



Queensland

# **Health and Other Legislation Amendment Bill 2014**

**Includes amendments agreed during Consideration**





Queensland

# Health and Other Legislation Amendment Bill 2014

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# 2014

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## A Bill

for

***An Act to amend the *Ambulance Service Act 1991*, the *Building and Construction Industry Payments Amendment Act 2014*, the *Health Ombudsman Act 2013*, the *Hospital and Health Boards Act 2011*, the *Mental Health Act 2000*, the *Public Health Act 2005*, the *Radiation Safety Act 1999*, the *Tobacco and Other Smoking Products Act 1998* and the *Transplantation and Anatomy Act 1979* for particular purposes***

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[s 1]

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## The Parliament of Queensland enacts—

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Health and Other Legislation Amendment Act 2014*.

#### 2 Commencement

- (1) This Act, other than part 2A and sections 20, 34, 36 and 52 to 67, commences on a day to be fixed by proclamation.
- (2) Sections 53 and 56 to 67 commence on 1 January 2015.

### Part 2 Amendment of Ambulance Service Act 1991

#### 3 Act amended

This part amends the *Ambulance Service Act 1991*.

#### 4 Amendment of s 36A (Definitions for pt 4A)

- (1) Section 36A, definition *chain of events document*—  
*omit.*
- (2) Section 36A, definition *relevant person*, ‘or chain of events document’—  
*omit.*
- (3) Section 36A, definition *reportable event*, paragraph (b)—

*omit, insert—*

- (b) in relation to an RCA report, means the reportable event to which the report relates.

**5 Amendment of s 36G (RCA team’s report and chain of events document)**

- (1) Section 36G, heading, ‘and chain of events document’—

*omit.*

- (2) Section 36G(2)—

*omit, insert—*

- (2) Also, the RCA report may include a summary, or pictorial representation, of the chain of events identified by the RCA team as having led to the reportable event happening.

- (3) Section 36G(3), ‘or chain of events document’—

*omit.*

**6 Amendment of s 36H (Reporting to commissioning authority)**

Section 36H(2)—

*omit.*

**7 Amendment of s 36J (Stopping conduct of RCA of reportable event—RCA team)**

- (1) Section 36J—

*insert—*

- (1A) This section also applies if a member of the RCA team conducting the RCA of a reportable event, who is a registered health practitioner—

- (a) reasonably believes the event involves behaviour of a registered health practitioner

[s 8]

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that constitutes public risk notifiable conduct; and

(b) notifies the health ombudsman about the conduct.

(2) Section 36J(3)—

*omit, insert—*

(3) For subsection (3)(b), the notice must—

(a) be in the form approved by the chief executive; and

(b) state the reasons the RCA team stopped conducting the RCA.

(3) Section 36J(1A) to (4)—

*renumber* as section 36J(2) to (5).

## **8 Amendment of s 36K (Stopping conduct of RCA of reportable event—commissioning authority)**

Section 36K(1)(b)(i), after ‘receives information’—

*insert—*

, other than in a notice under section 36J(3)(b),

## **9 Amendment of s 36L (Definitions for div 5)**

(1) Section 36L, definition *National Agency*—

*omit.*

(2) Section 36L, definitions *public risk notifiable conduct* and *registered health practitioner*—

*relocate* to section 36A.

## **10 Amendment of s 36M (Disclosure of information—RCA team member or relevant person)**

(1) Section 36M(1)(b) and (c)(i), ‘or chain of events document’—

*omit.*

- (2) Section 36M(1)(d), ‘National Agency’—

*omit, insert—*

health ombudsman

**11 Amendment of s 36N (Disclosure of information—commissioning authority or relevant person)**

- (1) Section 36N(1) and (8), ‘or chain of events document’—

*omit.*

- (2) Section 36N(3) and (5), ‘Also, a’—

*omit, insert—*

A

- (3) Section 36N(7) to (9)—

*renumber* as section 36N(9) to (11).

- (4) Section 36N—

*insert—*

- (7) A person who is or was the commissioning authority must not disclose to someone else information contained in a notice given to the person under section 36J(3)(b), or give someone else a copy of the notice.

Maximum penalty—100 penalty units.

- (8) Subsection (7) does not apply to the disclosure of information by a person if the disclosure is—

(a) required under section 36Q(7); or

(b) necessary or incidental to the person taking, or deciding whether to take, disciplinary, investigative or other action in relation to the reportable event the subject of the information.

[s 12]

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**12 Amendment of s 36P (Giving of copy of RCA report or chain of events document—medical director)**

(1) Section 36P, ‘or chain of events document’—

*omit.*

(2) Section 36P, ‘or document’—

*omit.*

**13 Amendment of s 36Q (Giving of copy of RCA report etc.—investigation under the Coroners Act 2003)**

(1) Section 36Q(6)(b), ‘36J(2)’—

*omit, insert—*

36J(3)

(2) Section 36Q(8), definition *stop notice*, paragraph (a)—

*omit, insert—*

(a) if the RCA team stopped conducting the RCA under section 36J(3)—

(i) that fact; and

(ii) the reasons for stopping; or

**14 Insertion of new pt 8, div 7**

Part 8—

*insert—*

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**Division 7      Transitional provision for  
Health and Other  
Legislation Amendment  
Act 2014**

**100 Transitional provision for chain of event documents**

- (1) This section applies if, before the commencement, an RCA team conducting an RCA of a reportable event prepared a chain of events document in relation to the event.
- (2) Part 4A, divisions 5 and 6, as in force immediately before the commencement, continue to apply in relation to the chain of events document as if the *Health and Other Legislation Amendment Act 2014* had not been enacted.
- (3) In this section—  
*chain of events document* see section 36G(2) as in force from time to time before the commencement.

