



Hospital and Health Boards Act 2011

Reprinted as in force on 1 July 2012

Reprint No. 1

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- omit provisions that are no longer required (s 40)
- correct minor errors (s 44)
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- **when provisions commenced**
- **editorial changes made in the reprint, including table of corrected minor errors**
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Queensland

Hospital and Health Boards Act 2011

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	15
2	Commencement	15
3	Act binds all persons	15
4	Principles and objectives of national health system	15
Division 2	Object of Act	
5	Object	17
Division 3	Overview of Act	
6	Purpose of div 3	18
7	Establishment of Hospital and Health Services	18
8	Management of the public sector health system	18
9	Management of health system performance	19
10	Statewide employment and industrial relations arrangements	19
11	Protections for safety and quality	20
12	Confidentiality safeguards	20
Division 4	Guiding principles of Act	
13	Guiding principles	20
Division 5	Interpretation	
14	Definitions	21
15	Meaning of health service	22
16	Meaning of service agreement	22
Part 2	Hospital and Health Services	
Division 1	Establishment, functions and powers of Services	
17	Establishment of Services	23
18	Legal status	24
19	Functions of Services	24

Contents

20	Powers of Services	25
20A	Limitation on Service's dealing with land or buildings	26
21	Application of other Acts	26
Division 2	Hospital and Health Boards for Services	
Subdivision 1	Role of Hospital and Health Boards	
22	Role of exercising control over Service	27
Subdivision 2	Membership	
23	Membership of boards	27
24	Minister to advertise for members of boards	28
25	Chair and deputy chair	28
26	Conditions of appointment	29
27	Vacation of office of board member	29
27A	Suspension from office of Hospital and Health Board members	30
28	Removal from office of board members	30
29	Defects in appointment of members	31
Subdivision 3	Delegation by Hospital and Health Boards	
30	Delegation by boards	31
Subdivision 4	Conduct of business	
31	Members to act in public interest	32
32	Conduct of business by boards	32
Division 2A	Executive committees	
32A	Hospital and Health Board must establish executive committee for Hospital and Health Service	33
32B	Function of executive committee	33
32C	Membership of executive committee	34
32D	Conduct of business by executive committee	34
Division 3	Health service chief executives	
33	Appointment of health service chief executives	35
34	Delegation by health service chief executive	35
Division 4	Service agreements, engagement strategies and protocols	
35	Chief executive and Service must enter into service agreements	36
36	Term of service agreement	36
37	Negotiations for service agreement	36
38	Minister may decide on terms of service agreement	36
39	Procedure to amend service agreement	37
40	Engagement strategies	37

41	Review of strategies	38
42	Protocol with primary healthcare organisations	39
43	Review of protocol	39
Division 4A	Hospital and Health Ancillary Boards	
43A	Minister may establish ancillary board	40
Division 5	Directions to Hospital and Health Services and appointment of advisers to Hospital and Health Boards	
44	Minister may give directions to Service	41
44A	Minister may appoint advisers to boards	42
44B	Matters to which Minister may have regard in deciding whether to appoint adviser	42
44C	Functions of advisers	42
44D	Adviser not a member of board but has duty of disclosure	43
44E	Obligations of board in relation to adviser	43
Part 3	Functions of chief executive and chief health officer	
Division 1	Chief executive	
44F	Chief executive subject to direction of the Minister.	43
45	Functions of chief executive	44
46	Delegation by chief executive	45
Division 2	Chief executive may issue health service directives	
47	Health service directives	46
48	Consultation on health service directives	48
49	Publication of health service directives	48
50	Health service directives binding	49
51	Review of health service directives	49
Division 3	Chief health officer	
52	Chief health officer	49
53	Functions of chief health officer	49
Part 4	Performance reporting and auditing	
Division 1	Performance reporting	
54	Chief executive may provide data to Commonwealth.	50
Division 2	Health service audits	
55	Function of health service auditors.	51
56	Appointment of health service auditors	51
57	Appointment conditions and limit on powers	52
58	When office ends	52

Contents

59	Resignation	52
60	Powers of health service auditors.	53
61	Giving health service auditor false or misleading information . . .	53
62	Obstructing health service auditor	54
63	Duty of confidentiality of health service auditors	54
64	Reports by health service auditors.	55
65	Chief executive may request report from health service chief executive	56
Part 5	Health service employees	
Division 1	General	
66	Conditions of employment	56
67	Appointment of health service employees	57
68	Contracted health service employees other than health executives	58
69	Health service employees not public service employees	58
69A	Modification of Industrial Relations Act 1999 for health service employees	58
Division 2	Health executive service	
70	Health executive service continued	58
71	Purpose of health executive service.	59
72	Principles of health executive service employment	59
73	Composition of health executive service	59
74	Basis of employment for health executives.	59
75	Exclusion of certain matters from review under other Acts	60
76	Fixing of remuneration packages and classification levels for health executives	61
Division 3	Other provisions relating to health service employees	
77	Redeployment or secondment to lower classification level	62
78	Transfer of health service employees.	62
79	Entitlement on ending of particular employment contracts.	63
Division 4	Matters relating to employment of health service employees by Services	
80	Departmental health service employees to be employed by Services	63
80A	Appointment to perform functions or do other things not affected by becoming employees of prescribed Service	64
80B	Matters and proceedings not affected by persons becoming employees of prescribed Service	65

Part 6	Safety and quality	
Division 1	Quality assurance committees	
81	Purpose of division	66
82	Establishment of quality assurance committees	66
83	Restrictions on committees	68
84	Disclosure of information	68
85	Giving of reports and documents to patient safety entity	69
86	Information about excluded notifiable conduct	70
87	Protection for documents and information	70
88	Protection from liability	71
89	Giving of information protected	72
90	Information provider can not be compelled to give particular information in evidence	73
91	Further responsibilities of committees	73
92	Effect of provisions of division	74
Division 2	Root cause analysis	
Subdivision 1	Preliminary	
93	Purpose of div 2	74
94	Definitions for div 2	74
95	Meaning of root cause analysis	75
96	When is a health service provided	75
97	Guiding principles for conduct of RCA of reportable event	76
Subdivision 2	RCA teams	
98	Appointment of RCA team	77
99	Requirements for appointment	77
Subdivision 3	Reporting	
100	RCA team's report and chain of events document	78
101	Reporting to commissioning authority	79
Subdivision 4	Stopping conduct of RCA of reportable event	
102	Stopping conduct of RCA of reportable event—RCA team	79
103	Stopping conduct of RCA of reportable event—commissioning authority	80
Subdivision 5	Disclosure or release of information	
104	Definition for sdiv 5	81
105	Disclosure of information—RCA team member or relevant person	81

Contents

106	Disclosure of information—commissioning authority or relevant person	82
107	Information about excluded notifiable conduct	84
108	Release of information to Health Quality and Complaints Commission	84
109	Release of information to chief health officer	85
110	Release of information by chief health officer to Health Quality and Complaints Commission	85
111	Release of information to director of mental health	86
112	Giving of copy of RCA report or chain of events document—patient safety entity	86
113	Giving of copy of RCA report etc.—investigation under the Coroners Act 2003	87
114	Giving of information to Minister or chief executive	90
115	Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest	90
Subdivision 6	Protections	
116	Protection from liability	90
117	Giving of information protected	91
118	Information provider can not be compelled to give particular information in evidence.	92
119	Protection for documents and information	93
120	Reprisal and grounds for reprisals	94
121	Offence for taking reprisal	94
122	Damages entitlement for reprisal	95
Subdivision 7	Miscellaneous	
123	Application of provisions of this division	95
Division 3	Clinical reviews	
124	Functions of clinical reviewers	95
125	Appointment of clinical reviewers	96
126	Appointment conditions and limit on powers	96
127	When office ends	96
128	Resignation	97
129	Powers of clinical reviewers	97
130	Giving clinical reviewer false or misleading information	98
131	Obstructing clinical reviewer.	98
132	Duty of confidentiality of clinical reviewers	99

133	Disclosure to person under Coroners Act 2003	99
134	Stopping clinical review	99
135	Reports by clinical reviewers other than to provide advice to investigator	100
136	Reports by clinical reviewers to provide advice to investigator. . .	101
137	Chief executive may request report from health service chief executive	101
138	Protection for reports	101
Part 7	Confidentiality	
Division 1	Interpretation and application	
139	Definitions for pt 7.	102
140	Meaning of parent	103
141	Part does not apply to Act officials	104
Division 2	Confidentiality	
142	Confidential information must not be disclosed	104
143	Disclosure required or permitted by law	105
144	Disclosure with consent	105
145	Disclosure of confidential information for care or treatment of person	106
146	Disclosure to person who has sufficient interest in health and welfare of person	106
147	Disclosure to lessen or prevent serious risk to life, health or safety	107
148	Disclosure for the protection, safety or wellbeing of a child	108
149	Disclosure for funding arrangements and public health monitoring	108
150	Disclosure for purposes relating to health services	108
151	Disclosure to Commonwealth, another State or Commonwealth or State entity	109
152	Disclosure to or by inspector	110
153	Disclosure to Act officials	110
154	Disclosure to or by relevant chief executive	110
155	Disclosure to health practitioner registration board	111
156	Disclosure to Health Quality and Complaints Commission	111
157	Disclosure to person performing functions under Coroners Act 2003	112
158	Disclosure to lawyers	112
159	Disclosure to Australian Red Cross Society	112

Contents

160	Disclosure of confidential information in the public interest	112
161	Necessary or incidental disclosure	113
Part 8	Control of traffic and conduct on health services land	
Division 1	Interpretation	
162	Definitions for pt 8.	114
Division 2	Authorised persons and security officers	
163	Appointment of authorised persons	115
164	Appointment of security officers	115
165	Person may be appointed as authorised person and security officer	115
166	Appointment conditions and limit on powers	115
167	When office ends	116
168	Resignation	116
169	Identity cards	116
170	Production or display of identity card	117
171	Return of identity card	117
Division 3	Traffic control	
172	Health services land for which authorised person may exercise powers	118
173	Health services land for which health service chief executives may exercise powers	118
174	Authorised persons to control traffic on health services land	118
175	Regulatory notice	119
176	Notices that contravention of regulatory notice an offence.	119
177	Removal and detention of illegally parked or abandoned vehicles	120
178	Disposal of unclaimed vehicles	121
179	Application of proceeds of sale	122
Division 4	Conduct on health services land	
180	Health services land for which authorised person or security officer may exercise powers	122
181	Health services land for which health service chief executives may exercise powers	122
182	Conduct causing a public nuisance	123
183	Power to deal with persons causing a public nuisance	123
184	Prohibition of smoking	124
Division 5	Requirements to give name and address and other matters	
185	Power to require name and address.	124

186	Offence to contravene personal details requirement	125
187	Obstructing an authorised person or security officer	126
188	Impersonating authorised person or security officer	126
Part 9	Health service investigations	
189	Functions of health service investigators	126
190	Appointment of health service investigators	127
191	Appointment conditions and limit on powers	127
192	When office ends	127
193	Resignation	128
194	Powers of health service investigators	128
195	Giving health service investigator false or misleading information	129
196	Obstructing investigator	129
197	Duty of confidentiality of health service investigators	130
198	Disclosure to person under Coroners Act 2003	130
199	Reports by health service investigators	131
200	Chief executive may request report from health service chief executives	131
Part 10	Monitoring and enforcement	
Division 1	Interpretation	
201	Definitions for pt 10.	132
Division 2	General provisions about inspectors	
Subdivision 1	Functions and appointment	
202	Functions of inspectors	135
203	Appointment and qualifications	135
204	Appointment conditions and limit on powers	135
205	When office ends	136
206	Resignation	136
Subdivision 2	Identity cards	
207	Issue of identity card	136
208	Production or display of identity card	137
209	Return of identity card	137
Subdivision 3	Miscellaneous provisions	
210	References to exercise of powers	138
211	Reference to document includes reference to reproductions from electronic document	138

Contents

Division 3	Entry of places by inspectors	
Subdivision 1	Power to enter	
212	General power to enter places	138
Subdivision 2	Entry by consent	
213	Application of sdiv 2	139
214	Incidental entry to ask for access	139
215	Matters inspector must tell occupier	140
216	Consent acknowledgement	140
Subdivision 3	Entry under warrant	
217	Application for warrant	141
218	Issue of warrant	141
219	Electronic application	142
220	Additional procedure if electronic application	143
221	Defect in relation to a warrant	144
222	Entry procedure	144
Division 4	General powers of inspectors after entering places	
223	Application of div 4	145
224	General powers	145
225	Power to require reasonable help	147
226	Offence to contravene help requirement	147
Division 5	Seizure and forfeiture	
Subdivision 1	Power to seize	
227	Seizing evidence at a place that may be entered without consent or warrant	147
228	Seizing evidence at a place that may be entered only with consent or warrant	148
229	Seizure of property subject to security	149
Subdivision 2	Powers to support seizure	
230	Requirement of person in control of thing to be seized	149
231	Offence to contravene seizure requirement	149
232	Power to secure seized thing	149
233	Offence to contravene other seizure requirement	150
234	Offence to interfere	150
Subdivision 3	Safeguards for seized things	
235	Receipt and information notice for seized thing	151
236	Access to seized thing	152

237	Return of seized thing	152
Subdivision 4	Forfeiture	
238	Forfeiture by chief executive decision	153
239	Information notice about forfeiture decision	154
240	Forfeiture on conviction	154
241	Procedure and powers for making forfeiture order	155
Subdivision 5	Dealing with property forfeited or transferred to State	
242	When thing becomes property of the State	155
243	How property may be dealt with	155
Division 6	Disposal orders	
244	Disposal order	156
Division 7	Other information-obtaining powers	
245	Power to require name and address	157
246	Offence to contravene personal details requirement	157
247	Power to require information	158
248	Offence to contravene information requirement	158
Division 8	Miscellaneous provisions relating to inspectors	
Subdivision 1	Damage	
249	Duty to avoid inconvenience and minimise damage	159
250	Notice of damage	159
Subdivision 2	Compensation	
251	Compensation	160
Subdivision 3	Other offences relating to inspectors	
252	Giving inspector false or misleading information	161
253	Obstructing inspector	162
254	Impersonating inspector	162
Division 9	Reviews and appeals	
255	Right of appeal	162
256	Appeal process starts with internal review	163
257	How to apply for review	163
258	Stay of operation of decision	164
259	Review decision	164
260	Who may appeal	165
261	Procedure for an appeal to the court	165
262	Stay of operation of review decision	166
263	Powers of court on appeal	166

Contents

264	Effect of decision of court on appeal	167
Part 11	Legal proceedings	
Division 1	Application	
265	Application of pt 11	167
Division 2	Evidentiary aids	
266	Appointments and authority	167
267	Signatures	168
268	Evidentiary provisions	168
Division 3	Offence proceedings	
269	Summary offences	169
270	Limitation on time for starting proceedings for summary offence	169
271	Proceedings for indictable offences	170
272	Limitation on who may summarily hear indictable offence	170
273	Allegations of false or misleading information or document	171
Part 12	Miscellaneous	
274	Disclosure of personal information of health service employees and health professionals.	171
275	Governor in Council may dismiss members of board.	172
276	Governor in Council may appoint administrator for Service	172
277	Term and role of administrator	173
278	Ministerial advisory committees	173
279	Delegation by Minister	173
280	Protecting officials	174
281	Approval of forms	174
282	Regulation-making power.	175
Part 13	Repeal, savings and transitional provisions	
Division 1	Repeal	
283	Repeal of Health Services Act 1991.	177
Division 2	Savings and transitionals for Act No. 32 of 2011	
284	Definitions for div 2.	177
285	Existing health service employees	177
286	Existing health executives employed in health service districts	178
287	Chief health officer	179
288	Continued appointment of inspectors.	179
289	Continued appointment of authorised persons.	179
290	Continued appointment of security officers	180

291	Continued appointment of auditors	180
292	Continued appointment of investigators	181
293	Continuation of RCA teams	181
294	Continuation of quality assurance committees	181
295	Continuation of Ministerial advisory committees	182
296	Health service audits	182
297	Health service investigations	182
298	Regulatory notices and information notices	182
299	Authorisations and considerations by chief executive	182
300	Applications under Information Privacy Act 2009, s 43, 44 or 94 .	183
301	Applications under Information Privacy Act 2009, s 99	184
302	Persons affected by reviewable decision under the Information Privacy Act 2009	184
303	Applications under Right to Information Act 2009, s 24 or 80 . . .	185
304	Applications under Right to Information Act 2009, s 85	185
305	Persons affected by reviewable decision under the Right to Information Act 2009	185
306	Assistance must be provided	186
307	Transfer notice	186
308	Decisions not reviewable	189
309	Severability	190
310	Registering authority to note transfer or other dealing	190
311	Effect on legal relationships	191
312	Things done under transfer notice	192
313	Requirement for Service to develop engagement strategies	193
314	Requirement for Service to develop protocol	193
315	Advertising for members of boards before commencement 193	
316	Reporting obligations for prescribed public hospitals to continue.	193
317	When chief executive may decide service agreement	194
319	Transitional regulation-making power	194
Division 3	Savings and transitionals for the Health and Hospitals Network and Other Legislation Amendment Act 2012	
319A	Definitions for div 3	195
319B	Governing councils continue in existence as Hospital and Health Boards	195
319C	Networks continue in existence as Hospital and Health Services	195

Contents

319D	Transitional regulation-making power for amendment Act	196
Schedule 1	Conduct of business by boards	197
1	Application of sch 1	197
2	Conduct of business by board	197
3	Times and places of meetings	197
4	Quorum	197
5	Presiding at meetings.	197
6	Conduct of meetings	198
7	Minutes	198
8	Committees	199
9	Disclosure of interests	199
Schedule 2	Dictionary	201
 Endnotes		
1	Index to endnotes.	213
2	Date to which amendments incorporated.	213
3	Key	214
4	Table of reprints	214
5	List of legislation.	215
6	List of annotations	215
7	Table of corrected minor errors.	226

Hospital and Health Boards Act 2011

[as amended by all amendments that commenced on or before 1 July 2012]

An Act to provide for the delivery of public sector health services and other health services in Queensland

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Hospital and Health Boards Act 2011*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and all the other States.

