

Health Legislation Amendment Bill 2025

Explanatory Notes

For

Amendments to be moved during consideration in detail by the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services

Title of the Bill

The title of the Bill is the Health Legislation Amendment Bill 2025.

Objectives of the Amendments

The objectives of the amendments to be moved during consideration in detail of the Health Legislation Amendment Bill 2025 (Bill) are to:

- clarify the employment arrangements for new employees of the Queensland Pharmacy Business Ownership Council (Council); and
- ensure the entitlements of any staff transferred from Queensland Health to the Council are appropriately protected.

Achievement of the Objectives

The *Pharmacy Business Ownership Act 2024* (Act) received assent on 28 March 2024. The Act creates a licensing framework for the ownership of pharmacy businesses in Queensland, establishes the Council as a statutory body, transfers responsibility for administration of pharmacy ownership regulation from Queensland Health to the Council, and makes other reforms to support effective enforcement of pharmacy business ownership restrictions. The Act partially commenced in 2024, primarily to establish the Council. The Act must commence in full by 29 March 2026.

Section 175 of the Act allows the chief executive officer of the Council to employ the staff the chief executive officer considers appropriate to perform the Council's functions.

Part 14 of the Act contains transitional provisions. Division 3 of part 14 sets out the employment terms and conditions of initial council employees, which include both employees

who may transfer from Queensland Health to the Council, and new employees employed by the Council.

Technical issues with the current transitional provisions applying to Council employees have been identified during implementation of the Act. Amendments are required to clarify these provisions and ensure they operate as intended when the Act commences in full.

Background

The transitional provisions provide for the terms and conditions of persons employed after the commencement as Council employees, other than the chief executive officer, including those who were employed by Queensland Health immediately before being transferred to the Council.

The current provisions provide for:

- those who were health service employees immediately before being transferred to the Council (transferred health service employees) – section 224(2)(a);
- those who were public service employees employed by Queensland Health immediately before being transferred to the Council (transferred public service employees) – section 224(2)(b); and
- new employees of the Council (new employees) – section 224(3).

Terms and conditions of transferred health service employees

A small number of Queensland Health employees may transfer to the Council. These employees are appointed by Queensland Health as health service employees, under the *Hospital and Health Boards Act 2011*.

Section 224(2)(a) currently provides that the terms and conditions of these employees will be the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments. This position continues until a new certified agreement, covering the transferred employees as members of the Council's staff, takes effect.

The amended transitional provisions clarify that the terms and conditions of transferred health service employees (other than health senior officers) are those that applied immediately before commencement to health service employees employed by Queensland Health, under the *Queensland Public Health Sector Certified Agreement (No. 11) 2022* and the *Hospital and Health Service General Employees (Queensland Health) Award – State 2015*.

To the extent that changes to these instruments take effect after commencement, the changes will also apply to the transferred health service employees. The provisions will cease to have effect if the employee is permanently promoted by the Council, or if a certified agreement made after commencement, covering the employee as a member of the Council's staff, takes effect.

Terms and conditions of transferred health senior officers

Health senior officers are senior health service employees who are appointed by Queensland Health under the *Hospital and Health Boards Act*. Health senior officers are not subject to a

certified agreement or an award. The application of the current transitional provisions to any health senior officers who may transfer to the Council is therefore unclear.

The amended transitional provisions clarify that a transferring health senior officer is to be subject to the terms and conditions that applied, immediately before the commencement, to health senior officers employed by Queensland Health, as decided by the chief executive under the Hospital and Health Boards Act, that is, the Director-General of Queensland Health. Any changes to the terms and conditions of health senior officers employed by Queensland Health, as decided by the chief executive, will also apply to a transferred health senior officer. These provisions will cease to have effect if a transferred health senior officer is permanently promoted by the Council.

Terms and conditions of transferred public service employees

Section 224(2)(b) of the Act provides for the terms and conditions of public service employees employed by Queensland Health immediately before being transferred to the Council. However, it has been confirmed that no public service employees employed by Queensland Health are within scope to be transferred to the Council under the Public Sector Act.

The amended transitional provisions therefore do not provide for the terms and conditions of transferred public service employees.

Terms and conditions of new employees appointed by the Council

Under section 224(3) of the Act, the terms and conditions of new employees are those that applied, immediately before the commencement, to health service employees under the existing instruments.

New employees will be appointed under the *Public Sector Act 2022*, and will be public sector employees, not health service employees employed under the Hospital and Health Boards Act. As such, it is appropriate for the terms and conditions of these staff to be those that applied, immediately before the commencement, to public service employees employed by Queensland Health under the existing instruments.