**15 Amendment of schedule (Dictionary)**

- (1) Schedule, definitions *chain of events document* and *National Agency*—  
*omit.*
- (2) Schedule, definitions *public risk notifiable conduct* and *registered health practitioner*, ‘division 5, see section 36L’—  
*omit, insert—*  
see section 36A

[s 15A]

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## **Part 2A**

# **Amendment of Building and Construction Industry Payments Amendment Act 2014**

### **15A Act amended**

This part amends the *Building and Construction Industry Payments Amendment Act 2014*.

### **15B Replacement of s 44 (Insertion of new pt 7, div 2)**

Section 44—

*omit, insert—*

#### **44 Insertion of new pt 7, div 2**

After section 112—

*insert—*

### **Division 2**

## **Transitional provisions for Building and Construction Industry Payments Amendment Act 2014**

#### **113 Definitions for div 2**

In this division—

*amendment Act* means the *Building and Construction Industry Payments Amendment Act 2014*.

*former*, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.

*unamended Act* means this Act as in force immediately before the commencement.



### **114 Registration of authorised nominating authorities**

- (1) The registration of an authorised nominating authority ends.
- (2) The registrar must refund the amount of the authorised nominating authority's registration fee that, on the ending of an authorised nominating authority's registration, is proportional to the unexpired period of the registration in whole months.
- (3) An application for registration or application for renewal of registration made, but not decided, before the commencement is taken to be withdrawn.
- (4) The registrar must refund to the authorised nominating authority the amount of the application fee for registration or for renewing his or her registration.
- (5) In this section—

*application for registration* means an application for registration as an authorised nominating authority under repealed section 42.

*application for renewal of registration* means an application for renewal of a registration as an authorised nominating authority under former section 70.

### **115 Adjudication applications made to authorised nominating authorities for referral to adjudicators**

- (1) This section applies to an adjudication application made to an authorised nominating authority, but not yet referred to an adjudicator, under former section 21 before the commencement.

[s 15B]

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- (2) The authorised nominating authority must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.

*Note—*

Section 116 would apply in relation to the payment claim to which the adjudication application relates, including in relation to the adjudication of the payment claim.

- (3) Former section 107(2) continues for the purpose of referring the adjudication application under subsection (2) despite the repeal of that section under the amendment Act.
- (4) An adjudication application referred to an adjudicator under subsection (2) is taken to have been referred by the registrar.

### **116 Outstanding matters for existing payment claims to be dealt with under transitional version of the Act**

- (1) This section applies if a payment claim was served on a respondent before the commencement.
- (2) From the commencement, the transitional version of the Act applies to any outstanding matters under this Act relating to the payment claim, including, for example, the following—
  - (a) replying to the payment claim by serving a payment schedule on the claimant;
  - (b) the consequences of not paying any or all of the claimed amount for the progress payment to which the payment claim relates;

- 
- (c) making an adjudication application for adjudication of the payment claim;
  - (d) the adjudication of the payment claim, including—
    - (i) the giving of an adjudication response;
    - (ii) the adjudication procedures;
    - (iii) the adjudicator's decision;
    - (iv) correcting a clerical mistake in an adjudicator's decision;
    - (v) the consequences of not paying the claimant the adjudicated amount;
    - (vi) the filing of an adjudication certificate as a judgement debt;
    - (vii) an adjudicator's entitlement to be paid for adjudicating the payment claim;
  - (e) the claimant suspending work under the construction contract relevant to the payment claim.
- (3) However, a matter mentioned in subsection (2)(c) may be subject to section 115 and subsection (2) does not release an authorised nominating authority of its obligation under that section.
- (4) To remove any doubt, it is declared that this section does not apply if—
- (a) a payment claim was served on a respondent before the commencement and there are, at the commencement, no outstanding matters under this Act relating to the payment claim; or

[s 15B]

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(b) a payment claim is served on a respondent after the commencement and includes an amount that has been the subject of a payment claim that was served on a respondent before the commencement.

(5) In this section—

*transitional version of the Act* means the unamended Act as amended by the following amendments of the amendment Act—

(a) the amendment of the following sections to the extent a reference to the authorised nominating authority in the sections is replaced with a reference to the registrar—

(i) section 4(4)(d)(ii);

(ii) section 21(6);

(iii) section 23(1);

(iv) section 30(1)(a), (4) and (6);

(v) section 32(2)(a);

*Example of the effect of paragraph (a)—*

Claimants may ask the registrar for an adjudication certificate.

(b) the amendment of section 21(3)(a), (b) and (e);

*Examples of the effect of paragraph (b)—*

1 Adjudication applications are to be made to the registrar in the approved form.

2 Adjudication applications are to be accompanied by the fee prescribed by regulation for the application.

(c) the insertion of new section 35B;

(d) the amendment of section 84;

- (e) the amendment of section 100;
- (f) the replacement of section 101;
- (g) the amendment of section 111(2);
- (h) the amendment of the definition *business day*, as defined in schedule 2.

*outstanding matter*, under this Act, includes a matter under this Act that has yet to be started or is incomplete.

### **117 New payment claims for existing contracts transitioned to new time requirements**

- (1) This section applies if a payment claim—
  - (a) is to be served on a respondent after the commencement; and
  - (b) relates to a construction contract entered into before the commencement.
- (2) The 6 month maximum period for serving the payment claim under section 17A(2)(b) or (3)(c) is extended to 12 months.
- (3) This section expires 6 months after the commencement.

### **118 Previously expired payment claims not revived by new section 17A**

To remove any doubt, it is declared that a claimant can not rely on section 17A(3)(b) to serve a payment claim if, before the commencement, the claimant failed to serve the claim on a respondent within the time required under former section 17(4).

[s 15B]

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### **119 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a savings or transitional nature to allow or facilitate the change from the operation of the unamended Act to the operation of this Act, as amended by the amendment Act.
- (2) A transitional regulation—
  - (a) may have retrospective operation to a day not earlier than the day this section commences; and
  - (b) must declare it is a transitional regulation.
- (3) This section and any transitional regulation expire 1 year after the commencement.