4 Principles and objectives of national health system

This Act recognises and gives effect to the principles and objectives of the national health system agreed by Commonwealth, State and Territory governments, namely—

- (a) the following Medicare principles—

[s 4]

- (i) eligible persons are to be given the choice to receive, free of charge as public patients, health and emergency services of a kind or kinds that are currently, or were historically, provided by hospitals;
 - (ii) access to these services by public patients free of charge is to be on the basis of clinical need and within a clinically appropriate period;
 - (iii) arrangements are to be in place to ensure equitable access to the services for all eligible persons, regardless of their geographic location; and
- (b) the health system principles—Australia’s health system should—
- (i) be shaped around the health needs of individual patients, their families and communities; and
 - (ii) focus on the prevention of disease and injury and the maintenance of health and not simply on the treatment of illness; and
 - (iii) support an integrated approach to the promotion of healthy lifestyles, prevention of illness and injury, and diagnosis and treatment of illness across the continuum of care; and
 - (iv) provide all Australians with timely access to quality health services based on their needs, not ability to pay, regardless of where they live in the country; and
- (c) the following long-term objectives for Australia’s health system—
- (i) prevention—Australians are born and remain healthy;
 - (ii) primary and community health—Australians receive appropriate high quality and affordable primary and community health services;

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- (iii) hospital and related care—Australians receive appropriate high quality and affordable hospital and hospital-related care;
 - (iv) aged care—older Australians receive appropriate high quality and affordable health and aged care services;
 - (v) patient experience—Australians have positive health and aged care experiences which take account of individual circumstances and care needs;
 - (vi) social inclusion and Indigenous health—Australia’s health system promotes social inclusion and reduces disadvantage, especially for Indigenous Australians;
 - (vii) sustainability—Australians have a sustainable health system.

Division 2 Object of Act

5 Object

- (1) The object of this Act is to establish a public sector health system that delivers high quality hospital and other health services to persons in Queensland having regard to the principles and objectives of the national health system.
- (2) The object is mainly achieved by—
 - (a) strengthening local decision-making and accountability, local consumer and community engagement, and local clinician engagement; and
 - (b) providing for Statewide health system management including health system planning, coordination and standard setting; and
 - (c) balancing the benefits of the local and system-wide approaches.

Division 3 Overview of Act

6 Purpose of div 3

This division gives an overview of this Act.

7 Establishment of Hospital and Health Services

- (1) Hospital and Health Services are statutory bodies and are the principal providers of public sector health services.
- (2) Each Hospital and Health Service is independently and locally controlled by a Hospital and Health Board.
- (3) Each Hospital and Health Board appoints a health service chief executive.
- (4) Each Hospital and Health Board exercises significant responsibilities at a local level, including controlling—
 - (a) the financial management of the Service; and
 - (b) the management of the Service's land and buildings; and
 - (c) for a prescribed Service, the management of the Service's staff.

8 Management of the public sector health system

- (1) The public sector health system is comprised of the Hospital and Health Services and the department.
- (2) The overall management of the public sector health system is the responsibility of the department, through the chief executive (the *system manager role*).
- (3) In performing the system manager role, the chief executive is responsible for the following—
 - (a) Statewide planning;
 - (b) managing Statewide industrial relations;
 - (c) managing major capital works;
 - (d) monitoring Service performance;

- (e) issuing binding health service directives to Services.
- (4) The way in which the chief executive's responsibilities are exercised establishes the relationship between the chief executive and the Services.
- (5) The relationship between the chief executive and the Services is also governed by the service agreement between the chief executive and each Service.

9 Management of health system performance

- (1) Hospital and Health Services are individually accountable for their performance.
- (2) Services are required to report on their performance to the chief executive.
- (3) The chief executive is responsible for—
 - (a) collating and validating the data provided by Services; and
 - (b) providing the data to the Commonwealth and relevant Commonwealth entities.
- (4) Health service auditors may be appointed to examine the performance of Services and the department.

10 Statewide employment and industrial relations arrangements

- (1) This Act provides for Statewide employment and industrial relations arrangements in the public sector health system.
- (2) Health service employees employed by Services and the department are employed on the same terms and conditions.
- (3) The chief executive is authorised under the *Industrial Relations Act 1999* to negotiate certified agreements for health service employees and for other health system industrial relations matters.

[s 11]

11 Protections for safety and quality

- (1) This Act provides safeguards and protection for—
 - (a) members of quality assurance committees and Root Cause Analysis teams; and
 - (b) information obtained and reports prepared by the committees or teams.
- (2) Clinical reviewers may be appointed to conduct clinical reviews and to provide expert clinical advice.

12 Confidentiality safeguards

This Act provides safeguards to protect the confidentiality of information that identifies persons who have received public sector health services.

Division 4 Guiding principles of Act

13 Guiding principles

- (1) The following principles are intended to guide the achievement of this Act's object—
 - (a) the best interests of users of public sector health services should be the main consideration in all decisions and actions under this Act;
 - (b) there should be a commitment to ensuring quality and safety in the delivery of public sector health services;
 - (c) providers of public sector health services should work with providers of private sector health services to achieve coordinated, integrated health service delivery across both sectors;
 - (d) there should be responsiveness to the needs of users of public sector health services about the delivery of public sector health services;

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- (e) information about the delivery of public sector health services should be provided to the community in an open and transparent way;
 - (f) there should be a commitment to ensuring that places at which public sector health services are delivered are places at which—
 - (i) employees are free from bullying, harassment and discrimination; and
 - (ii) employees are respected and diversity is embraced; and
 - (iii) there is a positive workplace culture based on mutual trust and respect;
 - (g) there should be openness to complaints from users of public sector health services and a focus on dealing with the complaints quickly and transparently;
 - (h) there should be engagement with clinicians, consumers, community members and local primary healthcare organisations in planning, developing and delivering public sector health services;
 - (i) opportunities for research and development relevant to the delivery of public sector health services should be promoted;
 - (j) opportunities for training and education relevant to the delivery of public sector health services should be promoted.
- (2) A person must have regard to the guiding principles when performing a function or exercising a power under this Act.

Division 5 Interpretation

14 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

[s 15]

15 Meaning of *health service*

- (1) A ***health service*** is a service for maintaining, improving, restoring or managing people's health and wellbeing.
- (2) Without limiting subsection (1), a health service includes—
 - (a) a service mentioned in subsection (1) that is provided to a person at a hospital, residential care facility, community health facility or other place; and
 - (b) a service dealing with public health, including a program or activity for—
 - (i) the prevention and control of disease or sickness;
or
 - (ii) the prevention of injury; or
 - (iii) the protection and promotion of health.

Example of health service mentioned in paragraph (b)—
a cancer screening program
- (3) In addition, a health service includes a support service for a service mentioned in subsection (1).

16 Meaning of *service agreement*

- (1) A ***service agreement***, for a Service, means an agreement between the chief executive and the Service that states—
 - (a) the hospital services, other health services, teaching, research and other services to be provided by the Service; and
 - (b) the funding to be provided to the Service for the provision of services, including the way in which the funding is to be provided; and

Example of a way of funding a health service—
activity-based funding
- (c) the performance measures for the provision of services by the Service; and

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- (d) the performance data and other data to be provided by a Service to the chief executive, including how, and how often, the data is to be provided; and
 - (e) any other matter the chief executive considers relevant to the provision of services by the Service.
- (2) Without limiting subsection (1), a service agreement may—
- (a) deal with the matters stated in subsection (1) relating to funding provided by the Commonwealth, without the Commonwealth being a party to the agreement; and
 - (b) state the circumstances in which a Service (the *first Service*) may agree with another Service to deliver services for the first Service.

Part 2 Hospital and Health Services

Division 1 Establishment, functions and powers of Services

17 Establishment of Services

A regulation may—

- (a) declare any 1 or more of the following to be a health service area for a Hospital and Health Service—
 - (i) a part of the State;
 - (ii) a public sector hospital;
 - (iii) a public sector health service facility;
 - (iv) a public sector health service; and
- (b) establish a Hospital and Health Service (a *Service*) for the health service area; and
- (c) assign a name to the Service.

[s 18]

18 Legal status

- (1) A Service—
 - (a) is a body corporate; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) A Service represents the State.
- (3) Without limiting subsection (2), a Service has all the privileges and immunities of the State.

19 Functions of Services

- (1) A Service's main function is to deliver the hospital services, other health services, teaching, research and other services stated in the service agreement for the Service.
- (2) A Service also has the following functions—
 - (a) to ensure the operations of the Service are carried out efficiently, effectively and economically;
 - (b) to enter into a service agreement with the chief executive;
 - (c) to comply with the health service directives that apply to the Service;
 - (d) to contribute to, and implement, Statewide service plans that apply to the Service and undertake further service planning that aligns with the Statewide plans;
 - (e) to monitor and improve the quality of health services delivered by the Service, including, for example, by implementing national clinical standards for the Service;
 - (f) to develop local clinical governance arrangements for the Service;
 - (g) to undertake minor capital works, and major capital works approved by the chief executive, in the health service area;

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- (h) to maintain land, buildings and other assets owned by the Service;
 - (ha) for a prescribed Service, to employ staff under this Act;
 - (i) to cooperate with other providers of health services, including other Services, the department and providers of primary healthcare, in planning for, and delivering, health services;
 - (j) to cooperate with local primary healthcare organisations;
 - (k) to arrange for the provision of health services to public patients in private health facilities;
 - (l) to manage the performance of the Service against the performance measures stated in the service agreement;
 - (m) to provide performance data and other data to the chief executive;
 - (n) to consult with health professionals working in the Service, health consumers and members of the community about the provision of health services;
 - (o) other functions approved by the Minister;
 - (p) other functions necessary or incidental to the above functions.

20 Powers of Services

- (1) A Service has the powers of an individual and may, for example—
 - (a) enter into contracts and agreements; and
 - (b) subject to subsection (2), acquire, hold, deal with or dispose of property; and
 - (c) engage consultants or contractors; and
 - (d) appoint agents and attorneys; and
 - (e) charge for the services it provides; and

[s 20A]

- (f) do anything else necessary or convenient to be done in performing its functions.
- (2) A Service may not own assets prescribed by regulation.
- (3) A Service may employ health executives.
- (4) A Service prescribed by regulation may also employ other health service employees under this Act.

Note—

Section 80 states that employees employed in the department and working for a Service immediately before the prescribed day for the Service become employees of the Service on the same terms, conditions and entitlements.

- (5) A regulation under subsection (4) may also restrict, limit or impose conditions on the power to employ health service employees.

20A Limitation on Service's dealing with land or buildings

- (1) A Service must not buy or sell land or buildings without the prior written approval of the Minister and the Treasurer.
- (2) A Service must not, without the prior written approval of the Minister and the Treasurer, grant or take a lease of land or buildings unless the lease is a type prescribed by regulation.

21 Application of other Acts

- (1) A Service is—
 - (a) a statutory body under the *Financial Accountability Act 2009*; and
 - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*; and
 - (c) a unit of public administration under the *Crime and Misconduct Act 2001*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which a Service's powers under this Act are affected by that Act.

[s 24]

- (g) persons with other areas of expertise the Minister considers relevant to a Service performing its functions.
- (3) One or more of the members of a board must be clinicians.
- (4) In this section—
 - clinician* means a person who—
 - (a) is a health professional registered under the Health Practitioner Regulation National Law, other than as a student; and
 - (b) is currently directly or indirectly providing care or treatment to persons; and
 - (c) is in a profession that provides care or treatment to persons in public sector health services.

24 Minister to advertise for members of boards

- (1) Before recommending persons for membership of a board, the Minister must—
 - (a) advertise for expressions of interest from suitably qualified persons interested in being members of a board; and
 - (b) consider the expressions of interest received.
- (2) Subsection (1) does not apply to a vacancy that arises in the membership of a board under section 27.
- (3) In this section—
 - suitably qualified* means having the skills, knowledge and experience mentioned in section 23.

25 Chair and deputy chair

- (1) The Governor in Council may, on the recommendation of the Minister, appoint—
 - (a) a member of a board to be chair of the board; and
 - (b) another member to be deputy chair of the board.

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- (2) A member may be appointed as the chair or deputy chair at the same time as the person is appointed as a member and by the same gazette notice.
 - (3) Subject to this subdivision, the chair or deputy chair holds office for the term, ending not later than his or her term of appointment as a member, stated in his or her appointment as chair or deputy chair.
 - (4) A vacancy arises in the office of chair or deputy chair if the person holding the office—
 - (a) resigns office by signed notice of resignation given to the Minister; or
 - (b) ceases to be a member.
 - (5) A person resigning the office of chair or deputy chair may continue to be a member.
 - (6) The deputy chair is to act as chair—
 - (a) during a vacancy in the office of the chair; and
 - (b) during all periods when the chair is absent from duty or for another reason can not perform the duties of the office.

26 Conditions of appointment

- (1) A member of a board holds office for the term, of not more than 4 years, stated in the member's instrument of appointment.
- (2) A member is entitled to the fees and allowances fixed by the Governor in Council, and otherwise holds office under the conditions of appointment fixed by the Governor in Council.

27 Vacation of office of board member

The office of a member of a board becomes vacant if the member—

[s 27A]

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is removed from office as a member under section 28.

27A Suspension from office of Hospital and Health Board members

- (1) This section applies if—
 - (a) a matter has arisen in relation to a member of a board; and
 - (b) the matter—
 - (i) is one which is, or may be, grounds for removing a member from office under section 28; or
 - (ii) is alleged misconduct by the member; and
 - (c) the Minister considers that it is necessary in the public interest for the member to be suspended from office pending further consideration of the matter.
- (2) The Minister may suspend the member from office for a period not exceeding 60 days by notice in writing to the member.
- (3) If the Minister considers it is necessary in the circumstances, the Minister may extend the suspension from time to time by periods not exceeding 60 days, by notice in writing to the member.
- (4) The Minister must advise the member by notice in writing if the Minister ends the member's suspension.

28 Removal from office of board members

The Governor in Council may remove a member from office if—

- (a) the member is or becomes an insolvent under administration under the Corporations Act, section 9; or

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- (b) the member is disqualified from managing corporations under the Corporations Act, part 2D.6; or
 - (c) the member has been, or is, convicted of an indictable offence; or
 - (d) the member has been, or is, convicted of an offence against this Act; or
 - (e) the Minister recommends the removal because the Minister is satisfied the member—
 - (i) has been guilty of misconduct; or
 - (ii) is incapable of performing the member's duties; or
 - (iii) has neglected the member's duties or performed the member's duties incompetently; or
 - (iv) has been absent without permission of the board from 3 consecutive meetings of which due notice was given.

29 Defects in appointment of members

A decision of a board is not invalidated by—

- (a) a defect or irregularity in the appointment of a member of a board, including in the appointment of the chair or deputy chair; or
- (b) a vacancy in the membership of a board.

Subdivision 3 Delegation by Hospital and Health Boards

30 Delegation by boards

- (1) The board for a Hospital and Health Service may delegate any of the Service's functions under this Act or the *Financial Accountability Act 2009*—
 - (a) to a committee of the board if all of the members of the committee are board members; or

[s 31]

- (b) to the executive committee established by the board; or
 - (c) to the health service chief executive.
- (2) The health service chief executive, with the written approval of the board, may subdelegate a function mentioned in subsection (1) to an appropriately qualified—
- (a) employee of the Hospital and Health Service; or
 - (b) health service employee employed in the department and working for the Service.
- (3) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

the person's classification level or how senior the person is in the Hospital and Health Service

Subdivision 4 Conduct of business

31 Members to act in public interest

A member of a board is to act impartially and in the public interest in performing the member's duties.