The amendments clarify that the terms and conditions of new Council employees are those that applied to officers employed by Queensland Health under the *Queensland Public Health Sector Certified Agreement (No. 11) 2022* and the *Queensland Public Service Officers and Other Employees Award – State 2015*.

To the extent that changes to these instruments take effect after commencement, the changes will apply to the new employees. These provisions cease to have effect if a certified agreement made after commencement, covering the employee as a member of the Council's staff, takes effect.

Application of directives

During implementation, several technical issues have been identified in relation to the provisions of part 14 dealing with public sector directives and health employment directives.

Under current sections 213, 224(2) and 224(3) of the Act, health employment directives are relevant instruments which are proposed to apply to transferred health service employees and new employees. However, health employment directives are not relevant to Council employees and can only apply to employees who are appointed under the Hospital and Health Boards Act, whereas all Council employees will be appointed under the Public Sector Act. Health employment directives therefore should not apply to Council staff in any capacity. Accordingly, the amendments remove the provisions relating to health employment directives.

Further, public sector directives that are superseded may be considered to have been revoked under section 226, rather than changed under section 225. This means that new versions of these public sector directives will not automatically apply to Council employees. This issue is compounded by current section 227, which could be interpreted to mean that new public sector directives will only apply to Council employees if the directive is expressly stated to apply to those staff – if this does not occur, Council employees will not have the benefit of that directive.

It is intended that public sector directives will apply to Council employees. The amendments remove all references to public sector directives. The effect of this is that directives that apply to public sector employees will automatically apply to Council employees, under the Public Sector Act.

Fixed term contracts

Currently, section 228 of the Act applies if a fixed term contract was in effect for an *initial council employee* to whom section 224(2) applies immediately before the employee was transferred to the Council, and clarifies that nothing in division 3 of part 14 affects the operation of the fixed term contract.

No relevant fixed term contracts are in existence. The amendments therefore omit section 228 to reduce the complexity of the transitional provisions.

Alternative Ways of Achieving Policy Objectives

There are no other ways of achieving the policy objective of clarifying the appropriate employment arrangements for new employees of the Council and ensuring the entitlements of any employees transferred from Queensland Health to the Council are appropriately protected.

The provisions in division 3 of part 14 of the Act are currently technically unworkable and do not align with the Public Sector Act.

If the legislative amendments are not made, the terms and conditions of Council employees will be uncertain. This will impact on the Council's ability to confidently appoint employees, and therefore the Council's ability to undertake its functions under the Act.

Estimated Cost for Government Implementation

There is no cost to Government to implement the amendments to the Bill.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. No potential departures have been identified.

Consultation

The Chair and incoming chief executive officer of the Council were consulted and support the amendments.

Together Union was consulted on the draft amendments and did not raise concerns about the amendments.

The Council has not yet employed any employees and therefore no current Council employees are directly impacted by the amendments. Those Queensland Health employees who may be transferred to the Council have been consulted on the amendments. These employees have not raised concerns about the amendments.

Consistency with legislation of other jurisdictions

These provisions are unique to Queensland.

Notes on provisions

Amendment 1 inserts part 2A, titled ‘Amendment of Pharmacy Business Ownership Act 2024’ in the Health Legislation Amendment Bill 2025, after clause 8 of the Bill.

Part 2A consists of new clauses 8A to 8C.

Act amended

Clause 8A states that part 2A amends the *Pharmacy Business Ownership Act 2024*.

Amendment of s 213 (Definitions for part)

Clause 8B amends section 213 of the Pharmacy Business Ownership Act to omit the definitions of *existing instruments*, *health employment directive*, *initial council employee*, *new certified agreement*, *public sector directive*, *Queensland Health award*, and *Queensland Health certified agreement*.

This clause also inserts new definitions for *health senior officer*, *officer* and *promote*.

Health senior officer means a health service employee employed by Queensland Health in the position known as health senior officer.

Officer means a public service employee mentioned in section 13(1)(d) of the *Public Sector Act 2022*.

Promote, in relation to a person, means to employ the person at a higher classification level, other than temporarily.

Replacement of pt 14, div 3 (Employment terms and conditions of initial council employees)

Clause 8C omits current division 3 in part 14 of the Pharmacy Business Ownership Act and inserts a new division 3.

The heading of new division 3 is ‘Employment terms and conditions of particular council employees’.

Subdivision 1 is titled ‘Transferred health senior officer’ and consists of new sections 223 and 224.

Section 223 provides that subdivision 1 applies to a person who:

- is transferred to the Council as a member of the Council’s staff (other than the chief executive officer) under part 4 of chapter 4 of the Public Sector Act after commencement; and
- was a health senior officer immediately before the commencement.

The subdivision stops applying if, after the transfer, the person is promoted by the Council.

Subdivision 1 applies despite any other Act.

Section 224 is titled ‘Terms and conditions of employment’.