### **120 Mandatory training about adjudication changes**

- (1) The registrar may impose a condition on the registration of an adjudicator that requires the adjudicator—
  - (a) to complete the mandatory transition training prescribed by regulation; and
  - (b) to pay the cost of the training prescribed by regulation.
- (2) This section expires 6 months after the commencement.

*Editor's note—*

Legislation ultimately amended—

- *Building and Construction Industry Payments Act 2004*



[s 20]

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**20 Amendment of s 46 (Delegation by chief executive)**

(1) Section 46—

*insert—*

(5A) However, a health service chief executive may not subdelegate the function to authorise access to an information system under section 161A delegated to the health service chief executive under subsection (1).

(2) Section 46(7)—

*omit.*

(3) Section 46(5A) and (6)—

*renumber* as section 46(6) and (7).

**21 Amendment of s 84 (Disclosure of information)**

Section 84(1)(d), ‘National Agency’—

*omit, insert—*

health ombudsman

**22 Amendment of s 94 (Definitions for div 2)**

(1) Section 94, definition *chain of events document*—

*omit.*

(2) Section 94—

*insert—*

***prescribed health service facility*** means a facility—

(a) at which a health service is provided; and

(b) that is prescribed by regulation as a prescribed health service facility.

(3) Section 94, definition *health service facility*—

*insert—*



(c) a prescribed health service facility.

(4) Section 94, definition *reportable event*, paragraph (b)—  
*omit, insert—*

(b) in relation to an RCA report—means the reportable event to which the report relates.

**23 Amendment of s 98 (Appointment of RCA team)**

Section 98(c), after ‘private health facility’—

*insert—*

or prescribed health service facility

**24 Amendment of s 100 (RCA team’s report and chain of events document)**

(1) Section 100, heading, ‘and chain of events document’—  
*omit.*

(2) Section 100(2)—  
*omit, insert—*

(2) Also, the RCA report may include a summary, or pictorial representation, of the chain of events identified by the RCA team as having led to the reportable event happening.

(3) Section 100(3), ‘or chain of events document’—  
*omit.*

**25 Amendment of s 101 (Reporting to commissioning authority)**

Section 101(2)—

*omit.*

[s 26]

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**26 Amendment of s 102 (Stopping conduct of RCA of reportable event—RCA team)**

(1) Section 102—

*insert—*

(1A) This section also applies if a member of the RCA team conducting the RCA of a reportable event, who is a registered health practitioner—

- (a) reasonably believes the event involves behaviour of a registered health practitioner that constitutes public risk notifiable conduct; and
- (b) notifies the health ombudsman about the conduct.

(2) Section 102(3)—

*omit, insert—*

(3) For subsection (3)(b), the notice must—

- (a) be in the approved form; and
- (b) state the reasons the RCA team stopped conducting the RCA.

(3) Section 102(1A) to (3)—

*renumber* as section 102(2) to (4).

**27 Amendment of s 103 (Stopping conduct of RCA of reportable event—commissioning authority)**

Section 103(1)(b)(i), after ‘receives information’—

*insert—*

, other than in a notice under section 102(3)(b),

**28 Amendment of s 105 (Disclosure of information—RCA team member or relevant person)**

(1) Section 105(1)(b), ‘, chain of events document’—

*omit.*

- (2) Section 105(1)(c)(i), ‘or chain of events document’—

*omit.*

- (3) Section 105(1)(e), ‘National Agency’—

*omit, insert—*

health ombudsman

**29 Amendment of s 106 (Disclosure of information—commissioning authority or relevant person)**

- (1) Section 106(1) and (7), ‘or chain of events document’—

*omit.*

- (2) Section 106(3) and (5), ‘Also, a’—

*omit, insert—*

A

- (3) Section 106(7) and (8)—

*renumber* as section 106(9) and (10).

- (4) Section 106—

*insert—*

- (7) A person who is or was a commissioning authority must not disclose to someone else information contained in a notice given to the person under section 102(3)(b), or give someone else a copy of the notice.

Maximum penalty—100 penalty units.

- (8) Subsection (7) does not apply to the disclosure of information by a person if the disclosure is—

(a) required under section 113(7); or

(b) necessary or incidental to the person taking, or deciding to take, disciplinary,

[s 30]

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investigative or other action in relation to the reportable event the subject of the information.

**30 Amendment of s 112 (Giving of copy of RCA report or chain of events document—patient safety entity)**

(1) Section 112, ‘or chain of events document’—

*omit.*

(2) Section 112, ‘or document’—

*omit.*

**31 Amendment of s 113 (Giving of copy of RCA report etc.—investigation under the Coroners Act 2003)**

(1) Section 113(6)(b), ‘102(2)’—

*omit, insert—*

102(3)

(2) Section 113(8), definition *stop notice*, paragraph (a)—

*omit, insert—*

(a) if the RCA team stopped conducting the RCA under section 102(3)—

(i) that fact; and

(ii) the reasons for stopping; or

**32 Amendment of s 116 (Protection from liability)**

Section 116(3)—

*insert—*

(d) if the individual who has the day-to-day management of a prescribed health service facility or the individual who has overall management responsibility for the facility appointed the RCA team members—the

person prescribed by regulation for the facility for this section.

**33 Amendment of s 119 (Protection for documents and information)**

Section 119(1)(a) and (b), ‘, chain of events document’—  
*omit.*

**34 Amendment of s 139 (Definitions for pt 7)**

Section 139—  
*insert—*

*external service provider* means an entity providing a health service under an agreement between the chief executive or a Service and the entity.

*information system* means a system for making, keeping and preserving records, whether paper-based, electronic or both, including records that contain confidential information.