32 Conduct of business by boards

A board is to conduct its business in the way stated in schedule 1.

Division 2A Executive committees

32A Hospital and Health Board must establish executive committee for Hospital and Health Service

A board must establish, as a committee of the board, an executive committee for the Service controlled by the board.

32B Function of executive committee

- (1) The function of the executive committee is to support the board in its role of controlling the Service for which it is established by—
 - (a) working with the health service chief executive to progress strategic issues identified by the board; and
 - (b) strengthening the relationship between the board and the health service chief executive to ensure accountability in the delivery of services by the Service.
- (2) Without limiting subsection (1), an executive committee may, at the direction of the board—
 - (a) oversee the performance of the Service against the performance measures stated in the service agreement; and
 - (b) support the board in the development of engagement strategies and protocols with primary healthcare organisations, monitor their implementation, and address issues that arise in their implementation; and
 - (c) support the board in the development of service plans and other plans for the Service and monitor their implementation; and
 - (d) work with the health service chief executive in responding to critical emergent issues in the Service; and
 - (e) perform other functions given to the executive committee by the board.

[s 32C]

- (3) A regulation may prescribe other matters relating to an executive committee's functions.

32C Membership of executive committee

- (1) An executive committee consists of the following—
 - (a) the chair or deputy chair of the board who is to be chair of the committee;
 - (b) at least 2 other board members, decided by the board, at least one of whom is a clinician.

- (2) In this section—

clinician means a person who—

- (a) is a health professional registered under the Health Practitioner Regulation National Law, other than as a student; and
- (b) is currently directly or indirectly providing care or treatment to persons; and
- (c) is in a profession that provides care or treatment to persons in public sector health services.

32D Conduct of business by executive committee

- (1) The health service chief executive of a Service is to attend all meetings of the Service's executive committee, unless excused by the chair of the committee.
- (2) A quorum for a meeting of an executive committee is one-half of the number of its members, or if one-half is not a whole number, the next highest whole number.
- (3) An executive committee must keep a record of the decisions it makes when exercising a power delegated to it by the board that established the committee.
- (4) An executive committee is to otherwise conduct its business, including its meetings, in the way the board that established the committee considers appropriate.

Division 3 Health service chief executives

33 Appointment of health service chief executives

- (1) A Hospital and Health Service's board must appoint a health service chief executive to manage the Service.
- (2) The appointment is not effective until it is approved by the Minister.
- (3) The person appointed as health service chief executive must also be appointed as a health executive.
- (4) In managing the Service, the health service chief executive is subject to direction by the Service's board.

34 Delegation by health service chief executive

- (1) A health service chief executive may delegate the health service chief executive's functions under this Act to an appropriately qualified—
 - (a) employee of the Hospital and Health Service; or
 - (b) health service employee employed in the department and working for the Service.
- (2) However, the health service chief executive must not delegate the authorisation to disclose confidential information in the public interest under section 160.
- (3) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

the person's classification level or how senior the person is in the Service

[s 35]

Division 4 Service agreements, engagement strategies and protocols

35 Chief executive and Service must enter into service agreements

- (1) The chief executive and a Service must enter into a service agreement for the Service.
- (2) The chair of the Service's board must sign the agreement on behalf of the Service.
- (3) A service agreement is binding on the chief executive and the Service.

36 Term of service agreement

A service agreement must be for a term of not longer than 3 years.

37 Negotiations for service agreement

- (1) For the first service agreement, the chief executive and the Service must enter into negotiations immediately after the commencement of this section.
- (2) For a new service agreement, the chief executive and the Service must enter into negotiations at least 6 months before the expiry of the existing service agreement.

38 Minister may decide on terms of service agreement

- (1) This section applies if the chief executive and the Service cannot agree on some or all of the terms of a service agreement—
 - (a) for the first agreement after the commencement of this section—by a date prescribed by regulation; or
 - (b) for a service agreement that is to replace an existing service agreement on its expiry—at least 1 month before the expiry of the existing agreement.

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- (2) The chief executive and the Service are to immediately advise the Minister—
 - (a) that they can not agree; and
 - (b) of the terms of the agreement on which they can not agree.
 - (3) The Minister must decide the terms and advise the chief executive and the Service of the terms.
 - (4) The chief executive and the Service must include the terms decided by the Minister in the agreement.

39 Procedure to amend service agreement

- (1) If the chief executive or the Service wants to amend the terms of a service agreement, the party that wants to amend the agreement must give written notice of the proposed amendment to the other party.
- (2) If the chief executive and the Service can not agree on the terms of the amendment, the party wanting the amendment must immediately advise the Minister—
 - (a) that they can not agree; and
 - (b) of the terms on which they can not agree.
- (3) The Minister must decide the terms and advise the chief executive and the Service of the terms.
- (4) For subsection (3), the Minister may decide that the amendment should not be made.
- (5) The chief executive and the Service must include any terms decided by the Minister in the agreement.

40 Engagement strategies

- (1) A Service must develop and publish the following strategies—

[s 41]

- (a) a strategy (a *clinician engagement strategy*) to promote consultation with health professionals working in the Service; and
 - (b) a strategy (a *consumer and community engagement strategy*) to promote consultation with health consumers and members of the community about the provision of health services by the Service.
- (2) The Service must consult with the following persons in developing the strategies—
 - (a) for the clinician engagement strategy—health professionals working in the Service;
 - (b) for the consumer and community engagement strategy—health consumers and members of the community.
- (3) Each of the strategies must—
 - (a) satisfy any requirements prescribed by regulation for that strategy; and
 - (b) be published in a way that allows the strategy to be accessed by members of the public, including, for example, on the internet.
- (4) The Service must give effect to the strategies in performing its functions under this Act.

41 Review of strategies

- (1) A Service must complete a review of each strategy mentioned in section 40 within 3 years after it is made and afterwards within 3 years after the previous review.
- (2) The Service must consult with the following persons in reviewing a strategy—
 - (a) for the clinician engagement strategy—health professionals working in the Service;
 - (b) for the consumer and community engagement strategy—health consumers and members of the community.

- (3) If a strategy is amended as a result of the review, the Service must publish the amended strategy in a way that allows it to be accessed by members of the public, including, for example, on the internet.

42 Protocol with primary healthcare organisations

- (1) A Service must use its best endeavours to agree on a protocol with local primary healthcare organisations to promote cooperation between the Service and the organisations in the planning and delivery of health services.
- (2) A protocol must—
 - (a) satisfy any requirements prescribed by regulation for the protocol; and
 - (b) be published in a way that allows the protocol to be accessed by members of the public, including, for example, on the internet.
- (3) The Service must give effect to the protocol in performing its functions under this Act.

43 Review of protocol

- (1) A Service must use its best endeavours to complete a review of a protocol within 3 years after it is made and afterwards within 3 years after the previous review.
- (2) The review must be conducted with the local primary healthcare organisations.
- (3) If a protocol is amended as a result of the review, the Service must publish the amended protocol in a way that allows it to be accessed by members of the public, including, for example, on the internet.

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- (c) the appointment and removal of members of an ancillary board.

Division 5 Directions to Hospital and Health Services and appointment of advisers to Hospital and Health Boards

44 Minister may give directions to Service

- (1) The Minister may give a Service a written direction about a matter relevant to the performance of its functions under this Act, if the Minister is satisfied it is necessary to do so in the public interest.
- (2) Without limiting subsection (1), the Minister may direct a Service to give the Minister stated reports and information.
- (3) However, the Minister may not give a direction about—
 - (a) the health services provided, or to be provided, to a particular person; or
 - (b) the employment of a particular person.
- (4) The Minister must give a copy of a direction to the chief executive who must, as soon as practicable, publish it in a way that allows it to be accessed by members of the public, including, for example, on the internet.
- (5) A Service must comply with a direction given by the Minister.
- (6) A Service's annual report under the *Financial Accountability Act 2009* for a financial year must include a statement about—
 - (a) each direction given by the Minister to the Service during the financial year; and
 - (b) action taken by the Service as a result of the direction.

[s 44A]

44A Minister may appoint advisers to boards

- (1) The Minister may appoint a person to be an adviser to a board if the Minister considers that the adviser may assist the board to improve the performance of—
 - (a) the board; or
 - (b) the Service controlled by the board.
- (2) An appointment under this section must be—
 - (a) in writing; and
 - (b) for the term not exceeding 1 year decided by the Minister; and
 - (c) on the terms and conditions, including remuneration, decided by the Minister.
- (3) The Minister must not appoint more than 2 persons to be advisers to a board at the same time.
- (4) An appointment under this section is effective whether or not the board agrees to the appointment.
- (5) An adviser may resign by notice in writing to the Minister.

44B Matters to which Minister may have regard in deciding whether to appoint adviser

In deciding whether to appoint an adviser to a board, the Minister may have regard to the performance of the board or the Service controlled by the board in relation to the following—

- (a) the safety and quality of the health services being provided by the Service;
- (b) the way in which the Service is complying with the service agreement for the Service;
- (c) the financial management of the Service.

44C Functions of advisers

The functions of an adviser are—

- (a) to attend board meetings; and
- (b) to provide information and advice to the board to assist it in performing its functions under this Act; and
- (c) to advise the Minister and the chief executive on any matter relating to the performance of the board or the Service controlled by the board.

44D Adviser not a member of board but has duty of disclosure

An adviser is not a member of the board, but schedule 1, section 9 applies to an adviser as if the adviser were a member of the board.

44E Obligations of board in relation to adviser

- (1) While an adviser's appointment is in force, the board must provide the adviser with all notices of board meetings, and all documents and other information provided to board members.
- (2) The board must permit the adviser—
 - (a) to attend all meetings of the board; and
 - (b) to provide information and advice to the board during meetings.

Part 3 Functions of chief executive and chief health officer

Division 1 Chief executive

44F Chief executive subject to direction of the Minister

- (1) The chief executive is subject to the directions of the Minister in managing the department.

[s 45]

- (2) However, in making decisions about particular individuals, the chief executive—
- (a) must act independently, impartially and fairly; and
 - (b) is not subject to the direction of the Minister.

45 Functions of chief executive

The chief executive has the following functions—

- (a) to provide strategic leadership and direction for the delivery of public sector health services in the State;
- (b) to promote the effective and efficient use of available resources in the delivery of public sector health services in the State;
- (c) to develop Statewide health service plans, workforce plans and capital works plans;
- (d) to manage major capital works for proposed public sector health service facilities;
- (e) to employ staff in the department, including to work for Services other than prescribed Services;
- (f) to manage Statewide industrial relations, including the negotiation of certified agreements, and making applications to make or vary awards;
- (g) to establish the terms and conditions of employment for health service employees;
- (h) to deliver specialised health services;
- (i) to arrange for the provision of health services to public patients in private health facilities;
- (j) to develop and issue health service directives to apply to the Services;
- (k) to enter into service agreements with the Services;
- (l) to provide support services to Services;
- (m) to monitor and promote improvements in the quality of health services delivered by Services;

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- (n) to monitor the performance of Services, and take remedial action when performance does not meet the expected standard;
 - (o) to receive and validate performance data and other data provided by Services;
 - (p) to provide performance data and other data to the Commonwealth, or an entity established under an Act of the Commonwealth;
 - (q) other functions given to the chief executive under this Act or another Act.

46 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's functions under this Act to a health service chief executive or an appropriately qualified employee of the department.
- (2) However, the chief executive must not delegate the function—
 - (a) to enter into a service agreement with a Service; or
 - (b) to authorise the disclosure of confidential information in the public interest under section 160; or
 - (c) to issue a health service directive.
- (3) Subsection (4) applies if the chief executive is considering whether, and the extent to which, to delegate to a health service chief executive a matter that affects employees.
- (4) The chief executive must have regard to the Service's capacity and capability to effectively administer the human resource management and industrial relations processes for employees.
- (5) A health service chief executive, with the written approval of the chief executive, may subdelegate a function delegated to the health service chief executive under subsection (1) to an appropriately qualified—
 - (a) health executive employed by the Service; or
 - (b) health service employee employed in the department and working for the Service.

[s 47]

(6) A health executive in the department, with the written approval of the chief executive, may subdelegate a function delegated to the health executive under subsection (1) to an appropriately qualified departmental employee.

(7) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

the person's classification level or how senior the person is in the department

Division 2 Chief executive may issue health service directives

47 Health service directives

(1) The chief executive may develop and issue health service directives to Services for the following—

- (a) promoting service coordination and integration in the delivery of health services—
 - (i) between Services; and
 - (ii) between Services, the department and other service providers;
- (b) optimising the effective and efficient use of available resources in the delivery of health services;
- (c) setting standards and policies for the safe and high quality delivery of health services;
- (d) ensuring consistent approaches to the delivery of health services, employment and the delivery of support services;
- (e) supporting the application of public sector policies, State and Commonwealth Acts, and agreements entered into by the State.

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- (2) Without limiting subsection (1), health service directives may be about the following—
- (a) standards and policies for the healthcare rights of users of public sector health services;
 - (b) standards and policies for improving the quality of health services;
 - (c) the terms and conditions of employment for health service employees;
 - (d) the use by Services of support services provided by the department, other departments or other Services;
 - (e) the purchasing of goods and services under contracts and agreements entered into by the department, other departments or other Services;
 - (f) the provision of information to the chief executive and other entities;
 - (g) responding to public health emergencies;
 - (h) the setting of fees and charges, including for the provision of services to private patients, for residential care, and for the supply of pharmaceuticals;
 - (i) other matters prescribed under a regulation.
- (3) Health service directives may apply to all Services, some Services, or a stated type of public sector health service facility or public sector health service.
- (4) If a health service directive about the terms and conditions of employment for health service employees is inconsistent with an industrial instrument, the industrial instrument prevails to the extent of the inconsistency.
- (5) Subsection (4) does not apply if the terms and conditions of employment in the health service directive are more favourable to the employee than those in the industrial instrument.
- (6) In this section—
delivery, of health services, includes—

[s 48]

- (a) matters that support the delivery of health services, including—
 - (i) the establishment and operation of clinical networks; and
 - (ii) the training of health professionals in public sector health service facilities; and
 - (iii) the engagement of independent contractor visiting medical officers or other contracted health professionals; and
 - (iv) private practice arrangements for health professionals; and
 - (v) the management of information, including the way in which information is captured, collated, shared and reported; and
 - (vi) research, innovation and the application of intellectual property; and
- (b) undertaking capital works for proposed public sector health service facilities; and
- (c) the provision of health services to public patients in private health facilities.

48 Consultation on health service directives

In developing a health service directive that applies to a Service, the chief executive must consult with the Service.

Editor's note—

This provision had not commenced on or before the reprint date.

49 Publication of health service directives

A health service directive must be published in a way that allows the directive to be accessed by members of the public, including, for example, on the internet.

50 Health service directives binding

A health service directive is binding on the Service to which it relates.

51 Review of health service directives

- (1) The chief executive must complete a review of a health service directive within 3 years after it is made and afterwards within 3 years after the previous review.
- (2) In reviewing a directive, the chief executive must consult with a Service for a directive that applies to the Service.
- (3) If a directive is amended as a result of the review, the chief executive must publish the amended directive in a way that allows it to be accessed by members of the public, including, for example, on the internet.

Division 3 Chief health officer

52 Chief health officer

- (1) There is to be a chief health officer for the State.
- (2) The chief health officer is to be employed as a public service officer or as a health service employee.
- (3) The chief health officer must be a medical practitioner.

53 Functions of chief health officer

The functions of the chief health officer are—

- (a) to provide high-level medical advice to the chief executive and the Minister on health issues, including policy and legislative matters associated with the health and safety of the Queensland public; and
- (b) any functions given to the chief health officer by the chief executive; and
- (c) other functions under this or another Act.

Part 4 **Performance reporting and auditing**

Division 1 **Performance reporting**

54 **Chief executive may provide data to Commonwealth**

- (1) Subsection (2) applies to performance data and other data provided by a Service to the chief executive—
 - (a) under the service agreement between the chief executive and the Service; or
 - (b) under a health service directive.
- (2) The chief executive may validate the data and provide relevant data to—
 - (a) the Commonwealth; or
 - (b) an entity established under an Act of the Commonwealth.
- (3) In this section—

relevant data means—

 - (a) data the State and Commonwealth have agreed is to be provided to—
 - (i) the Commonwealth; or
 - (ii) an entity established under an Act of the Commonwealth; or
 - (b) data the State and an entity established under an Act of the Commonwealth have agreed is to be provided to the entity.