Under subsection (1), the terms and conditions that apply to a transferred health senior officer are those that applied immediately before the transfer, to the person as a health senior officer as decided by the chief executive under the *Hospital and Health Boards Act 2011*.

The note to subsection (1) refers to sections 45(g), 66(1) and 66(4) of the Hospital and Health Boards Act, in relation to the chief executive deciding conditions of employment.

Subsection (2) clarifies that a decision of the chief executive about the terms and conditions is taken to apply to the Council employee to the same extent the decision applied to the person as a health senior officer immediately before the transfer, and to the Council in place of Queensland Health, in relation to the Council’s employment of the person, to the same extent the decision applied to Queensland Health in relation to the employment of the person immediately before the transfer.

Under subsection (3), if a change of the decision of the chief executive of Queensland Health about the terms and conditions of a health senior officer takes effect after the transfer, the change applies to the transferred health senior officer.

Clause 8C also inserts a new subdivision 2, titled ‘Other transferred health service employees’ which consists of sections 225 and 226.

Section 225(1) confirms that subdivision 2 applies to a person who:

- immediately before commencement, was a health service employee, other than a health senior officer; and
- after commencement, is transferred to the Council as a member of the Council’s staff (other than the chief executive officer) under chapter 4, part 4 of the Public Sector Act.

Subsection (2) provides that subdivision 2 stops applying in relation to the person if a certified agreement covering the person as a member of the Council’s staff takes effect before the transfer.

Subsection (3) states that that subdivision 2 also stops applying if after the transfer, the Council promotes the person, or a certified agreement, covering the person as a member of the Council’s staff, takes effect.

Subsection (4) states that subdivision 2 applies despite any other Act.

Section 226 sets out the ‘Terms and conditions of employment’ of transferred health service employees which, under subsection (1), are the terms and conditions that applied immediately before the transfer, to health service employees employed by Queensland Health, under the following instruments:

- the certified agreement called *Queensland Public Health Sector Certified Agreement (No. 11) 2022*; and

- the award under the *Industrial Relations Act 2016* called *Hospital and Health Service General Employees (Queensland Health) Award – State 2015*.

Subsection (2) clarifies that these instruments are taken to apply to the transferred health service employee to the same extent the instrument applied to a health service employee, other than a health senior officer, employed by Queensland Health immediately before the transfer. The instruments also apply to the Council in place of Queensland Health, in relation to the Council's employment of the person, to the same extent the instrument applied to Queensland Health in relation to the employment of a health service employee, other than a health senior officer, immediately before the transfer.

Subsection (3) clarifies that if a change to one of the above instruments takes effect after the commencement, the change will also apply to the transferred health service employee.

Subdivision 3, titled 'Particular other employees', relates to new employees employed by the Council and consists of sections 227 and 228.

Section 227 provides that subdivision 3 applies to a person employed by the Council as an officer, where a certified agreement covering the person as a member of the Council's staff has not taken effect. However, it will not apply to a person mentioned in section 225(1) (that is, a transferred health service employee). Subdivision 3 applies despite any other Act.

Under section 228, the terms and conditions that apply to new employees are those that applied immediately before the person was employed by the Council, to officers employed by Queensland Health under the following instruments:

- the certified agreement called *Queensland Public Health Sector Certified Agreement (No. 11) 2022*; and
- the award under the *Industrial Relations Act* called *Queensland Public Service Officers and Other Employees Award – State 2015*.

Subsection (2) clarifies that these instruments are taken to apply to the new employee to the same extent the instrument applied to an officer employed by Queensland Health immediately before the person was employed by the Council. The instruments also apply to the Council in place of Queensland Health, in relation to the Council's employment of the person, to the same extent the instrument applied to Queensland Health in relation to the employment of an officer, immediately before the person was employed by the Council.

Subsection (3) clarifies that if a change to one of the above instruments takes effect after the commencement, the change will apply to the new employee.

Subdivision 4 is headed 'Other provision for transferred health service employees' and consists of section 229.

Section 229 is headed 'Preservation of rights of transferring health service employees' and confirms that the transfer of a health service employee mentioned in sections 223(1) or 225(1) to the Council does not:

- affect the person's benefits, entitlements or remuneration;

- prejudice the person's existing or accruing rights to superannuation or recreation, sick, long service or other leave;
- interrupt continuity of service, except that the person is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
- entitle the person to a payment or other benefit from the State because the person is no longer employed by Queensland Health.

Subsection (2) clarifies that section 229 does not limit the operation of chapter 4, part 4 of the Public Sector Act, in relation to the transfer of the person to the Council as a member of the Council's staff.

Long title

Amendment 2 amends the long title of the Bill to insert reference to the Pharmacy Business Ownership Act.