**35 Amendment of s 156 (Disclosure to health ombudsman)**

Section 156(a), after ‘Health Ombudsman Act 2013’—  
*insert—*

or the Health Practitioner Regulation National Law (Queensland)

**36 Insertion of new pt 7, div 3**

Part 7—  
*insert—*

### **Division 3            Access by external service                                  provider to information                                  system**

#### **161A Chief executive may authorise access to information system**

- (1) The chief executive may authorise an external service provider, or a person engaged by the external service provider, to access an information system.
- (2) The chief executive may authorise the access only if satisfied the access is necessary to enable the external service provider to provide a health service under an agreement between the chief executive or a Service and the service provider.
- (3) An authorisation under subsection (1)—
  - (a) must be in writing; and
  - (b) must describe the information system to which the authorisation relates; and
  - (c) may be given on conditions stated in the authorisation.

#### **161B External service provider may access confidential information under authorisation**

- (1) An external service provider that is the subject of an authorisation under section 161A, or a person engaged by the service provider, may access the information system under the authorisation.
- (2) For the purposes of the *Information Privacy Act 2009*, chapter 2, part 4—
  - (a) the external service provider is taken to be a bound contracted service provider; and

- (b) the agreement between the chief executive or a Service and the service provider is taken to be a service arrangement; and
- (c) the chief executive or the Service, as the case may be, is the contracting agency.

**37 Omission of s 184 (Prohibition of smoking)**

Section 184—

*omit.*

**38 Insertion of new pt 13, div 5**

Part 13—

*insert—*

**Division 5 Transitional provision for  
Health and Other  
Legislation Amendment  
Act 2014**

**322 Transitional provision for chain of event  
documents**

- (1) This section applies if, before the commencement, an RCA team conducting an RCA of a reportable event prepared a chain of events document in relation to the event.
- (2) Part 6, division 2, subdivisions 5 and 6, as in force immediately before the commencement, continue to apply in relation to the chain of events document as if the *Health and Other Legislation Amendment Act 2014* had not been enacted.
- (3) In this section—

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*chain of events document* see section 100(2) as in force from time to time before the commencement.

**39 Amendment of sch 2 (Dictionary)**

Schedule 2, definition *chain of events document*—  
*omit.*

**Part 5 Amendment of Mental Health Act 2000**

**40 Act amended**

This part amends the *Mental Health Act 2000*.

**41 Amendment of schedule (Dictionary)**

Schedule, definition *psychiatrist*—  
*insert—*

- (c) a person registered under the Health Practitioner Regulation National Law with limited registration to undertake postgraduate training or supervised practice in a specialist position in psychiatry.



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## Part 6                      Amendment of Public Health Act 2005

### 42      Act amended

This part amends the *Public Health Act 2005*.

### 43      Insertion of new ch 11, pt 1A

Chapter 11—

*insert—*

## Part 1A                      Civil liability for asbestos-related harm

### Division 1                  Preliminary

#### 454A Definitions for pt 1A

In this part—

*annual compliance certificate* see section 454J(1).

*asbestos-related event* means an event—

- (a) involving the exposure, release or dispersal, or potential exposure, release or dispersal, of asbestos fibres; and
- (b) related to the performance of a local government's asbestos-related function.

*asbestos-related function*, of a local government, means the administration and enforcement of this Act by the local government for a public health risk mentioned in section 11(1)(b)(v) or (viii) to the extent the risk relates to asbestos at a place other than a workplace.

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***asbestos-related harm*** means harm that is, or is suffered because of, a dust-related condition within the meaning of the *Civil Liability Act 2003* that is attributable to asbestos.

***conduct*** means an act or omission to act.

***harm*** means harm of any kind, other than damage to property, including—

- (a) personal injury, including the following—
  - (i) disease;
  - (ii) psychological or psychiatric injury;
  - (iii) fatal injury; and
- (b) economic loss.

***indemnified liability***, of a local government, means a civil liability of the local government that is indemnified by the State under section 454C(1).

***indemnity conditions*** see section 454F.

***official conduct***, of a prescribed person, means conduct engaged in by the person as part of, or in connection with, the performance of a local government's asbestos-related function.

***prescribed person*** means—

- (a) a chief executive officer of a local government; or
- (b) an authorised person appointed by a chief executive officer of a local government; or
- (c) a person acting under the direction of a person mentioned in paragraph (a) or (b), other than a third-party contractor.

***third-party contractor***, of a local government, means a person engaged by the local government under a contract to provide services to assist the

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local government with the performance of its asbestos-related function.

## **Division 2            Protection from civil liability and indemnity**

### **454B Protecting prescribed persons from civil liability for asbestos-related harm**

- (1) A prescribed person is not civilly liable for official conduct engaged in by the person that gives rise to asbestos-related harm.
- (2) If subsection (1) prevents a civil liability attaching to a prescribed person, the liability attaches instead to the relevant local government.
- (3) If liability attaches to a local government under subsection (2), the local government may recover contribution from the prescribed person but only if the official conduct was engaged in—
  - (a) other than in good faith; and
  - (b) with gross negligence.
- (4) In a proceeding under subsection (3) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.

### **454C Indemnifying local government against civil liability for asbestos-related harm**

- (1) A local government is indemnified by the State against any civil liability for official conduct of a prescribed person that gives rise to asbestos-related harm, including liability that attaches to the local government under section 454B(2).

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- (2) However, subsection (1) applies only if the local government has reasonably complied with the indemnity conditions in relation to each asbestos-related event to which the official conduct relates.
- (3) The onus of proving the local government has reasonably complied with the indemnity conditions is on the local government.
- (4) For the purposes of subsection (1), the State is subrogated to the rights of the local government in relation to the civil liability.
- (5) For the purposes of subsection (4), the State may manage and control any proceedings started against the local government in relation to the civil liability.

#### **454CA Local government must notify State of claim**

- (1) This section applies if a proceeding is started against a local government and it may result in an indemnified liability of the local government.
- (2) The local government must give notice of the proceeding to the State as soon as practicable after the proceeding has started.