Division 2 Health service audits

55 Function of health service auditors

- (1) The function of a health service auditor is to conduct health service audits.
- (2) In this section—

efficient price means the cost of providing a particular health service as stated by an entity established under an Act of the Commonwealth to provide advice on the funding of health services.

health service audit means an audit—

- (a) to examine the accuracy of performance data and other data reported by a Service or a manager of a specialised health service; or
- (b) to investigate the circumstances leading to an inability of a Service or a specialised health service to meet any performance measures applying to the Service or specialised health service; or

Example—

an audit to investigate the circumstances leading to an inability of a Service to provide services at an efficient price

- (c) to investigate any other matter to promote the effective and efficient use of available resources in the delivery of public sector health services.

56 Appointment of health service auditors

- (1) The chief executive (the *appointer*) may, in writing, appoint a person as a health service auditor to undertake a health service audit in the department or a Service.
- (2) A health service chief executive (also the *appointer*) may, in writing, appoint a person as a health service auditor to undertake a health service audit in the Service.

[s 57]

- (3) However, the appointer may appoint a person as a health service auditor only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

57 Appointment conditions and limit on powers

- (1) A health service auditor holds office on any conditions stated in—
- (a) the auditor's instrument of appointment; or
 - (b) a signed notice given to the auditor; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the auditor or a regulation may limit the auditor's powers.
- (3) In this section—
- signed notice* means a notice signed by the appointer.

58 When office ends

- (1) The office of a person as a health service auditor ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the auditor's resignation under section 59 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an auditor ends.
- (3) In this section—
- condition of office* means a condition under which the auditor holds office.

59 Resignation

- (1) A health service auditor may resign by signed notice given to the appointer.

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- (2) However, if holding office as an auditor is a condition of the auditor holding another office, the auditor may not resign as an auditor without resigning from the other office.

60 Powers of health service auditors

- (1) A health service auditor may enter a public sector health service facility at any time the facility is open for business or otherwise open for entry.
- (2) A health service auditor may, in the exercise of the auditor's functions, ask an employee of the department or a Service to give to the auditor a document, including a document containing confidential information, that—
- (a) is relevant to the auditor's functions; and
 - (b) is in the possession or control of the employee.
- (3) The employee must comply with the request.
- (4) If requested by the employee, the health service auditor must produce the auditor's instrument of appointment to the employee.
- (5) The health service auditor may make copies of, and take extracts from, the document.
- (6) In this section—
- confidential information*** means any information that—
- (a) is about a person who is receiving or has received a public sector health service; and
 - (b) could identify the person.

61 Giving health service auditor false or misleading information

- (1) A person must not, in relation to a health service audit, give a health service auditor information, or a document containing information, that the person knows is false or misleading in a material particular.

[s 62]

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to a health service audit whether or not the information or document was given in response to a specific power under this division.

62 Obstructing health service auditor

- (1) A person must not obstruct a health service auditor exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed a health service auditor and the auditor decides to proceed with the exercise of the power, the auditor must warn the person that—
 - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the auditor considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

63 Duty of confidentiality of health service auditors

- (1) This section applies to a person who—
 - (a) is or has been a health service auditor; and
 - (b) in that capacity was given information.
- (2) The person must not disclose the information to anyone else.
Maximum penalty—100 penalty units.
- (3) However, the person may disclose the information to someone else—
 - (a) to the extent necessary to perform the person's functions under or in relation to this Act; or

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- (b) if the person to whom the information relates consents in writing to the disclosure; or
 - (c) if the disclosure is otherwise required or permitted by another Act or law.
- (4) Also, the person may disclose the information to someone else if—
- (a) the disclosure is to—
 - (i) the relevant chief executive; or
 - (ii) another person authorised in writing by the relevant chief executive to receive the information; and
 - (b) the purpose of the disclosure under this section is to allow further disclosure of the information under section 160.

64 Reports by health service auditors

- (1) A health service auditor must prepare and provide a report to the appointer for each health service audit.
- (2) The report may include recommendations about—
 - (a) ways in which the accuracy of performance data and other data provided by a Service or a specialised health service may be improved; or
 - (b) ways in which the performance of a Service or a specialised health service may be improved; or
 - (c) whether stated public sector health services should—
 - (i) continue to be provided by a Service or a specialised health service; or
 - (ii) be transferred to a Service or other entity; or
 - (iii) be discontinued.
- (3) Subsection (4) applies to a report provided to the chief executive after a health service audit in a Service.

[s 65]

- (4) After considering the report, the chief executive may issue a direction to a Service.
- (5) The Service must comply with the direction.
- (6) Subsection (7) applies to a report provided—
 - (a) to the chief executive after a health service audit in the department; or
 - (b) to a health service chief executive after a health service audit in the Service.
- (7) After considering the report, the chief executive or health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

65 Chief executive may request report from health service chief executive

- (1) This section applies if a report is provided to a health service chief executive after a health service audit in a Service.
- (2) If requested by the chief executive, the health service chief executive must give a copy of the report to the chief executive.

Part 5 Health service employees

Division 1 General

66 Conditions of employment

- (1) The conditions of employment for a health service employee, other than for a health executive, are governed by—
 - (a) this Act; and
 - (b) the applied Public Service law; and

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- (c) an industrial instrument that applies to the employee; and
 - (d) health service directives; and
 - (e) if the employee is appointed on a contract for a fixed term—the employee’s contract.
- (2) A health executive’s conditions of employment are governed by—
- (a) this Act; and
 - (b) the applied Public Service law; and
 - (c) health service directives; and
 - (d) the health executive’s contract.
- (3) The chief executive may decide that a particular health service employee’s conditions of employment are to be more favourable than those contained in an industrial instrument that applies to the employee.

67 Appointment of health service employees

- (1) The chief executive may appoint a person as a health service employee in the department, including as an employee of the department working for a Service that is not a prescribed Service.
- (2) A Service may appoint a person as a health executive in the Service.
- (3) A prescribed Service may appoint a person as any health service employee in the Service.
- (4) Appointment as a health service employee may be—
 - (a) on tenure; or
 - (b) on contract for a fixed term, including as a health executive; or
 - (c) on a temporary basis; or
 - (d) on a casual basis.

[s 68]

- (5) An appointment under this section may be for full-time or part-time employment.

68 Contracted health service employees other than health executives

- (1) This section applies to a health service employee other than a health executive.
- (2) A person appointed on a contract for a fixed term must enter into a written contract of employment—
- (a) for an employee of the department—with the chief executive; or
 - (b) for an employee of a prescribed Service—with the health service chief executive.

69 Health service employees not public service employees

A health service employee is employed under this Act and not under the *Public Service Act 2008*.

69A Modification of Industrial Relations Act 1999 for health service employees

The *Industrial Relations Act 1999*, schedule 4A states the way that Act is modified for Hospital and Health Services prescribed under the *Hospital and Health Boards Act 2011*, section 20(4) and their employees.

Division 2 Health executive service

70 Health executive service continued

The health executive service established under the repealed Act is continued under this Act.

71 Purpose of health executive service

The purpose of the health executive service is to promote effectiveness and efficiency in the delivery of public sector health services by attracting, developing and retaining a core of mobile, highly skilled health executives.

72 Principles of health executive service employment

Employment in the health executive service is to be directed towards ensuring that health executives—

- (a) develop a Statewide perspective about the delivery of public sector health services; and
- (b) continue their executive development; and
- (c) develop their skills through their deployment in Services and the department.

73 Composition of health executive service

The health executive service consists of the following—

- (a) the health service chief executives;
- (b) other persons appointed under section 67 as health executives in Services or the department.

74 Basis of employment for health executives

(1) Each person appointed as a health executive must enter into a written contract of employment with the following—

- (a) for a health executive employed by a Service (other than the health service chief executive)—the health service chief executive;
- (b) for a health executive in the department—the chief executive;
- (c) for a health service chief executive—the chair of the board for the Service.

(2) The contract of employment must state—

[s 75]

- (a) the term, of not longer than 5 years, of the person's employment; and
 - (b) that, if the person's employment as a health executive continues to the end of the term, a further contract may be entered into under this section; and
 - (c) the person's functions; and
 - (d) that the person must meet any performance criteria stated in the contract; and
 - (e) the person's classification level, and the remuneration to which the person is entitled.
- (3) A health executive may resign by written notice of resignation given, at least 1 month before the notice is to take effect, to the person with whom the health executive entered into the contract of employment.
- (4) A health executive's appointment and contract of employment may be terminated by written notice given to the health executive at least 1 month before it is to take effect by—
- (a) for a health executive employed by a Service (other than the health service chief executive)—the health service chief executive;
 - (b) for a health executive in the department—the chief executive;
 - (c) for a health service chief executive—the chair of the board for the Service.
- (5) For subsection (4), the termination of the appointment and contract of employment of a health service chief executive is not effective until it is approved by the Minister.

75 Exclusion of certain matters from review under other Acts

- (1) An excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 1999*.

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- (2) However, this section has no effect on the *Industrial Relations Act 1999*, section 276.

Note—

The *Industrial Relations Act 1999*, section 276 allows the commission to amend or declare void a contract, wholly or partly, in the circumstances stated in the section.

- (3) Without limiting subsection (1), industrial instruments do not apply to a health executive.
- (4) A decision about an excluded matter can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991*.
- (5) In this section—

excluded matter means—

- (a) a decision to appoint, or not to appoint, a person as a health executive; or
- (b) the contract of employment of, or the application of this part or a provision of this part to, a health executive.

76 Fixing of remuneration packages and classification levels for health executives

- (1) The chief executive may from time to time fix—
- (a) the remuneration packages for health executives; and
- (b) the classification levels at which they are to be employed; and
- (c) the terms and conditions of their contracts.
- (2) In exercising the chief executive's powers under subsection (1), the chief executive may have regard to—
- (a) the remuneration packages and classification levels for public sector employees employed in Queensland or other States; and
- (b) the remuneration arrangements for similar private sector employees employed in Queensland.

[s 77]

Division 3 Other provisions relating to health service employees

77 Redeployment or secondment to lower classification level

- (1) A health service employee may be redeployed or seconded at a lower classification level only if the person consents to the redeployment or secondment.
- (2) However, subsection (1) does not prevent redeployment or secondment to a lower classification level as a result of disciplinary action against the employee.

78 Transfer of health service employees

- (1) If a health service employee is transferred, the transfer has effect unless the employee establishes reasonable grounds for refusing the transfer to the satisfaction of the relevant employer.
- (2) If the employee refuses the transfer after failing to establish reasonable grounds for refusing the transfer to the relevant employer's satisfaction, the relevant employer may end the employee's employment by signed notice given to the employee.
- (3) If the employee establishes reasonable grounds to the relevant employer's satisfaction—
 - (a) the transfer is cancelled; and
 - (b) the refusal must not be used to prejudice the employee's prospects for future promotion or advancement.
- (4) Subsection (5) applies to the transfer of a health executive, or another health service employee if the employee is employed on contract for a fixed term.
- (5) The transfer has effect despite anything in the contract under which the executive or employee is employed.

79 Entitlement on ending of particular employment contracts

- (1) This section applies if—
 - (a) a health service employee is employed on contract other than as a health executive; and
 - (b) the contract—
 - (i) is terminated other than by disciplinary action; or
 - (ii) expires and is not renewed or replaced by another contract of employment as a health service employee other than as a health executive; and
 - (c) when the employee was first employed under the contract, or an earlier continuous contract of employment as a health service employee other than as a health executive, the employee was employed on tenure.
- (2) The employee becomes a health service employee on tenure.
- (3) The employee is to be employed—
 - (a) at the classification level at which the employee would have been employed if the employee had continued in employment as a health service employee on tenure; and
 - (b) on the remuneration to which the employee would have been entitled if the employee had continued in employment as a health service employee on tenure.

Division 4 Matters relating to employment of health service employees by Services

80 Departmental health service employees to be employed by Services

- (1) This section applies to a person employed in the department who is working for a Service immediately before the prescribed day for that Service.

[s 80A]

- (2) From the prescribed day, the person is taken to be employed by the Service on the same terms, conditions and entitlements as those applying to the person's employment in the department immediately before the prescribed day.
- (3) Also, the following apply for the person—
 - (a) the person retains and is entitled to all rights, benefits and entitlements that have accrued to the person because of the person's previous employment as a health service employee in the department;
 - (b) the person's accruing rights, including to superannuation or recreation, sick, long service or other leave are not affected;
 - (c) continuity of service is not interrupted, 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;
 - (d) the employment does not constitute a termination of employment or a retrenchment or redundancy;
 - (e) the person is not entitled to a payment or other benefit because he or she is no longer employed in the department.
- (4) Subject to this section, the chief executive may issue a direction to a person to facilitate the transition of employees from the department to a Service.
- (5) A person given a direction must comply with the direction.
- (6) If a person employed under subsection (2) was employed in the department under a contract, the person is taken to be employed by the Service under the contract under which the person was employed before the prescribed day.

80A Appointment to perform functions or do other things not affected by becoming employees of prescribed Service

- (1) Subsection (2) applies if—

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- (a) a person is employed in the department and is working for a Service before the person becomes an employee of the Service under section 80; and
 - (b) before the person becomes an employee of the Service the person is appointed to perform a function or to do anything under this Act; and
 - (c) the function or thing has not been completed immediately before the prescribed day.
- (2) The person's appointment mentioned in subsection (1)(b) is not affected and the function or thing may be completed after the prescribed day.

Example—

A person's appointment as a clinical reviewer or as a member of an RCA team is not affected by the person becoming an employee of a Service and the person may complete the matter for which he or she was appointed.

80B Matters and proceedings not affected by persons becoming employees of prescribed Service

- (1) Subsection (2) applies if—
- (a) a person is employed in the department and is working for a Service before the person becomes an employee of the Service under section 80; and
 - (b) before the person becomes an employee of the Service a proceeding is taken by or against the person or anything else is done in relation to the person as an employee of the department; and
 - (c) the proceeding or other thing has not been completed immediately before the prescribed day.
- (2) The proceeding may be continued and completed after the prescribed day by or against the Service instead of the department.
- (3) For anything other than a proceeding, the thing may be continued unaffected by the person becoming an employee of the Service.

[s 81]

Examples for subsection (3)—

A recruitment and selection process involving a person employed in the department and working for a Service started before the prescribed day may continue after the prescribed day.

The approval of the annual leave for a person employed in the department and working for a Service before the prescribed day is effective after the prescribed day.

Part 6 Safety and quality

Division 1 Quality assurance committees

81 Purpose of division

The purpose of this division is to improve the safety and quality of health services by providing protections for quality assurance committees established under this division.

82 Establishment of quality assurance committees

- (1) Any of the following may establish a quality assurance committee—
 - (a) for a matter relating to its functions—
 - (i) a Service; or
 - (ii) a professional association, society, college or other entity whose functions relate to the provision of health services or to the providers of health services;
 - (b) the chief executive for a matter relating to a Service or the department;
 - (c) the licensee of a private health facility for a matter relating to health services provided in its facility.

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- (2) Two or more of the bodies mentioned in subsection (1) may jointly establish a single committee.
 - (3) However, an entity must not establish a committee unless satisfied—
 - (a) if the committee is established by an entity other than an individual—that the committee is established under a resolution or in accordance with the rules or official procedures of the entity; and
 - (b) that the committee’s functions include the assessment and evaluation of the quality of health services, the reporting and making of recommendations concerning those services and monitoring the implementation of its recommendations; and
 - (c) that the committee comprises individuals with training and experience appropriate to the services to be assessed and evaluated by the committee; and
 - (d) that the exercise of the committee’s functions would benefit from the immunities and protections afforded by this division.
 - (4) An entity mentioned in subsection (1)(a) and (c) must notify the chief executive in the approved form of the establishment of the committee under this section.
 - (5) For a committee established by the chief executive, the chief executive must keep a record of its establishment in the approved form.
 - (6) The chief executive must establish and maintain a register of committees established under this section.
 - (7) The chief executive must make the register available for inspection by members of the public on the department’s website.

Editor’s note—

The department’s website is <www.health.qld.gov.au>.

[s 83]

83 Restrictions on committees

- (1) A committee is to have regard to the rules of natural justice in so far as they are relevant to the functions of a committee.
- (2) A report furnished, or information made available, by a committee, must not disclose the identity of an individual who is a provider or recipient of health services unless the individual has consented in writing to that disclosure.
- (3) However, a report may identify a provider in the copy of the report given to the provider to enable the provider to comment on the report.

84 Disclosure of information

- (1) A person who is or was a member of a committee must not disclose to someone else information acquired by the person as a member of the committee, other than—
 - (a) for the purpose of exercising the functions of a member of the committee; or
 - (b) to members of another committee if the information is relevant to the functions of the other committee; or
 - (c) to a prescribed patient safety entity under section 85; or
 - (d) if the person is a registered health practitioner—for notifying the National Agency about information in relation to a reasonable belief of the person that another registered health practitioner has behaved in a way that constitutes public risk notifiable conduct; or
 - (e) to comply with a requirement of an inspector made of the person under this Act, if the requirement relates to an offence under this division; or
 - (f) under a regulation made under section 91.

