health if the disclosure is for the care or treatment of the patient. This will overcome any obstacles in Commonwealth privacy legislation to the disclosure of this information.

Part 4 Transitional provision

9 Existing agreement

Clause 9 specifies that the existing agreement (ie. the Mater Hospital Funding Agreement made between the State and the Mater on 16 December 2002) and the annual agreement made under clause 7 of the existing agreement continue in force until they expire or are otherwise terminated. The clause also clarifies that the existing agreement is taken to have been made under clause 6 of the Bill.

Part 5 Amendment of Child Protection Act 1999

10 Act amended in pt 5

Clause 10 specifies that this Part amends the *Child Protection Act 1999*.

11 Amendment of s 159D (Other definitions for ch 5A)

Clause 11 amends the definition of ‘prescribed entity’ in section 159D to include the chief executive officer of the Mater. This means that the obligation about giving information under section 159N, which applies to all prescribed entities, will apply to the chief executive officer of the Mater.

12 Amendment of s 159H (chief executive may ask particular prescribed entities to provide a service)

Clause 12 amends section 159H to include the chief executive officer of the Mater as prescribed entity to which the section applies. This means that the chief executive officer of the Mater will be subject to the obligations in section 159H about providing a service if asked by the chief executive.

13 Amendment of s 159M (Particular prescribed entities giving and receiving relevant information)

Clause 13 amends section 159M (which deals with prescribed entities giving and receiving relevant information) to include the chief executive officer of the Mater as a prescribed entity to which the section applies.

Part 6 Amendment of Health Services Act 1991

14 Act amended in pt 6

Clause 14 specifies that this Part amends the *Health Services Act 1991*.

15 Omission of s 65 (Mater Misericordiae Public Hospitals)

Clause 15 omits section 65 because it is redundant.

Part 7 Amendment of Private Health Facilities Act 1999

16 Act amended in pt 7

Clause 16 specifies that this Part amends the *Private Health Facilities Act 1999*.

17 Insertion of new pt 14

Clause 17 inserts a new Part 14 (sections 166-168) in the Act.

Section 166 contains definitions of terms used in Part 14.

Section 167 clarifies that the Mater public hospitals are private hospitals for the Act.

Section 168(1) requires the chief health officer to issue a new licence to the Mater for the Mater public hospitals and the Mater private hospitals. The new licence must be issued within 30 days after the chief health officer receives the application that the Mater is required to give under section 168(2).

Section 168(3) clarifies that sections 43-46 (which deal with decisions on applications) do not apply to the application given under section 168(2). These sections do not apply because the chief health officer is not required to make a decision to grant or refuse the application.

Section 168(5) specifies that the new licence replaces the existing licences for the Mater private hospitals and is taken to be issued under Part 6.

Section 168(6)(a) specifies that Divisions 4-7 of Part 6 apply to the new licence. The purpose of section 168(6)(b) is to ensure that the condition of licence in section 48(1)(a), that requires notification of any 'prescribed change' in a matter disclosed in a licence application, also applies to the application mentioned in section 168(2).

Section 168(6)(c) clarifies that section 48(1)(e), which requires licensees to comply with relevant standards, is not limited by anything in the existing agreement mentioned in clause 9 of the Bill.

18 Amendment of sch (Dictionary)

Clause 18 inserts new definitions in Schedule 3.

Schedule Dictionary

The Dictionary contains definitions of various terms used in the Bill.

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