#### **454D State may recover contribution in particular circumstances**

- (1) The State may recover contribution from the local government for an indemnified liability of the local government but only if the circumstances stated in subsection (2), (3) or (4) exist.
- (2) The official conduct giving rise to the liability was engaged in—
  - (a) other than in good faith; and

- (b) with gross negligence.
- (3) The local government engaged in conduct that the local government knew, or ought reasonably to have known, could have prejudiced the State's defence of a claim, or potential claim, relating to the liability.
- (4) The local government did not, at its cost, reasonably cooperate with, and assist, the State to defend the claim that resulted in the liability.
- (5) In a proceeding under this section to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.

#### **454E Limitation on indemnity**

A local government's right to indemnity under section 454C does not apply in relation to a civil liability of the local government under the *Workers' Compensation and Rehabilitation Act 2003*.

### **Division 3            Indemnity conditions**

#### **454F Purpose of div 3**

This division states the conditions (the *indemnity conditions*) with which a local government must comply, for the purposes of section 454C(2), in relation to an asbestos-related event.

#### **454G Training**

The local government must ensure an authorised person who exercises the person's powers under this Act in relation to the asbestos-related event

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has satisfactorily completed the training prescribed by regulation.

#### **454H Compliance with Act, laws and guidelines**

(1) The local government must comply with the following in relation to the asbestos-related event—

(a) this Act;

*Note—*

Under section 17(3), a local government must comply with a request from the chief executive for information about the local government's administration and enforcement of particular matters within a stated reasonable time. Noncompliance with the request may breach this indemnity condition.

(b) any other law relevant to the event;

(c) a guideline made under subsection (2) that is prescribed by regulation and published on the department's website.

(2) The chief executive may make a guideline about asbestos-related events.

#### **454I Record-keeping**

(1) The local government must ensure a record is kept about the asbestos-related event that includes details of the following matters—

(a) if a complaint was received about the event—the date of the complaint, the name and contact details of the complainant, and the nature of the event;

(b) the location of the event, including the address of the place or premises, and the location at the place or premises, where the event occurred;

- (c) the names and contact details of persons known to have knowledge of the event or any action taken in response to the event;
  - (d) any action taken by the local government in response to the event, including, for example, investigation, remediation, enforcement or prosecution action;
  - (e) any advice given to a person by the local government about the event, including a copy of any written advice and a summary of any verbal advice;
  - (f) any correspondence sent to or received by the local government about the event, including a copy of the correspondence;
  - (g) any measures intended to remove or reduce the public health risk, or prevent the risk from recurring, relating to asbestos put in place in relation to the event by—
    - (i) the local government; or
    - (ii) a person other than the local government if the local government is aware of the measures;
  - (h) any results known to the local government of action mentioned in paragraph (d) or measures mentioned in paragraph (g);
  - (i) a guideline made under section 454H(2) complied with by the local government in relation to the event, including the name and version of the guideline.
- (2) Also, the local government must ensure a record is kept about an authorised person who exercises powers under this Act in relation to the asbestos-related event that includes details of any training mentioned in section 454G completed by the person.

[s 43]

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- (3) Despite the *Public Records Act 2002*, section 13, the local government must ensure a public record about any of the following is kept for at least 70 years after the day of the last action on the record—
  - (a) the asbestos-related event;
  - (b) training completed by an authorised person relating to the event mentioned in subsection (2);
  - (c) an annual compliance certificate relating to the event that is given under section 454J;
  - (d) a notice given under section 454K acknowledging receipt of an annual compliance certificate mentioned in paragraph (c).
- (4) In this section—

*public record* see the *Public Records Act 2002*, section 6.

## **Division 4          Annual compliance    certificate**

### **454J Requirement for annual compliance    certificate**

- (1) The chief executive officer of a local government may give the chief executive a certificate (an *annual compliance certificate*) for a year about the local government's compliance with the indemnity conditions for 1 or more asbestos-related events that happened during the year.
- (2) The annual compliance certificate for a year must be—
  - (a) in the approved form; and



- (b) signed by the chief executive officer; and
  - (c) verified by statutory declaration.
- (3) In this section—
- approved form*** means a form approved by the chief executive.

#### **454K Acknowledgement of receipt of annual compliance certificate**

- (1) This section applies if the chief executive receives an annual compliance certificate from the chief executive officer of a local government under section 454J.
- (2) As soon as practicable after receiving the certificate, the chief executive must give the chief executive officer a notice acknowledging receipt of the certificate.

#### **454L Evidentiary provision**

- (1) An annual compliance certificate purporting to be signed by the chief executive officer of a local government is, in the absence of evidence to the contrary, evidence of the matters stated in the certificate.
- (2) Subsection (1) applies only if the annual compliance certificate was given to the chief executive under section 454J(1) within 2 years after the end of the year to which the certificate relates.

#### **44 Amendment of s 456 (Protecting prescribed persons from liability)**

Section 456(3)—

*omit, insert—*

[s 45]

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- (3) This section does not apply to a prescribed person—
- (a) in relation to a civil liability, if section 454B(1) prevents the liability attaching to the person; or
  - (b) if the person is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

*Note—*

For protection from civil liability in relation to the chief executive or another public service officer or employee—see the *Public Service Act 2008*, section 26C.

- (4) In this section—
- prescribed person*** means—
- (a) the Minister; or
  - (b) a chief executive officer; or
  - (c) an authorised person; or
  - (d) a contact tracing officer; or
  - (e) an emergency officer; or
  - (f) a person in charge of a public sector health service; or
  - (g) a designated medical officer; or
  - (h) a State analyst; or
  - (i) a person acting under the direction of a person mentioned in paragraph (a) to (h).

## **45 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2—

*insert—*

***annual compliance certificate***, for chapter 11, part 1A, see section 454J(1).

---

***asbestos*** means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals, including the following—

- (a) actinolite asbestos;
- (b) grunerite (or amosite) (brown) asbestos;
- (c) anthophyllite asbestos;
- (d) chrysotile (white);
- (e) crocidolite (blue);
- (f) tremolite asbestos;
- (g) a mixture containing 1 or more of the minerals mentioned in paragraphs (a) to (f).