Maximum penalty—100 penalty units.

- (2) Also, a person who is or was a relevant person for a committee must not disclose to someone else information acquired by the person as a relevant person for the committee, other than—

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- (a) for the purpose of helping the committee to perform its functions; or
 - (b) to comply with a requirement of an inspector made of the person under this Act, if the requirement relates to an offence under this division.

Maximum penalty—100 penalty units.

85 Giving of reports and documents to patient safety entity

- (1) A committee may give a copy of a report or other document to a prescribed patient safety entity for an authorised purpose for the entity.
- (2) A person who performs functions for the entity—
 - (a) must not give a copy of the report or other document to anyone else; and
 - (b) must not disclose any information contained in the copy of the report or other document to anyone else other than for the authorised purpose for which the copy of the report or document was given; and
 - (c) must not use the copy of the report or document, other than for the authorised purpose for which the copy of the report or document was given.

Maximum penalty—100 penalty units.

- (3) In this section—

authorised purpose, for a prescribed patient safety entity, means a purpose prescribed under a regulation for the entity that relates to the entity's responsibilities.

patient safety entity means an entity whose responsibilities include the planning, implementation, management and evaluation of patient safety initiatives and programs.

prescribed patient safety entity means a patient safety entity prescribed under a regulation.

[s 86]

86 Information about excluded notifiable conduct

- (1) This section applies for the purpose of the Health Practitioner Regulation National Law (Queensland), section 141(4)(d).
- (2) Subsection (3) applies if—
 - (a) a person is or was a member of a committee; and
 - (b) the person is a registered health practitioner; and
 - (c) the person forms a reasonable belief that another registered health practitioner has behaved in a way that constitutes excluded notifiable conduct; and
 - (d) the information that forms the basis of the reasonable belief was acquired while the person was exercising functions as a member of the committee.
- (3) The person must not disclose the information that forms the basis of the reasonable belief.

87 Protection for documents and information

- (1) This section applies to—
 - (a) a report or other document created by or for a committee; or
 - (b) information contained in a report or other document created by or for a committee; or
 - (c) information acquired by a person as a member of the committee or as a relevant person for the committee.
- (2) The document or information—
 - (a) can not be accessed under any order, whether of a judicial or administrative nature; and
 - (b) is not admissible in any proceeding, other than a proceeding for an offence under this division.
- (3) A person must not, and can not be compelled to, produce the document or information, or give evidence relating to the document or information—

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- (a) in any proceeding, other than a proceeding for an offence under this division; or
 - (b) in compliance with a requirement under an Act or legal process.
- (4) In this section—
- order* includes a direction or other process.
- proceeding* includes—
- (a) a civil proceeding; or
 - (b) a criminal proceeding; or
 - (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999* or a proceeding under the Health Practitioner Regulation National Law.

88 Protection from liability

- (1) A person who is or was a member of a committee, or relevant person for a committee, is not civilly liable for an act done, or omission made, honestly and without negligence under this division.
- (2) Without limiting subsection (1), if the act or omission involves giving information—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information given under an Act, oath, or rule of law or practice, the person—
 - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.
- (3) If a person who is or was a member of a committee, or a relevant person for a committee, incurs costs in defending proceedings relating to a liability against which the person is

[s 89]

protected under this section, the person must be indemnified by—

- (a) if the chief executive established the committee—the State; or
 - (b) if a Service established the committee—the Service; or
 - (c) if a professional association, society, college or other entity established the committee—the entity that established the committee; or
 - (d) if the licensee of a private health facility established the committee—the licensee of the private health facility.
- (4) For subsection (3), if the committee was established jointly by the entities mentioned in subsection (3)(a) to (d), the person must be indemnified jointly by the entities responsible for indemnifying the person.

89 Giving of information protected

- (1) This section applies to a person who honestly and on reasonable grounds gives information to a committee, or a relevant person for a committee, for the committee's functions.
- (2) The person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

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- (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
 - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

90 Information provider can not be compelled to give particular information in evidence

A person can not be compelled to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, any of the following—

- (a) whether or not the person gave information to a committee or a relevant person for a committee;
- (b) what information the person gave to a committee or a relevant person for a committee;
- (c) a document given by the person to a committee or a relevant person for a committee that was created by the person or another person for the committee;
- (d) information the person was given, or questions the person was asked, by a committee or a relevant person for a committee.

91 Further responsibilities of committees

A regulation may make provision for—

- (a) the procedure of committees and the manner in which they are to exercise their functions; and
- (b) permitting or requiring committees to make specified information available to the public; and
- (c) permitting or requiring committees to give reports or stated information concerning their activities to the Minister, the chief executive or another entity.

[s 92]

92 Effect of provisions of division

If there is an inconsistency between the provisions of this division and a provision of any other Act or law, the provisions of this division prevail to the extent of the inconsistency.

Division 2 Root cause analysis

Subdivision 1 Preliminary

93 Purpose of div 2

The purpose of this division is to facilitate the use of root cause analysis as a quality improvement technique to assess and respond to reportable events that happen while health services are being provided.

94 Definitions for div 2

In this division—

blameworthy act means any of the following—

- (a) an intentionally unsafe act;
- (b) deliberate patient abuse;
- (c) conduct that constitutes a criminal offence.

chain of events document see section 100(2).

commissioning authority see section 98.

coroner see the *Coroners Act 2003*, schedule 2.

health service facility means—

- (a) a public sector health service facility; or
- (b) a private health facility.

RCA, of a reportable event, see section 95.

RCA report see section 100(1).

RCA team means a group of persons appointed under section 98.

relevant health service, for a reportable event, means the health service during the provision of which the reportable event happened.

reportable event—

- (a) generally—means an event prescribed under a regulation that happens while a health service is being provided; or
- (b) in relation to an RCA report or chain of events document—means the reportable event to which the report or document relates.

root cause analysis, of a reportable event, see section 95.

95 Meaning of root cause analysis

- (1) **Root cause analysis** or **RCA**, of a reportable event, means a systematic process of analysis under which—
 - (a) factors that contributed to the happening of the event may be identified; and
 - (b) remedial measures that could be implemented to prevent a recurrence of a similar event may be identified.
- (2) However, a **root cause analysis** or **RCA**, of a reportable event, does not include—
 - (a) investigating the professional competence of a person in relation to the event; or
 - (b) finding out who is to blame for the happening of the event.

96 When is a health service provided

For this division, a health service is taken to be provided to a person if—

[s 97]

- (a) the service is provided to the person in a health service facility; or
- (b) the service is provided to the person by a health professional at another place; or
- (c) the person is undertaking care or treatment while residing in the community.

97 Guiding principles for conduct of RCA of reportable event

The principles intended to guide the conduct of an RCA of a reportable event are the following—

- (a) reporting and acknowledging errors happening while a health service is being provided is encouraged if people do not fear blame or reprisal;
- (b) people involved in providing health services should be accountable for their actions;
- (c) the focus of the RCA should be on identifying and improving the policies, procedures or practices relating to the provision of the health service that contributed to the happening of the event, rather than on the conduct of individuals;
- (d) participation in the RCA should be voluntary;
- (e) the benefits of conducting the RCA will be maximised—
 - (i) in an environment oriented towards learning from analysing the event; and
 - (ii) if the RCA is conducted in a timely way;
- (f) teamwork, good communication and sharing of information by people involved in providing health services should be fostered.

Subdivision 2 RCA teams

98 Appointment of RCA team

Each of the following persons (a *commissioning authority*) may appoint persons to be members of an RCA team to conduct an RCA of a reportable event—

- (a) if the event happens while a public sector health service is being provided by a Service—the health service chief executive;
- (b) if the event happens while a public sector health service is being provided by the department—the chief executive;
- (c) if the event happens while a health service is being provided by a private health facility—the individual who has the day-to-day management of the facility or the individual who has overall management responsibility for the facility.

99 Requirements for appointment

- (1) Before appointing persons to be members of an RCA team to conduct an RCA of a reportable event, the commissioning authority proposing to make the appointment must be satisfied that—
 - (a) the persons—
 - (i) have the appropriate skills, knowledge and experience to conduct an RCA of the event, having regard to the nature of the event; and
 - (ii) were not directly involved in providing the relevant health service; and
 - (b) the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information under subdivision 5; and

[s 100]

- (c) the conduct of an RCA of the event would be helped by the provision of immunities and protections provided to persons under subdivision 6.
- (2) In this section—
- relevant information* means information that will be compiled by the proposed RCA team in the conduct of an RCA of the reportable event.

Subdivision 3 Reporting

100 RCA team's report and chain of events document

- (1) An RCA team must, as soon as practicable after conducting an RCA of a reportable event, prepare a report (the *RCA report*) stating the following—
 - (a) a description of the event;
 - (b) a statement of the factors the RCA team considers contributed to the happening of the event;
 - (c) any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of health services, to reduce the likelihood of, or prevent, the same type of event happening again.
- (2) In addition to the RCA report, the RCA team may prepare a document (the *chain of events document*) that details, or pictorially represents, the chain of events identified by the RCA team as having led to the happening of the reportable event.
- (3) The RCA report or chain of events document must not contain the name or address of—
 - (a) a person involved in providing the relevant health service; or
 - (b) the person who received the relevant health service; or
 - (c) a member of the RCA team.

101 Reporting to commissioning authority

- (1) The RCA team must, as soon as practicable after preparing the RCA report, give the report to the commissioning authority that appointed the RCA team members.
- (2) If the RCA team prepares a chain of events document for the reportable event, it must at the time of giving the RCA report under subsection (1) also give the document to the commissioning authority.

Subdivision 4 Stopping conduct of RCA of reportable event

102 Stopping conduct of RCA of reportable event—RCA team

- (1) This section applies if, while conducting an RCA of a reportable event, the RCA team conducting the RCA reasonably believes—
 - (a) the event involves a blameworthy act; or
 - (b) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person.
- (2) The RCA team must—
 - (a) stop conducting the RCA; and
 - (b) give written notice to the commissioning authority that appointed the RCA team members that the RCA team has stopped conducting the RCA.
- (3) For subsection (2)(b), the notice—
 - (a) must be in the approved form; and
 - (b) must not contain any information about why the RCA team stopped conducting the RCA.

103 Stopping conduct of RCA of reportable event—commissioning authority

- (1) This section applies if—
 - (a) persons have been appointed to be members of an RCA team to conduct an RCA of a reportable event; and
 - (b) the commissioning authority that appointed the RCA team members—
 - (i) receives information that leads the commissioning authority to reasonably believe—
 - (A) the event involves a blameworthy act; or
 - (B) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person; or
 - (ii) becomes aware that a relevant entity has started an investigation or assessment of, or enquiry into, the event; or
 - (iii) later comes to the view that the event the basis of the appointment is not a reportable event.
- (2) If subsection (1)(b)(i) or (iii) applies, the commissioning authority must, by written notice given to the RCA team, direct it to stop conducting the RCA.
- (3) If subsection (1)(b)(ii) applies, the commissioning authority may, by written notice given to the RCA team, direct it to stop conducting the RCA.
- (4) For subsection (2) or (3), the notice given to the RCA team must be in the approved form.
- (5) Before acting under subsection (3), the commissioning authority may consult with any relevant entity.
- (6) In this section—

relevant entity means—

 - (a) the Health Quality and Complaints Commission; or

- (b) a coroner; or
- (c) a board established under a health practitioner registration Act; or
- (d) the commissioner of the police service; or
- (e) another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event.

Subdivision 5 Disclosure or release of information

104 Definition for sdiv 5

In this subdivision—

information includes a document.

105 Disclosure of information—RCA team member or relevant person

- (1) A person who is or was a member of an RCA team must not disclose to someone else information acquired by the person as a member of the RCA team, other than for the purpose (an *authorised purpose*) of—
 - (a) the RCA team conducting an RCA of a reportable event; or
 - (b) the RCA team preparing an RCA report, chain of events document or safety and quality report; or
 - (c) the RCA team giving the commissioning authority that appointed the RCA team members—
 - (i) an RCA report or chain of events document under section 101; or
 - (ii) a notice under section 102; or
 - (iii) a safety and quality report under section 106; or

[s 106]

- (d) the RCA team complying with a requirement of an inspector made of the RCA team under this Act, if the requirement relates to an offence under this division; or
- (e) if the person is a registered health practitioner—notifying the National Agency about information in relation to a reasonable belief of the person that another registered health practitioner has behaved in a way that constitutes public risk notifiable conduct.

Maximum penalty—100 penalty units.

- (2) Also, a person who is or was a relevant person for an RCA team must not disclose to someone else information acquired by the person as a relevant person for the RCA team, other than for an authorised purpose.

Maximum penalty—100 penalty units.

- (3) In this section—

information includes—

- (a) the identity of a member of the RCA team; and
- (b) information from which a member of the RCA team could be identified.

106 Disclosure of information—commissioning authority or relevant person

- (1) A person who is or was a commissioning authority must not disclose to someone else information contained in an RCA report or chain of events document, or give someone else a copy of an RCA report or chain of events document, received by the person under section 101, other than—
 - (a) as required or permitted under sections 108 to 115; or
 - (b) as permitted under subsection (2).

Maximum penalty—100 penalty units.

- (2) A commissioning authority may give a safety and quality report prepared by, or for, the commissioning authority to—

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- (a) an individual involved in providing a health service to which the report relates; or
 - (b) an entity with responsibilities for the management of patient safety initiatives and programs for the relevant health service.
- (3) Also, a person who is or was a commissioning authority must not disclose to someone else—
- (a) the identity of a member of an RCA team appointed by the commissioning authority; or
 - (b) information from which a member of the RCA team could be identified.

Maximum penalty—100 penalty units.

- (4) Subsections (1) and (3) do not apply to—
- (a) the disclosure of information by a commissioning authority that is necessary or incidental to the exercise by the commissioning authority of its powers under this division; or
 - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person under this Act, if the requirement relates to an offence under this division.
- (5) Also, a person who is or was a relevant person for a commissioning authority must not disclose to someone else information acquired by the person as a relevant person for the commissioning authority.

Maximum penalty—100 penalty units.

- (6) Subsection (5) does not apply to—
- (a) the disclosure of information by a relevant person for a commissioning authority for the purpose of helping the commissioning authority exercise its powers under this division; or
 - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person

[s 107]

under this Act, if the requirement relates to an offence under this division.

(7) This section does not authorise the attachment of a copy of an RCA report or chain of events document to a safety and quality report.

(8) In this section—

safety and quality report means a report about the safety and quality of the health service to which an RCA report relates that is based on information contained in the RCA report.

107 Information about excluded notifiable conduct

(1) This section applies for the purpose of the Health Practitioner Regulation National Law (Queensland), section 141(4)(d).

(2) An RCA team is an approved body under this Act.

(3) Subsection (4) applies if—

(a) a person is or was a member of an RCA team; and

(b) the person is a registered health practitioner; and

(c) the person forms a reasonable belief that another registered health practitioner has behaved in a way that constitutes excluded notifiable conduct; and

(d) the information that forms the basis of the reasonable belief was acquired while the person was exercising functions as a member of the RCA team.

(4) The person must not disclose the information that forms the basis of the reasonable belief.

108 Release of information to Health Quality and Complaints Commission

(1) A commissioning authority must, as soon as practicable after receiving an RCA report under section 101, give the Health Quality and Complaints Commission—

(a) a copy of the report; and

- (b) details of the name and address of the entity responsible for providing the relevant health service.
- (2) The commissioning authority need not comply with subsection (1) if there is an agreement in force under section 110 relating to the report and details.

109 Release of information to chief health officer

- (1) This section applies if a commissioning authority receives an RCA report under section 101 and the reportable event happened at a private health facility.
- (2) The commissioning authority must, as soon as practicable after receiving the report, give the following to the chief health officer—
 - (a) a copy of the report;
 - (b) details of the name and address of the private health facility.

110 Release of information by chief health officer to Health Quality and Complaints Commission

- (1) This section applies if—
 - (a) a commissioning authority complies with section 109(2); and
 - (b) the authority has a written agreement with the chief health officer under which the chief health officer is authorised to give a copy of the RCA report and details mentioned in the subsection to the Health Quality and Complaints Commission.
- (2) The chief health officer must, as soon as practicable after receiving the RCA report, give a copy of the report and details to the Health Quality and Complaints Commission.

[s 111]

111 Release of information to director of mental health

- (1) This section applies if a commissioning authority receives an RCA report under section 101 and the relevant health service for the reportable event is an authorised mental health service.
- (2) The commissioning authority must, as soon as practicable after receiving the report, give the following to the director of mental health—
 - (a) a copy of the report;
 - (b) details of the name and address of the authorised mental health service.
- (3) In this section—

authorised mental health service means a health service declared to be an authorised mental health service under the *Mental Health Act 2000*, section 495.

112 Giving of copy of RCA report or chain of events document—patient safety entity

- (1) This section applies if the commissioning authority is—
 - (a) a health service chief executive; or
 - (b) the chief executive.
- (2) The commissioning authority must give a copy of each RCA report or chain of events document received by the commissioning authority under section 101 to a prescribed patient safety entity for an authorised purpose for the entity.
- (3) At the time of giving a copy of an RCA report or chain of events document to an entity under subsection (2), the commissioning authority must also give the entity—
 - (a) details of the reportable event; and
 - (b) details of the name and address of the entity responsible for providing the relevant health service.
- (4) A person who performs functions for the entity—

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- (a) must not give a copy of the report or document to anyone else; and
 - (b) must not disclose any information contained in the copy of the report or document, or information mentioned in subsection (3), to anyone else other than for the authorised purpose for which the copy of the report or document was given; and
 - (c) must not use the copy of the report or document, and the information mentioned in subsection (3), other than for the authorised purpose for which the copy of the report or document was given.

Maximum penalty—100 penalty units.

- (5) An authorised purpose mentioned in subsection (4)(b) or (c) does not include the disclosure of information contained in the copy of the RCA report or chain of events document, or information mentioned in subsection (3), that may lead to the identification of—
 - (a) a person involved in providing the relevant health service; or
 - (b) the person who received the relevant health service.

- (6) In this section—

authorised purpose, for a prescribed patient safety entity, means a purpose prescribed under a regulation for the entity that relates to the entity's responsibilities.

patient safety entity means an entity whose responsibilities include the planning, implementation, management and evaluation of patient safety initiatives and programs for a health service.

prescribed patient safety entity means a patient safety entity prescribed under a regulation for a relevant health service.

113 Giving of copy of RCA report etc.—investigation under the Coroners Act 2003

- (1) This section applies if—

[s 113]

- (a) a coroner is investigating the death of a person; and
 - (b) the death is a reportable event that happened while a health service was being provided.
- (2) This section also applies if—
- (a) a coroner is investigating the death of a person; and
 - (b) the coroner considers that a reportable event that happened while a health service was being provided to the person may be relevant to the investigation; and
 - (c) the reportable event is not the death.
- (3) If the coroner, or a police officer helping the coroner to investigate the death, asks a commissioning authority for the relevant health service whether an RCA team has conducted or is conducting an RCA of the reportable event, the commissioning authority must respond to the query as soon as practicable.

Maximum penalty—50 penalty units.

- (4) Subsection (5) applies if—
- (a) an RCA of the reportable event has been conducted by an RCA team; and
 - (b) an RCA report relating to the event has been given, under section 101, to the commissioning authority that appointed the RCA team members; and
 - (c) the commissioning authority has, under subsection (3), received a query from the coroner or a police officer helping the coroner to investigate the death.
- (5) The commissioning authority must—
- (a) if the commissioning authority received the report before receiving the query under subsection (3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the query; or
 - (b) if the commissioning authority had not received the report before receiving the query under subsection

(3)—give a copy of the report to the coroner or police officer as soon as practicable after receiving the report.

Maximum penalty—50 penalty units.

- (6) Subsection (7) applies if—
- (a) an RCA has been started by an RCA team in relation to the reportable event; and
 - (b) the RCA team has, under section 102(2) or 103(2) or (3), stopped conducting the RCA; and
 - (c) the commissioning authority has, under subsection (3), received a query from the coroner or a police officer helping the coroner to investigate the death.
- (7) The commissioning authority must—
- (a) if the RCA team stopped conducting the RCA before the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after receiving the query; or
 - (b) if the RCA team stops conducting the RCA after the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after the RCA team stops conducting the RCA.
- (8) In this section—
- stop notice** means a written notice stating—
- (a) if the RCA team stopped conducting the RCA under section 102(2)—that fact; or
 - (b) if the RCA team stopped conducting the RCA because of a direction given by the commissioning authority under section 103(2) or (3)—
 - (i) that fact; and
 - (ii) the reasons for giving the direction.

[s 114]

114 Giving of information to Minister or chief executive

- (1) The Minister or chief executive may, in relation to an RCA of a reportable event, ask a commissioning authority—
 - (a) whether an RCA report has been received by the authority under section 101; and
 - (b) if an RCA report has been received by the authority under section 101—for a copy of the report.
- (2) The authority must comply with the request as soon as practicable.

Maximum penalty—50 penalty units.

115 Giving of copy of, or information contained in, RCA report—person who has sufficient personal or professional interest

A commissioning authority may give a copy of an RCA report received by the commissioning authority under section 101, or information contained in the report, to a person who the commissioning authority reasonably believes has a sufficient personal or professional interest in the reportable event.

Subdivision 6 Protections

116 Protection from liability

- (1) A person who is or was a member of an RCA team, or relevant person for an RCA team, is not civilly liable for an act done, or omission made, honestly and without negligence under this division.
- (2) Without limiting subsection (1), if the act or omission involves giving information—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

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- (b) if the person would otherwise be required to maintain confidentiality about the information given under an Act, oath, or rule of law or practice, the person—
 - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.
 - (3) If a person who is or was a member of an RCA team, or relevant person for an RCA team, incurs costs in defending proceedings relating to a liability against which the person is protected under this section, the person must be indemnified by—
 - (a) if the chief executive appointed the RCA team members—the State; or
 - (b) if a health service chief executive appointed the RCA team members—the Service; or
 - (c) if the individual who has the day-to-day management of a private health facility or the individual who has overall management responsibility for the facility appointed the RCA team members—the licensee of the private health facility.

117 Giving of information protected

- (1) This section applies to a person who honestly and on reasonable grounds gives information to an RCA team, or a relevant person for an RCA team, for the RCA team's conduct of an RCA of a reportable event.
- (2) The person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or

[s 118]

- (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
 - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

118 Information provider can not be compelled to give particular information in evidence

A person can not be compelled to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, any of the following—

- (a) whether or not the person gave information to an RCA team, or a relevant person for an RCA team, for its conduct of an RCA of a reportable event;
- (b) what information the person gave to an RCA team, or a relevant person for an RCA team, for its conduct of an RCA of a reportable event;
- (c) a document given by the person to an RCA team, or a relevant person for an RCA team, that was created by the person or another person for the conduct of an RCA of a reportable event;
- (d) information the person was given, or questions the person was asked, by an RCA team, or a relevant person for an RCA team, during the conduct of an RCA of a reportable event.

119 Protection for documents and information

- (1) This section applies to—
 - (a) an RCA report, chain of events document or other document created by or for an RCA team; or
 - (b) information contained in an RCA report, chain of events document or other document created by or for an RCA team; or
 - (c) information acquired by the following persons as—
 - (i) a member of an RCA team;
 - (ii) a relevant person for an RCA team;
 - (iii) a commissioning authority;
 - (iv) a relevant person for a commissioning authority.
- (2) The document or information—
 - (a) can not be accessed under any order, whether of a judicial or administrative nature; and
 - (b) is not admissible in any proceeding, other than a proceeding for an offence under this division.
- (3) A person must not, and can not be compelled to, produce the document or information, or give evidence relating to the document or information—
 - (a) in any proceeding, other than a proceeding for an offence under this division; or
 - (b) in compliance with a requirement under an Act or legal process.
- (4) However, a copy of an RCA report given to a coroner under section 113 may be admitted in evidence by a coroner in an inquest under the *Coroners Act 2003* into the death of a person—
 - (a) if section 113(1) applies—if the reportable event is the death; or

[s 120]

- (b) if section 113(2) applies—if the reportable event happened while a health service was being provided to the person.
- (5) In this section—
- order** includes a direction or other process.
- proceeding** includes—
- (a) a civil proceeding; or
 - (b) a criminal proceeding; or
 - (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999* or a proceeding under the Health Practitioner Regulation National Law.

120 Reprisal and grounds for reprisals

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has provided, or may provide, assistance to an RCA team in its conduct of an RCA of a reportable event.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

121 Offence for taking reprisal

- (1) A person who takes a reprisal commits an offence.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) The offence is a misdemeanour.

122 Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

Subdivision 7 Miscellaneous

123 Application of provisions of this division

- (1) If a commissioning authority acts or purports to act under section 98 and it transpires the event the basis of the action is not a reportable event, the provisions of this division apply as if the event were a reportable event.
- (2) If there is an inconsistency between the provisions of this division and a provision of any other Act or law, the provisions of this division prevail to the extent of the inconsistency.

Division 3 Clinical reviews

124 Functions of clinical reviewers

The functions of a clinical reviewer are to conduct a clinical review and to provide expert clinical advice to the following—

- (a) the chief executive or a health service chief executive;

[s 125]

- (b) a person or entity whose role includes maintaining and improving the safety and quality of public sector health services;
- (c) a health service investigator.

125 Appointment of clinical reviewers

- (1) The chief executive (the *appointer*) may, in writing, appoint a person as a clinical reviewer to undertake a review under this division in the department or a Service.
- (2) A health service chief executive (also the *appointer*) may, in writing, appoint a person as a clinical reviewer to undertake a review under this division in the Service.
- (3) However, the appointer may appoint a person as a clinical reviewer only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

126 Appointment conditions and limit on powers

- (1) A clinical reviewer holds office on any conditions stated in—
 - (a) the reviewer's instrument of appointment; or
 - (b) a signed notice given to the reviewer; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the reviewer or a regulation may limit the reviewer's powers.
- (3) In this section—
signed notice means a notice signed by the appointer.

127 When office ends

- (1) The office of a person as a clinical reviewer ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;

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- (b) under another condition of office, the office ends;
 - (c) the reviewer's resignation under section 128 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as a reviewer ends.
- (3) In this section—
- condition of office* means a condition under which the reviewer holds office.

128 Resignation

- (1) A clinical reviewer may resign by signed notice given to the appointer.
- (2) However, if holding office as a reviewer is a condition of the reviewer holding another office, the reviewer may not resign as a reviewer without resigning from the other office.

129 Powers of clinical reviewers

- (1) A clinical reviewer may enter a public sector health service facility at any time the facility is open for business or otherwise open for entry.
- (2) A clinical reviewer may, in the exercise of the reviewer's functions, ask an employee of the department or a Service to give to the reviewer a document, including a document containing confidential information, that—
- (a) is relevant to the reviewer's functions; and
 - (b) is in the possession or control of the employee.
- (3) The employee must comply with the request.
- (4) If requested by the employee, the clinical reviewer must produce the reviewer's instrument of appointment to the employee.
- (5) The clinical reviewer may make copies of, and take extracts from, the document.
- (6) In this section—

[s 130]

confidential information means any information that—

- (a) is about a person who is receiving or has received a public sector health service; and
- (b) could identify the person.

130 Giving clinical reviewer false or misleading information

- (1) A person must not, in relation to a clinical review under this division, give a clinical reviewer information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to a review under this division whether or not the information or document was given in response to a specific power under this division.

131 Obstructing clinical reviewer

- (1) A person must not obstruct a clinical reviewer exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed a clinical reviewer and the reviewer decides to proceed with the exercise of the power, the reviewer must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the reviewer considers the person's conduct an obstruction.

- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

132 Duty of confidentiality of clinical reviewers

- (1) This section applies to a person who—
 - (a) is or has been a clinical reviewer; and
 - (b) in that capacity was given information.
- (2) The person must not disclose the information to anyone else.
Maximum penalty—100 penalty units.
- (3) However, the person may disclose the information to someone else—
 - (a) to the extent necessary to perform the person’s functions under or in relation to this Act; or
 - (b) if the person to whom the information relates consents in writing to the disclosure.
- (4) Also, the person may disclose the information to someone else if—
 - (a) the disclosure is to—
 - (i) the relevant chief executive; or
 - (ii) another person authorised in writing by the relevant chief executive to receive the information; and
 - (b) the purpose of the disclosure under this section is to allow further disclosure of the information under section 160.

133 Disclosure to person under Coroners Act 2003

Section 132 does not apply to the disclosure of information to a person who requires the information to perform a function under the *Coroners Act 2003*, other than for the preparation of an annual report.

134 Stopping clinical review

- (1) This section does not apply to a clinical review undertaken to provide clinical advice to a health service investigator.

[s 135]

- (2) This section applies if, during a clinical review, a clinical reviewer reasonably believes that a matter under review involves a blameworthy act.
- (3) The reviewer must—
 - (a) stop the review; and
 - (b) give written notice to the appointer that states—
 - (i) the review has been stopped; and
 - (ii) the reasons that the reviewer formed the reasonable belief under subsection (2).

135 Reports by clinical reviewers other than to provide advice to investigator

- (1) This section does not apply to a clinical review undertaken to provide clinical advice to a health service investigator.
- (2) A clinical reviewer must prepare and provide a report to the appointer for each clinical review.
- (3) The report may include recommendations on ways in which the safety and quality of public sector health services can be maintained and improved.
- (4) Subsection (5) applies to a report provided to the chief executive after a clinical review in a Service.
- (5) After considering the report, the chief executive may issue a direction to the Service.
- (6) The Service must comply with the direction.
- (7) Subsection (8) applies to a report provided—
 - (a) to the chief executive after a clinical review in the department; or
 - (b) to a health service chief executive after a clinical review in the Service.
- (8) After considering the report, the chief executive or health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

136 Reports by clinical reviewers to provide advice to investigator

- (1) This section applies to a clinical review undertaken to provide clinical advice to a health service investigator.
- (2) The clinical reviewer must prepare and provide a report to the health service investigator.
- (3) The report may include recommendations on ways in which the safety and quality of public sector health services can be maintained and improved.

137 Chief executive may request report from health service chief executive

- (1) This section applies if a report is provided to a health service chief executive after a clinical review in the Service.
- (2) If requested by the chief executive, the health service chief executive must give a copy of the report to the chief executive.

138 Protection for reports

- (1) This section applies to a report prepared as a result of a clinical review, other than as a result of a review undertaken to provide clinical advice to a health service investigator.
- (2) The report—
 - (a) can not be accessed under any order, whether of a judicial or administrative nature; and
 - (b) is not admissible in any proceeding, other than a proceeding for an offence under this division.
- (3) A person must not, and can not be compelled to, produce the report, or give evidence relating to the report—
 - (a) in any proceeding, other than a proceeding for an offence under this division; or
 - (b) in compliance with a requirement under an Act or legal process.
- (4) In this section—

[s 139]

order includes a direction or other process.

proceeding includes—

- (a) a civil proceeding; or
- (b) a criminal proceeding; or
- (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999* or a proceeding under the Health Practitioner Regulation National Law.

Part 7 Confidentiality

Division 1 Interpretation and application

139 Definitions for pt 7

In this part—

confidential information means information, acquired by a person in the person's capacity as a designated person, from which a person who is receiving or has received a public sector health service could be identified.

designated person means a person who is or was—

- (a) a public service employee employed in the department;
or
- (b) a health service employee; or
- (c) the chief health officer; or
- (d) the director of mental health; or
- (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service, whether at a public sector health service facility or another place; or
- (f) a member of a board of a Service; or

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- (g) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for a Service or the department; or
 - (h) a person being educated or trained at a public sector health service facility as part of the requirements for—
 - (i) registration, enrolment or other authorisation (however described) to practise as a health professional; or
 - (ii) completion of a course of study qualifying a person for registration, enrolment or authorisation mentioned in subparagraph (i); or
 - (i) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (h); or
 - (j) a contractor who accesses confidential information under a contract to provide information and communication technology or information management services to a Service or the department; or
 - (k) a volunteer carrying out duties at a public sector health service facility on behalf of a Service or the department; or
 - (l) an inspector; or
 - (m) another person prescribed under a regulation for this paragraph to be a designated person.

guardian, of a child, means a person who is recognised in law as having the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

parent see section 140.

140 Meaning of parent

- (1) A **parent** of a child is the child's mother, father or someone else having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.

[s 141]

- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

141 Part does not apply to Act officials

- (1) This part does not apply to information acquired by an Act official in the performance of the official's functions under this Act.

- (2) In this section—

Act official means any of the following—

- (a) a member of a quality assurance committee;
- (b) a relevant person for a quality assurance committee;
- (c) a member of an RCA team;
- (d) a relevant person for an RCA team;
- (e) a commissioning authority;
- (f) a relevant person for a commissioning authority;
- (g) a health service auditor;
- (h) a clinical reviewer;
- (i) a health service investigator.

Division 2 Confidentiality

142 Confidential information must not be disclosed

- (1) A designated person must not disclose, directly or indirectly, confidential information to another person unless the disclosure is required or permitted under this Act.

Maximum penalty—100 penalty units.