*Note—*

Paragraphs (a), (b), (c) and (f) mention mineral silicates that use the same mineral term for both the asbestiform and nonasbestiform varieties. The word ‘asbestos’ has been included when listing these minerals to emphasise that only the asbestiform habit of these minerals is regulated as asbestos.

***asbestos-related event***, for chapter 11, part 1A, see section 454A.

***asbestos-related function***, of a local government, for chapter 11, part 1A, see section 454A.

***asbestos-related harm***, for chapter 11, part 1A, see section 454A.

***conduct***, for chapter 11, part 1A, see section 454A.

***harm***, for chapter 11, part 1A, see section 454A.

***indemnity conditions***, for chapter 11, part 1A, see section 454F.

***official conduct***, of a prescribed person, for chapter 11, part 1A, see section 454A.



### **50A No Act instruments for banned radiation sources**

A person may not apply for, and the chief executive may not issue, an Act instrument for a banned radiation source.

## **49 Amendment of s 79 (Applications for renewal)**

(1) Section 79—

*insert—*

(1A) However, the chief executive may accept an application for renewal of a renewable Act instrument made within 30 days after the term of the instrument ended if satisfied it is reasonable to do so in the circumstances.

*Examples of circumstances in which it may be reasonable to accept a late application—*

- a failure or delay in sending the application by post that the holder could not have reasonably foreseen
- an unforeseen medical condition preventing the holder applying for the renewal before the term of the instrument ends

(2) Section 79(1A) to (6)—

*renumber* as section 79(2) to (7).

## **50 Insertion of new pt 14, div 5**

Part 14—

*insert—*

[s 51]

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**Division 5**      **Transitional provision for  
Health and Other  
Legislation Amendment  
Act 2014**

**236 Transitional provision for records of  
Radiological Advisory Council**

- (1) This section is taken to have applied from the repeal of the *Radioactive Substances Act 1958* on the commencement of section 216.
- (2) The records of the Radiological Advisory Council of Queensland under the repealed *Radioactive Substances Act 1958* are the records of the council.

**51 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

*banned radiation source* means a radiation source prescribed under section 47(1) to be a banned radiation source.

**Part 8**      **Amendment of Tobacco and  
Other Smoking Products Act  
1998**

**52 Act amended**

This part amends the *Tobacco and Other Smoking Products Act 1998*.

---

**53 Insertion of new s 5A**

After section 5—

*insert—*

**5A Meaning of *personal vaporiser* and *personal vaporiser related product***

- (1) A *personal vaporiser* is a device that—
  - (a) is capable of being used to deliver a substance into an individual's body when the individual inhales through the device; and
  - (b) has 1 or more of the following parts—
    - (i) a battery;
    - (ii) a cartridge or container to store a liquid, vapour or gas;
    - (iii) an electric heating element.
- (2) However, a *personal vaporiser* does not include any of the following—
  - (a) a device included in the register under the *Therapeutic Goods Act 1989* (Cwlth), other than a device designed for the purpose of helping a person to stop smoking;
  - (b) a device designed to be used to deliver oxygen into an individual's body;
  - (c) a bong, hookah or ice pipe;
  - (d) a device prescribed under a regulation for this subsection.
- (3) A *personal vaporiser related product* means any of the following—
  - (a) a device or other product that—
    - (i) is apparently intended to be part of a personal vaporiser; and

[s 54]

---

- (ii) is not capable of being used to deliver a substance into an individual's body without an adjustment, modification or addition;

*Examples for paragraph (a)—*

- an electric heating element, battery, cartridge, container or mouthpiece
- a product that combines an electric heating element and cartridge in a single unit

- (b) a device or other product to which paragraph (a) does not apply that is apparently intended to be used in connection with a personal vaporiser.

*Example for paragraph (b)—*

a liquid that is to be used in a personal vaporiser, whether or not the liquid is in a cartridge or container

- (4) However, a *personal vaporiser related product* does not include any other device or product prescribed under a regulation for this subsection.

**54 Replacement of pt 2, div 3, hdg (Supply of herbal cigarettes and loose smoking blends from coin operated vending machines)**

Part 2, division 3, heading—

*omit, insert—*

**Division 3**

**Supply of particular smoking products from coin operated vending machines**



---

**55 Amendment of s 18 (Prohibition on use of vending machine to supply herbal cigarettes and loose smoking blends)**

(1) Section 18, heading, after ‘supply’—

*insert—*

**personal vaporisers and related products,**

(2) Section 18(1), after ‘supply’—

*insert—*

personal vaporisers, personal vaporiser related products,

**56 Amendment of s 25 (Definitions for pt 2A)**

Section 25, definition *smoking product*, paragraph (a), after ‘blend’—

*insert—*

, personal vaporiser, personal vaporiser related product

**57 Amendment of s 26R (Person must not smoke in enclosed place)**

Section 26R(2)(d)—

*omit.*

**58 Omission of s 26VA (Definitions for pt 2BA)**

Section 26VA—

*omit.*

**59 Insertion of new pt 2C, div 2A**

Part 2C—

*insert—*

[s 59]

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## **Division 2A      Health facility land and school land**

### **26ZGA Application of div 2A**

This division does not apply to an enclosed place.

### **26ZGB Definitions for div 2A**

In this division—

*business premises* means premises used for a commercial or industrial activity.

*health facility land* means—

- (a) land on which a private health facility is situated; or
- (b) land on which a Service provides a health service.

*health service* means a service for maintaining, improving, restoring or managing people's health and wellbeing.

*non-State school* means a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

*private health facility* see the *Private Health Facilities Act 1999*, section 8.

*residential premises* means premises used, or intended to be used, as a place of residence or mainly as a place of residence.

*school land* means—

- (a) land on which a State school provides an educational program under the *Education (General Provisions) Act 2006*; or
- (b) land on which a non-State school provides primary education, secondary education or

special education under the *Education (Accreditation of Non-State Schools) Act 2001*; or

- (c) land on which a State school or non-State school provides other educational instruction or activities.

**Service** means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

**State school** means a state educational institution within the meaning of the *Education (General Provisions) Act 2006*, schedule 4.

### **26ZGC Person must not smoke on health facility land**

- (1) A person must not smoke on health facility land.  
Maximum penalty—20 penalty units.
- (2) A person must not smoke on land within 5m outside the boundary of health facility land.  
Maximum penalty—20 penalty units.
- (3) Subsection (2) does not apply to—
- (a) a person at residential premises or on land on which residential premises are built or may be lawfully built; or
- (b) a person at business premises or on land on which business premises are built or may be lawfully built; or
- (c) a person in a motor vehicle unless the motor vehicle is parked on a road or road-related area.

### **26ZGD Person must not smoke on school land**

- (1) A person must not smoke on school land.

[s 59]

---

Maximum penalty—20 penalty units.

- (2) A person must not smoke on land within 5m outside the boundary of school land.

Maximum penalty—20 penalty units.

- (3) Subsection (2) does not apply to—
- (a) a person at residential premises or on land on which residential premises are built or may be lawfully built; or
  - (b) a person at business premises or on land on which business premises are built or may be lawfully built; or
  - (c) a person in a motor vehicle unless the motor vehicle is parked on a road or road-related area.

### **26ZGE Person smoking must stop when directed**

A person contravening section 26ZGC or 26ZGD must comply with a direction to stop the contravention by an authorised person.

Maximum penalty—20 penalty units.

### **26ZGF Application of ss 26ZM, 26ZN, 26ZO and 26ZP**

Sections 26ZM, 26ZN(a), 26ZO and 26ZP apply to the administration and enforcement of this division as if a reference in the sections to—

- (a) a matter were a reference to a matter under this division; and
- (b) an offence were a reference to an offence under this division.

---

**60 Amendment of s 26ZS (Supply of objects resembling tobacco products)**

Section 26ZS—

*insert—*

- (3) However, subsection (1) does not apply to an object that is a personal vaporiser.

**61 Amendment of s 28 (Appointment)**

Section 28—

*insert—*

- (4) A health service chief executive may appoint a person (a *health service authorised person*) as an authorised person.
- (5) The functions of a health service authorised person are to investigate, monitor and enforce compliance with the following provisions in relation to relevant health facility land for the person—
  - (a) section 26ZGC(1) and (2);
  - (b) section 26ZGE.
- (6) In this section—

*relevant health facility land*, for a health service authorised person, means land on which a health service is provided by the Service managed by the health service chief executive who appointed the authorised person.

**62 Insertion of new s 31A**

Part 3, division 2—

*insert—*

[s 63]

---

### **31A Application of div 2**

This division does not apply to a health service authorised person.

## **63 Insertion of new s 37C**

Part 3, division 3—

*insert—*

### **37C Application of div 3**

- (1) This division, other than sections 38 and 40A, does not apply to a health service authorised person.
- (2) A health service authorised person may exercise a power under section 38 or 40A in the performance of the person's functions.

## **64 Amendment of s 40A (Power to direct person to stop smoking)**

Section 40A(1), after '26ZE(1),'—

*insert—*

26ZGC, 26ZGD,

## **65 Insertion of new s 40AB**

Part 3, division 4—

*insert—*

### **40AB Application of div 4**

This division does not apply to a health service authorised person.

## **66 Insertion of new s 44BA**

Part 3, division 5—

*insert—*

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## 44BA Application of div 5

This division, other than sections 45, 46, 49 and 50, does not apply to a health service authorised person.

## 67 Amendment of schedule (Dictionary)

(1) Schedule—

*insert—*

***bong*** see section 26ZQ.

***business premises***, for part 2C, division 2A, see section 26ZGB.

***health facility land***, for part 2C, division 2A, see section 26ZGB.

***health service***, for part 2C, division 2A, see section 26ZGB.

***health service authorised person*** see section 28(4).

***health service chief executive*** see the *Hospital and Health Boards Act 2011*, schedule 2.

***ice pipe*** see section 26ZPF.

***inhale***, for an individual, means draw a vapour or gas into the individual's lungs.

***motor vehicle***, for part 2BA and part 2C, division 2A, means a motor vehicle within the meaning of the *Transport Operations (Road Use Management) Act 1995*, schedule 4 other than the following—

- (a) a trailer attached to the motor vehicle;
- (b) an aircraft;
- (c) a boat;
- (d) a train.

[s 67]

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**non-State school**, for part 2C, division 2A, see section 26ZGB.

**personal vaporiser** see section 5A(1) and (2).

**personal vaporiser related product** see section 5A(3) and (4).

**private health facility**, for part 2C, division 2A, see section 26ZGB.

**residential premises**, for part 2C, division 2A, see section 26ZGB.

**road**, for part 2BA and part 2C, division 2A, see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**road-related area**, for part 2BA and part 2C, division 2A, see the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 13.

**school land**, for part 2C, division 2A, see section 26ZGB.

**Service** see section 26ZGB.

**State school**, for part 2C, division 2A, see section 26ZGB.

(2) Schedule, definition *administering executive*—

*insert*—

(d) for a person appointed under this Act as an authorised person by a health service chief executive—the health service chief executive.

(3) Schedule, definition *smoke*—

*omit, insert*—

**smoke** means—



- 
- (a) for a smoking product other than a personal vaporiser—smoke, hold or otherwise have control over an ignited smoking product; or
- (b) for a personal vaporiser—inhalation through the vaporiser.
- (4) Schedule, definition *smoking product*—  
*omit, insert—*
- smoking product—*
- (a) for parts 1, 2 and 3—means a tobacco product, herbal cigarette, loose smoking blend, personal vaporiser or personal vaporiser related product; or
- (b) for part 2A—see section 25; or
- (c) otherwise—means a tobacco product, herbal cigarette, loose smoking blend or personal vaporiser.