- (2) For subsection (1), another person includes another designated person.

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- (3) Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.

143 Disclosure required or permitted by law

- (1) A designated person may disclose confidential information if the disclosure is required or permitted by an Act or law.
- (2) Without limiting subsection (1), the disclosure of the following confidential information is a disclosure permitted by an Act—
- (a) information provided to the chief executive by a Service under a service agreement;
 - (b) information provided to the chief executive and other entities by a Service in compliance with a health service directive;
 - (c) information provided under this Act by the chief executive to the Commonwealth or an entity established under an Act of the Commonwealth;
 - (d) information provided to the administrator under part 3A, division 4.

144 Disclosure with consent

A designated person may disclose confidential information if—

- (a) the person to whom the confidential information relates is an adult and consents to the disclosure; or
- (b) the person to whom the confidential information relates is a child and—
 - (i) the disclosure of the confidential information is by a health professional who reasonably believes the child is of sufficient age and mental and emotional maturity to understand the nature of consenting to the disclosure; and

[s 145]

- (ii) the child consents to the disclosure; or
- (c) the person to whom the confidential information relates is a child and—
 - (i) the disclosure of the confidential information is by a health professional who reasonably believes the child is of insufficient age or mental or emotional maturity to understand the nature of consenting to the disclosure; and
 - (ii) the child's parent or guardian consents to the disclosure; or
- (d) the person to whom the confidential information relates is a child and the disclosure of the confidential information is by a health professional who reasonably believes the disclosure of the information is in the child's best interests.

145 Disclosure of confidential information for care or treatment of person

A designated person may disclose confidential information if the disclosure is for the care or treatment of the person to whom the information relates.

146 Disclosure to person who has sufficient interest in health and welfare of person

- (1) A designated person may disclose confidential information if the confidential information—
 - (a) is about the condition of the person to whom the information relates and is communicated in general terms; or

Example of communicated in general terms—

A switchboard operator or other staff member at a hospital discloses that a person's condition is 'satisfactory'.

 - (b) is communicated by a health professional, under the recognised standards of the relevant health profession,

to a person who, in the health professional's reasonable opinion, has a sufficient personal or professional interest in the health and welfare of the person to whom the information relates.

Example of persons to whom a health professional may communicate confidential information—

- a spouse, parent or child of the person
 - another relative of the person
 - a friend of the person who has a close personal relationship with the person and a personal interest in the person's welfare
 - an adult who is providing home care to the person who has a chronic condition or a disability
 - a general practitioner who has had responsibility for the care and treatment of the person
- (2) For subsection (1)(b), if the person to whom the confidential information relates is deceased, another person has a sufficient personal interest in the health and welfare of the deceased person if, in the health professional's reasonable opinion, the other person would have had a sufficient interest while the deceased person was alive.
- (3) Subsection (1) does not apply to the disclosure of confidential information to a person if the person to whom the confidential information relates asks that the confidential information not be disclosed generally or to that person.

147 Disclosure to lessen or prevent serious risk to life, health or safety

A designated person may disclose confidential information if—

- (a) the relevant chief executive believes, on reasonable grounds, the disclosure is necessary to assist in lessening or preventing a serious risk to—
- (i) the life, health or safety of a person, including the person to whom the confidential information relates; or

[s 148]

- (ii) public safety; and
- (b) the relevant chief executive has, in writing, authorised the disclosure.

148 Disclosure for the protection, safety or wellbeing of a child

A designated person may disclose confidential information if—

- (a) the disclosure is to a person for the protection, safety or wellbeing of a child; and
- (b) the confidential information relates to someone other than the child mentioned in paragraph (a).

149 Disclosure for funding arrangements and public health monitoring

A designated person may disclose confidential information if—

- (a) the disclosure is to another designated person; and
- (b) the disclosure and receipt of the confidential information is—
 - (i) to give effect to or manage a funding arrangement for a public sector health service; or
 - (ii) for analysing, monitoring or evaluating public health; and
- (c) the other designated person is authorised in writing by the relevant chief executive to receive the confidential information.

150 Disclosure for purposes relating to health services

A designated person may disclose confidential information if—

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- (a) the disclosure is to another designated person for evaluating, managing, monitoring or planning health services; or
 - (b) the disclosure is to an entity prescribed under a regulation for this paragraph for evaluating, managing, monitoring or planning health services as stated in the regulation.

151 Disclosure to Commonwealth, another State or Commonwealth or State entity

- (1) A designated person may disclose confidential information if—
 - (a) the disclosure is to the Commonwealth or another State, or an entity of the Commonwealth or another State and the disclosure—
 - (i) is required or allowed under an agreement—
 - (A) between the State or a Service and the Commonwealth, State or entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the relevant chief executive to be in the public interest and the chief executive states this in writing; or
 - (b) the disclosure is to an entity of the State and the disclosure—
 - (i) is required or allowed under an agreement—
 - (A) between the chief executive or a Service and the entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the relevant chief executive to be in the public interest and the chief executive states this in writing.

[s 152]

- (2) The Commonwealth, a State or entity that receives confidential information under an agreement under subsection (1)—
- (a) must not give it to anyone else unless allowed to do so by the agreement or in writing by the relevant chief executive; and
 - (b) must ensure the confidential information is used only for the purpose for which it was given under the agreement.

- (3) In this section—

entity of the Commonwealth includes an entity established under an Act of the Commonwealth.

entity of the State includes a department and an entity established under an Act for a public purpose.

152 Disclosure to or by inspector

A designated person may disclose confidential information if—

- (a) the disclosure is to an inspector and the confidential information is relevant to the performance of the inspector's functions under this Act; or
- (b) the disclosure is by an inspector and is necessary for performing the inspector's functions under this Act.

153 Disclosure to Act officials

A designated person may disclose confidential information if the disclosure is to an Act official and the confidential information is relevant to the functions being performed by the Act official.

154 Disclosure to or by relevant chief executive

- (1) A designated person may disclose confidential information if the disclosure is to a relevant chief executive for achieving the objects of this Act.

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- (2) A relevant chief executive may disclose confidential information if the disclosure is for a function of the relevant chief executive under this Act.

155 Disclosure to health practitioner registration board

A designated person may disclose confidential information if the disclosure is to a board established under a health practitioner registration Act or to the National Agency for the purposes of—

- (a) making, or giving information about, a complaint or notification about a person who is or was registered under the health practitioner registration Act; or
- (b) answering questions or otherwise giving information as part of an investigation or a proceeding about a person who is or was registered under the health practitioner registration Act.

156 Disclosure to Health Quality and Complaints Commission

A designated person may disclose confidential information if the disclosure is to the Health Quality and Complaints Commission for the purpose of—

- (a) making, or giving information about, a complaint about a provider of health services; or
- (b) answering questions or otherwise giving information as part of an investigation under the *Health Quality and Complaints Commission Act 2006* about a person who is or was a provider of health services; or
- (c) giving the commission information about health services including information requested by the commission under the *Health Quality and Complaints Commission Act 2006*, section 21; or

Note—

Under the *Health Quality and Complaints Commission Act 2006*, section 21 the commission may ask a provider for reports,

[s 157]

records or other information relating to the quality of health services provided by or for the provider.

- (d) giving the commission aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services.

157 Disclosure to person performing functions under Coroners Act 2003

A designated person may disclose confidential information if the disclosure is to a person who requires the confidential information to perform a function under the *Coroners Act 2003*, other than for the preparation of an annual report.

158 Disclosure to lawyers

A relevant chief executive may disclose confidential information if—

- (a) the disclosure is to a lawyer in relation to a matter; and
- (b) the lawyer is representing the State or a Service in relation to the matter.

159 Disclosure to Australian Red Cross Society

A designated person may disclose confidential information if the disclosure is to the Australian Red Cross Society for the purpose of tracing—

- (a) blood or tissue, or blood products derived from blood, infected with any disease; or
- (b) the donor or recipient of that blood or tissue.

160 Disclosure of confidential information in the public interest

- (1) A designated person may disclose confidential information if—

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- (a) the relevant chief executive of a Service or the department believes, on reasonable grounds, the disclosure is in the public interest; and
 - (b) the relevant chief executive has, in writing, authorised the disclosure.
- (2) The annual report of the Service or the department for a financial year under the *Financial Accountability Act 2009* must include a statement about—
- (a) the nature of any confidential information disclosed under subsection (1) during the financial year; and
 - (b) the purpose for which the confidential information was disclosed.
- (3) However, the statement mentioned in subsection (2)(a) must not identify, directly or indirectly, the person to whom the confidential information relates.

161 Necessary or incidental disclosure

A designated person may disclose confidential information if the disclosure is necessary or incidental to a disclosure of confidential information otherwise permitted under this part.

Examples of necessary or incidental disclosures—

- the disclosure of confidential information to support staff at a public sector hospital who make appointments for patients, maintain patient records and undertake other administrative tasks
- the disclosure of confidential information to Medicare Australia or health insurance providers for processing the payment of accounts for treatment or diagnostic tests
- the disclosure of confidential information to advise the chief executive or a health service chief executive about authorising the disclosure of confidential information in the public interest under section 160 or to collect confidential information for the purpose of a prescribed agreement under section 151
- accessing contact details for a person to seek the person's consent under section 144 to the disclosure of confidential information

[s 162]

- permitting contractors to access databases to write, test or analyse programs, perform database administration tasks or maintain technical aspects of computer hardware

Part 8 Control of traffic and conduct on health services land

Division 1 Interpretation

162 Definitions for pt 8

In this part—

identity card, for a provision about authorised persons or security officers, means an identity card issued under section 169.

offence warning, for a direction or requirement by an authorised person or security officer, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given or of whom the requirement is made not to comply with it.

official traffic sign see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

owner, of a vehicle, includes the person registered as the owner of the vehicle under the *Transport Operations (Road Use Management) Act 1995*, or the corresponding law of another State or a Territory.

personal details requirement see section 185(5).

regulatory notice see section 175.

vehicle see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

Division 2 Authorised persons and security officers

163 Appointment of authorised persons

- (1) A health service chief executive (the *appointer*) may, in writing, appoint a person to be an authorised person under this Act for health services land under the control of the Service.
- (2) However, the appointer may appoint a person as an authorised person only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

164 Appointment of security officers

- (1) A health service chief executive (the *appointer*) may, in writing, appoint a person to be a security officer under this Act for health services land under the control of the Service.
- (2) However, the appointer may appoint a person as a security officer only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

165 Person may be appointed as authorised person and security officer

A person may be appointed both an authorised person and a security officer.

166 Appointment conditions and limit on powers

- (1) An authorised person or security officer holds office on any conditions stated in—
 - (a) the authorised person's or security officer's instrument of appointment; or
 - (b) a signed notice given to the authorised person or security officer; or

[s 167]

- (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or security officer or a regulation may limit the authorised person's or security officer's powers.
- (3) In this section—
signed notice means a notice signed by the appointer.

167 When office ends

- (1) The office of a person as authorised person or security officer ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the authorised person's or security officer's resignation under section 168 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person or security officer ends.
- (3) In this section—
condition of office means a condition under which the authorised person or security officer holds office.

168 Resignation

- (1) An authorised person or security officer may resign by signed notice given to the appointer.
- (2) However, if holding office as an authorised person or security officer is a condition of the authorised person or security officer holding another office, the authorised person or security officer may not resign as an authorised person or security officer without resigning from the other office.

169 Identity cards

- (1) The appointer must issue an identity card to each authorised person and security officer.

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- (2) The identity card must—
 - (a) contain a recent photo of the authorised person or security officer; and
 - (b) contain a copy of the authorised person’s or security officer’s signature; and
 - (c) identify the person as an authorised person or security officer under this Act; and
 - (d) state an expiry date for the card.
 - (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

170 Production or display of identity card

- (1) In exercising a power in relation to a person in the person’s presence, an authorised person or security officer must—
 - (a) produce the authorised person’s or security officer’s identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person or security officer must produce the identity card for the person’s inspection at the first reasonable opportunity.

171 Return of identity card

If the office of a person as an authorised person or security officer ends, the person must return the person’s identity card to the appointer within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

[s 172]

Division 3 Traffic control

172 Health services land for which authorised person may exercise powers

- (1) Subsection (2) applies to a reference in this division to an authorised person exercising a power or doing a thing.
- (2) The reference is taken to be a reference to the authorised person exercising the power or doing the thing for the health services land for which the authorised person is appointed.

173 Health services land for which health service chief executives may exercise powers

- (1) Subsection (2) applies to a reference in this division to—
 - (a) a health service chief executive exercising a power or doing a thing in relation to health services land; or
 - (b) a health service chief executive exercising a power or doing a thing in relation to a vehicle seized and removed by an authorised officer from health services land.
- (2) The reference is taken to be a reference to the health service chief executive exercising the power or doing the thing for the health services land under the control of the Service for which the health service chief executive is appointed.

174 Authorised persons to control traffic on health services land

- (1) An authorised person may control traffic on health services land and, for this purpose, may give directions to a person on the land.
- (2) The person given a direction must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

175 Regulatory notice

- (1) A health service chief executive may erect or display on, or at or near any vehicular entrance to, health services land, a notice (a **regulatory notice**) regulating the driving, parking or standing of vehicles on the land, including, for example—
 - (a) fixing a maximum speed limit; or
 - (b) indicating a pedestrian crossing; or
 - (c) indicating a place where the driving, parking or standing of a vehicle is restricted or prohibited.
- (2) A person on health services land must comply with a regulatory notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

- (3) A regulatory notice—
 - (a) must state the limits of the area to which the notice applies; and
 - (b) may state that a contravention of the notice is an offence against this Act and the penalty for the offence.
- (4) Without limiting subsection (1), a health service chief executive may erect or display regulatory notices in the form of official traffic signs.
- (5) Evidence that a regulatory notice was erected or displayed at a place mentioned in subsection (1) is evidence that the notice was erected or displayed by the health service chief executive.
- (6) A regulatory notice erected or displayed under this section must be easily visible to passers-by.

176 Notices that contravention of regulatory notice an offence

- (1) This section applies if a regulatory notice does not state that a contravention of the notice is an offence against this Act and the penalty for the offence.

[s 177]

- (2) A health service chief executive must erect or display at or near each vehicular entrance to health services land to which the regulatory notice relates, and other places the health service chief executive considers appropriate, notices stating that a contravention of a regulatory notice is an offence and the penalty for the offence.
- (3) The notice may contain any other information the health service chief executive considers appropriate.
- (4) The notice erected or displayed under this section must be easily visible to passers-by.

177 Removal and detention of illegally parked or abandoned vehicles

- (1) An authorised person may seize and remove a vehicle that the authorised person believes on reasonable grounds—
 - (a) is parked in contravention of a regulatory notice; or
 - (b) is abandoned.
- (2) The vehicle must be held at a safe place.
- (3) An authorised person may exercise the powers on the grounds mentioned in subsection (1)(a) only if—
 - (a) the authorised person believes on reasonable grounds that it is necessary or desirable to seize and remove the vehicle having regard to the safety and convenience of traffic on health services land; and
 - (b) the authorised person—
 - (i) can not immediately locate the driver of the vehicle; or
 - (ii) believes on reasonable grounds that the driver of the vehicle is not willing or able to remove the vehicle immediately.
- (4) As soon as is practicable and no later than 14 days after the vehicle is seized, a health service chief executive must give to the owner of the vehicle a written notice stating how the owner may recover the vehicle.

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- (5) If the owner can not be ascertained or located within 14 days after the vehicle is seized, the notice may be given by publishing it in a newspaper circulating generally in the State.
 - (6) If the vehicle was parked in contravention of a regulatory notice, the owner of the vehicle must pay to the relevant Service the cost of seizing, removing, holding and returning the vehicle.
 - (7) In this section—
vehicle includes a part of the vehicle and anything attached to, or contained in, the vehicle.

178 Disposal of unclaimed vehicles

- (1) This section applies if the owner of a seized vehicle does not recover the vehicle within 2 months after notice is given to the owner under section 177(4) or (5).
- (2) After publishing a notice in a newspaper circulating generally in the State, a health service chief executive may sell the vehicle by public auction.
- (3) The notice must—
 - (a) identify the vehicle; and
 - (b) state that the vehicle is to be sold by auction; and
 - (c) state how the owner may recover the vehicle before the auction; and
 - (d) state the time and place of the auction.
- (4) Compensation is not recoverable against a Service or the health service chief executive for the sale of a vehicle under this section.
- (5) In this section—
vehicle includes a part of the vehicle and anything attached to, or contained in, the vehicle.

[s 179]

179 Application of proceeds of sale

- (1) The proceeds of the sale must be applied in the following order—
 - (a) in payment of the reasonable expenses incurred in the sale;
 - (b) in payment of the reasonable cost of seizing, removing and holding the vehicle;
 - (c) in payment of any balance to the owner.
- (2) Compensation is not recoverable against a Service or the health service chief executive for a payment under this section.