## Part 9 **Amendment of Transplantation and Anatomy Act 1979**

### 68 **Act amended**

This part amends the *Transplantation and Anatomy Act 1979*.

### 69 **Amendment of s 4 (Interpretation)**

Section 4—

*insert—*

*trading*, of tissue, for part 7, see section 39.

### 70 **Insertion of new s 39**

Part 7—

[s 71]

---

*insert—*

### **39 Definition for pt 7**

In this part—

*trading*, of tissue, includes any of the following—

- (a) buying, agreeing to buy, offering to buy, holding out as being willing to buy, or inquiring whether a person is willing to sell the tissue;
- (b) selling, agreeing to sell, offering to sell, holding out as being willing to sell, or inquiring whether a person is willing to buy the tissue;
- (c) any act mentioned in section 41(a), (b) or (c) for an advertisement relating to the buying of the tissue.

### **71 Amendment of s 42A (Person who owns a prescribed tissue bank may charge amount to recover certain costs)**

- (1) Section 42A, heading, after ‘costs’—

*insert—*

**etc.**

- (2) Section 42A(1)—

*omit, insert—*

- (1) A person who owns a tissue bank may—
  - (a) charge an amount (a *cost-recovery amount*) to recover the person’s reasonable costs associated with removing, evaluating, processing, storing or distributing donated tissue; or
  - (b) sell, agree to sell, offer to sell or hold himself or herself out as being willing to sell

- 
- donated tissue for a cost-recovery amount;  
or
- (c) inquire whether a person is willing to buy from the person or another person donated tissue for a cost-recovery amount.
- (3) Section 42A(2), ‘charging an amount’—  
*omit, insert—*  
doing something that is permitted
- (4) Section 42A(3), from ‘merely by’—  
merely by—
- (a) paying a cost-recovery amount charged under subsection (1); or
- (b) buying, agreeing to buy, offering to buy or holding himself or herself out as being willing to buy donated tissue from a tissue bank for a cost-recovery amount; or
- (c) inquiring whether a person who owns a tissue bank is willing to sell to the person or another person donated tissue for a cost-recovery amount.
- (5) Section 42A(4), ‘an amount under subsection (1)’—  
*omit, insert—*  
a cost-recovery amount
- (6) Section 42A(5), ‘not charged under subsection (1)’—  
*omit, insert—*  
taken not to be a cost-recovery amount
- (7) Section 42A(6), definition *tissue bank*, after ‘facility’—  
*insert—*  
prescribed by regulation

[s 72]

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## **72 Insertion of new ss 42AA to 42AC**

After section 42A—

*insert—*

### **42AA Trading of tissue for particular purposes**

- (1) Sections 40, 41 and 42 do not apply to the trading of tissue if—
  - (a) the tissue has been subjected to processing or treatment; and
  - (b) the trading of the tissue is for a therapeutic purpose, medical purpose or scientific purpose; and
  - (c) the tissue is—
    - (i) a biological or a medical device included in the register under the *Therapeutic Goods Act 1989* (Cwlth); or
    - (ii) a registered good under the *Therapeutic Goods Act 1989* (Cwlth); and
  - (d) the tissue is not relevant tissue.

- (2) In this section—

**register** means the Australian Register of Therapeutic Goods kept under the *Therapeutic Goods Act 1989* (Cwlth), section 9A.

**relevant tissue** means—

- (a) tissue stored at a tissue bank under section 42A; or
- (b) tissue mentioned in section 42AB(1).

### **42AB Trading of tissue by, with or for exempt entity**

- (1) Sections 40, 41 and 42 do not apply to the trading of tissue if—

- 
- (a) the trading of the tissue is carried out by or with—
    - (i) an exempt entity; or
    - (ii) the Commonwealth for the benefit of an exempt entity; and
  - (b) the tissue is the subject of an agreement between the exempt entity and the Commonwealth or the State.

(2) In this section—

***blood products*** see the *National Blood Authority Act 2003* (Cwlth), section 3, definition *blood products and services*, paragraph (a).

***exempt entity*** means—

- (a) for blood products, an entity mentioned in the national products price list as a supplier; or
- (b) for tissue other than blood products, an entity that—
  - (i) is a party to an agreement with the Commonwealth or the State for the buying or selling of the tissue; and
  - (ii) is prescribed under a regulation.

***National Blood Agreement*** see the *National Blood Authority Act 2003* (Cwlth), section 3.

***national products price list*** means the annual national products price list approved by the Ministerial Council under the National Blood Agreement.

#### **42AC Donation of human eggs and human sperm by individuals**

- (1) Section 41 does not apply to a donation of human eggs or human sperm within the meaning of the

[s 73]

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*Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* if—

- (a) an individual (the **recipient**), as mentioned in that section, publishes, disseminates, exhibits or deposits an advertisement stating that the recipient seeks another individual (the **donor**) to donate human eggs or human sperm to the recipient; and
  - (b) the human eggs or human sperm are to be used with assisted reproductive technology for the recipient's personal use; and
  - (c) the recipient does not give the donor valuable consideration for the donation.
- (2) In this section—
- valuable consideration**, for a donation of human eggs or human sperm by an individual, means any form of payment, reward or other material benefit or advantage, but does not include the payment of the individual's reasonable expenses in connection with the donation.

### 73 Insertion of new 44A

Part 7—

*insert—*

#### **44A Relationship of pt 7 with Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003, s 17**

- (1) This section applies to human eggs, human sperm and human embryos within the meaning of the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*.
- (2) To the extent of an inconsistency between this part and the *Research Involving Human Embryos*

*and Prohibition of Human Cloning for Reproduction Act 2003*, section 17, that section prevails.

## 74 Insertion of new s 51A

After section 51—

*insert—*

### **51A Delegation by Minister**

- (1) The Minister may delegate the Minister's functions under this Act to an appropriately qualified public service employee or health service employee.

- (2) In this section—

*functions* includes powers.

*health service employee* see the *Hospital and Health Boards Act 2011*, schedule 2.