Division 4 Conduct on health services land

180 Health services land for which authorised person or security officer may exercise powers

- (1) Subsection (2) applies to a reference in this division to an authorised person or security officer exercising a power or doing a thing.
- (2) The reference is taken to be a reference to the authorised person or security officer exercising the power or doing the thing for the health services land for which the authorised person or security officer is appointed.

181 Health services land for which health service chief executives may exercise powers

- (1) Subsection (2) applies to a reference in this division to a health service chief executive exercising a power or doing a thing.
- (2) The reference is taken to be a reference to the health service chief executive exercising the power or doing the thing for the health services land under the control of the Service for which the health service chief executive is appointed.

182 Conduct causing a public nuisance

A person must not be disorderly or create a disturbance on health services land.

Maximum penalty—20 penalty units.

183 Power to deal with persons causing a public nuisance

- (1) This section applies if a security officer—
 - (a) finds a person contravening section 182; or
 - (b) finds a person in circumstances that leads the security officer to suspect on reasonable grounds that the person has just contravened section 182; or
 - (c) has information that leads the security officer to suspect on reasonable grounds that a person has just contravened section 182; or
 - (d) reasonably believes, having regard to the way a person is behaving, that the person's presence may pose a threat to the safety of anyone else on or leaving health services land; or
 - (e) has information that leads the security officer to believe, on reasonable grounds, a person's presence may pose a threat to the safety of anyone else on or leaving health services land; or
 - (f) reasonably believes a person is on health services land without lawful justification or excuse.
- (2) The security officer may direct the person to leave the health services land or a part of the health services land.
- (3) The person must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

[s 184]

184 Prohibition of smoking

- (1) A person must not smoke on health services land other than in a nominated smoking place.
- (2) If an authorised person or security officer finds a person smoking on health services land in contravention of subsection (1), the authorised person or security officer may direct the person—
 - (a) to stop or refrain from smoking; or
 - (b) to leave the land or, if the person wishes to smoke, to smoke only in a nominated smoking place.
- (3) The person must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty—10 penalty units.

- (4) A health service chief executive must not nominate a prohibited place as a smoking place.
- (5) In this section—

nominated smoking place means a place nominated as a smoking place by a health service chief executive, and designated as such by signs erected by the health service chief executive.

prohibited place means a place in which a person must not smoke under the *Tobacco and Other Smoking Products Act 1998*.

Division 5 Requirements to give name and address and other matters

185 Power to require name and address

- (1) This section applies if an authorised person or security officer—
 - (a) finds a person committing an offence against this part; or

-
- (b) finds a person in circumstances that lead the authorised person or security officer to reasonably suspect the person has just committed an offence against this part; or
 - (c) has information that leads the authorised person or security officer to reasonably suspect a person has just committed an offence against this part.
- (2) The authorised person or security officer may require the person to state the person's name and residential address.
 - (3) The authorised person or security officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
 - (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
 - (4) When making a personal details requirement, the authorised person or security officer must give the person an offence warning for the requirement.
 - (5) A requirement under this section is a *personal details requirement*.

186 Offence to contravene personal details requirement

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

[s 187]

187 Obstructing an authorised person or security officer

- (1) A person must not obstruct an authorised person or security officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person or security officer and the authorised person or security officer decides to proceed with the exercise of the power, the authorised person or security officer must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the authorised person or security officer considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

188 Impersonating authorised person or security officer

A person must not impersonate an authorised person or security officer.

Maximum penalty—100 penalty units.

Part 9 Health service investigations

189 Functions of health service investigators

The functions of a health service investigator are to investigate and report on any matters relating to the management, administration or delivery of public sector health services, including employment matters.

190 Appointment of health service investigators

- (1) The chief executive (the *appointer*) may, by instrument in writing, appoint a person as a health service investigator to undertake an investigation under this part in the department or a Service.
- (2) A health service chief executive (also the *appointer*) may, by instrument in writing, appoint a person as a health service investigator to undertake an investigation under this part in the Service.
- (3) However, a person may be appointed as a health service investigator only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

191 Appointment conditions and limit on powers

- (1) A health service investigator holds office on any conditions stated in—
 - (a) the investigator's instrument of appointment; or
 - (b) a signed notice given to the investigator; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.
- (3) In this section—

signed notice means a notice signed by the appointer.

192 When office ends

- (1) The office of a person as a health service investigator ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;

[s 193]

- (c) the investigator's resignation under section 193 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an investigator ends.
- (3) In this section—
condition of office means a condition under which the investigator holds office.

193 Resignation

- (1) A health service investigator may resign by signed notice given to the appointer.
- (2) However, if holding office as an investigator is a condition of the investigator holding another office, the investigator may not resign as an investigator without resigning from the other office.

194 Powers of health service investigators

- (1) A health service investigator may enter a public sector health service facility at any time the facility is open for business or otherwise open for entry.
- (2) A health service investigator may, in the exercise of the investigator's functions, ask an employee of the department or a Service to give to the investigator a document, including a document containing confidential information, that—
 - (a) is relevant to the investigator's functions; and
 - (b) is in the possession or control of the employee.
- (3) The employee must comply with the request.
- (4) If requested by the employee, the health service investigator must produce the investigator's instrument of appointment to the employee.
- (5) The health service investigator may make copies of, and take extracts from, the document.

(6) In this section—

confidential information means any information that—

- (a) is about a person who is receiving or has received a public sector health service; and
- (b) could identify the person.

195 Giving health service investigator false or misleading information

(1) A person must not, in relation to an investigation under this part, give a health service investigator information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) applies to information or a document given in relation to an investigation under this part whether or not the information or document was given in response to a specific power under this part.

196 Obstructing investigator

(1) A person must not obstruct a health service investigator exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed a health service investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the investigator considers the person's conduct an obstruction.

(3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

[s 197]

197 Duty of confidentiality of health service investigators

- (1) This section applies to a person who—
 - (a) is or has been a health service investigator; and
 - (b) in that capacity was given information.
- (2) The person must not disclose the information to anyone else.
Maximum penalty—100 penalty units.
- (3) However, the person may disclose the information to someone else—
 - (a) to the extent necessary to perform the person’s functions under or in relation to this Act; or
 - (b) if the person to whom the information relates consents in writing to the disclosure; or
 - (c) if the disclosure is otherwise required or permitted by another Act or law.
- (4) Also, the person may disclose the information to someone else if—
 - (a) the disclosure is to—
 - (i) the relevant chief executive; or
 - (ii) another person authorised in writing by the relevant chief executive to receive the information; and
 - (b) the purpose of the disclosure under this section is to allow further disclosure of the information under section 160.

198 Disclosure to person under Coroners Act 2003

Section 197 does not apply to the disclosure of information to a person who requires the information to perform a function under the *Coroners Act 2003*, other than for the preparation of an annual report.

199 Reports by health service investigators

- (1) A health service investigator must prepare and provide a report to the appointer for each health service investigation.
- (2) In preparing the report, the health service investigator must—
 - (a) have regard to any report provided by a clinical reviewer under section 136; and
 - (b) attach the reviewer's report to the investigator's report.
- (3) The investigator's report may include recommendations on ways in which the administration, management or delivery of public sector health services, including employment matters, can be improved.
- (4) Subsection (5) applies to a report provided to the chief executive after an investigation in a Service.
- (5) After considering the report, the chief executive may issue a direction to the Service.
- (6) The Service must comply with the direction.
- (7) Subsection (8) applies to a report provided—
 - (a) to the chief executive after an investigation in the department; or
 - (b) to a health service chief executive after an investigation in the Service.
- (8) After considering the report, the chief executive or the health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

200 Chief executive may request report from health service chief executives

- (1) This section applies if a report is provided to a health service chief executive after an investigation in the Service.
- (2) If requested by the chief executive, the health service chief executive must give a copy of the report to the chief executive.

Part 10 Monitoring and enforcement

Division 1 Interpretation

201 Definitions for pt 10

In this part—

court means a Magistrates Court.

disposal order see section 244(2).

electronic document means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

former owner see section 239(1).

general power see section 224(1).

help requirement see section 225(1).

identity card, for a provision about inspectors, means an identity card issued under section 207(1).

information notice, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the chief executive for a review of the decision within 20 business days after the person receives the notice;
- (d) how to apply for a review.

inspector means a person who holds office under this part as an inspector.

notice means a written notice.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

-
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
 - (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence warning, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given or of whom the requirement is made not to comply with it.

owner, for a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

personal details requirement see section 245(5).

person in control—

- (a) of a vehicle, includes—
 - (i) the vehicle’s driver or rider; and
 - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle’s driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

place includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

premises includes—

[s 201]

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

public place means—

- (a) a place, or part of the place—
 - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under subparagraph (i)—

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

Examples of a place that may be a public place under subparagraph (ii)—

a saleyard, a showground

- (b) a place that is a public place under another Act.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

vehicle—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

Division 2 General provisions about inspectors

Subdivision 1 Functions and appointment

202 Functions of inspectors

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

203 Appointment and qualifications

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as an inspector—
 - (a) a public service officer of the department;
 - (b) a health service employee;
 - (c) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

204 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) the inspector's instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.

[s 205]

- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.
- (3) In this section—
signed notice means a notice signed by the chief executive.

205 When office ends

- (1) The office of a person as an inspector ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the inspector's resignation under section 206 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—
condition of office means a condition under which the inspector holds office.

206 Resignation

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

Subdivision 2 Identity cards

207 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—

- (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector's signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

208 Production or display of identity card

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 212(1)(b) or (d).

209 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

[s 210]

Subdivision 3 Miscellaneous provisions

210 References to exercise of powers

If—

- (a) a provision of this part refers to the exercise of a power by an inspector; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any inspectors' powers under this part or a warrant, to the extent the powers are relevant.

211 Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Division 3 Entry of places by inspectors

Subdivision 1 Power to enter

212 General power to enter places

- (1) An inspector may enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry and section 215 has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or

- (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 222 has been complied with for the occupier; or
 - (d) it is a public sector health service facility and is—
 - (i) open for carrying on business; or
 - (ii) otherwise open for entry.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subdivision 2 Entry by consent

213 Application of sdiv 2

This subdivision applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 212(1)(a).

214 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

[s 215]

215 Matters inspector must tell occupier

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

216 Consent acknowledgement

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) the following has been explained to the occupier—
 - (i) the purpose of the entry, including the powers intended to be exercised;
 - (ii) that the occupier is not required to consent;
 - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
 - (d) the time and day the consent was given; and
 - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and

- (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

217 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

218 Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—

[s 219]

- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the inspector's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

219 Electronic application

- (1) An application under section 217 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
 - (a) may not be made before the inspector prepares the written application under section 217(2); but
 - (b) may be made before the written application is sworn.

220 Additional procedure if electronic application

- (1) For an application made under section 219, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under section 219; and
 - (b) the way the application was made under section 219 was appropriate.
- (2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information mentioned in section 218(2); and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 218(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 217(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

[s 221]

- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant Magistrates Court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 217.
- (8) In this section—
- relevant Magistrates Court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

221 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
 - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 220(3).

222 Entry procedure

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this subdivision.

-
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—
warrant includes a duplicate warrant mentioned in section 220(3).

Division 4 General powers of inspectors after entering places

223 Application of div 4

- (1) The power under this division may be exercised if an inspector enters a place under section 212(1)(a), (c) or (d).
- (2) However, if the inspector enters under section 212(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

224 General powers

- (1) The inspector may do any of the following (each a *general power*)—

[s 224]

- (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) place an identifying mark in or on anything at the place;
 - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
 - (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this division;
 - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
- (3) If the inspector takes a document from the place to copy it, the inspector must copy and return the document to the place as soon as practicable.
- (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—
- examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
- film* includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

225 Power to require reasonable help

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

226 Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this Act.

Division 5 Seizure and forfeiture

Subdivision 1 Power to seize

227 Seizing evidence at a place that may be entered without consent or warrant

An inspector who enters a place the inspector may enter under this part without the consent of an occupier of the place and

[s 228]

without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

228 Seizing evidence at a place that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
 - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

229 Seizure of property subject to security

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

Subdivision 2 Powers to support seizure

230 Requirement of person in control of thing to be seized

- (1) To enable a thing to be seized, an inspector may require the person in control of it—
 - (a) to take it to a stated reasonable place by a stated reasonable time; and
 - (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.
- (2) The requirement—
 - (a) must be made by notice; or
 - (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

231 Offence to contravene seizure requirement

A person of whom a requirement is made under section 230 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

232 Power to secure seized thing

- (1) Having seized a thing under this division, an inspector may—

[s 233]

- (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
- Example—*
- make it inoperable by dismantling it or removing a component without which the equipment can not be used
- (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

233 Offence to contravene other seizure requirement

A person must comply with a requirement made of the person under section 232(2)(c) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

234 Offence to interfere

- (1) If access to a seized thing is restricted under section 232, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an inspector's approval; or
 - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 232, a person must not enter the place in contravention of the restriction or

tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 3 Safeguards for seized things

235 Receipt and information notice for seized thing

- (1) This section applies if an inspector seizes anything under this division unless—
 - (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
 - (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.

[s 236]

- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

236 Access to seized thing

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

237 Return of seized thing

- (1) This section applies if a seized thing has some intrinsic value and is not—
 - (a) forfeited or transferred under subdivision 4 or 5; or
 - (b) subject to a disposal order under division 6.
- (2) The inspector must return the seized thing to an owner—
 - (a) generally—at the end of 6 months after the seizure; or
 - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—

-
- (a) its continued retention as evidence is no longer necessary; and
 - (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
 - (c) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

238 Forfeiture by chief executive decision

- (1) The chief executive may decide a seized thing is forfeited to the State if an inspector—
- (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the inspector is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- Example for paragraph (b)—*
- the owner of the thing has migrated to another country
- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

[s 239]

239 Information notice about forfeiture decision

- (1) If the chief executive decides under section 238(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
 - (a) a public place; or
 - (b) a place where the notice is unlikely to be read by the former owner.

240 Forfeiture on conviction

- (1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—
 - (a) anything used to commit the offence; or
 - (b) anything else the subject of the offence.
- (2) The court may make the order—
 - (a) whether or not the thing has been seized; or
 - (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under another law.

241 Procedure and powers for making forfeiture order

- (1) A forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution.
- (2) In deciding whether to make a forfeiture order for a thing, the court—
 - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
 - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

Subdivision 5 Dealing with property forfeited or transferred to State

242 When thing becomes property of the State

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 238(1) or 240; or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

243 How property may be dealt with

- (1) This section applies if, under section 242, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.

[s 244]

- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

Division 6 Disposal orders

244 Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
 - (a) anything that was the subject of, or used to commit, the offence;
 - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
 - (a) whether or not it has been seized under this Act; and
 - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—
 - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
 - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.

- (6) This section does not limit the court's powers under another law.

Division 7 Other information-obtaining powers

245 Power to require name and address

- (1) This section applies if an inspector—
- (a) finds a person committing an offence against this Act; or
 - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
 - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

246 Offence to contravene personal details requirement

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

[s 247]

Maximum penalty—100 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

247 Power to require information

- (1) This section applies if an inspector reasonably believes—
 - (a) an offence against this Act has been committed; and
 - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give the inspector information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—
information includes a document.

248 Offence to contravene information requirement

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Division 8 Miscellaneous provisions relating to inspectors

Subdivision 1 Damage

249 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 251.

250 Notice of damage

- (1) This section applies if—
 - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to the person who appears to the inspector to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
 - (a) leave the notice at the place where the damage happened; and

[s 251]

- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of an inspector's functions.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 251.

Subdivision 2 Compensation

251 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under this part.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

-
- (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 249 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—
loss includes costs and damage.

Subdivision 3 Other offences relating to inspectors

252 Giving inspector false or misleading information

- (1) A person must not, in relation to the administration of this Act, give an inspector information, or a document containing information, that the person knows is false or misleading in a material particular.
- Maximum penalty—100 penalty units.
- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

[s 253]

253 Obstructing inspector

- (1) A person must not obstruct an inspector, or someone helping an inspector, exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

254 Impersonating inspector

A person must not impersonate an inspector.

Maximum penalty—100 penalty units.

Division 9 Reviews and appeals

255 Right of appeal

A person who has a right to be given an information notice about a decision made under this part has a right to appeal against the decision.

Note—

Information notices are given under sections 235 and 239.

256 Appeal process starts with internal review

- (1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.
- (2) A person who has a right to appeal against a decision may apply to the chief executive for a review of the decision.

257 How to apply for review

- (1) An application for review of a decision must be—
 - (a) in the approved form; and
 - (b) supported by enough information to enable the chief executive to decide the application.
- (2) The application must be made within 20 business days after—
 - (a) the day the person is given the information notice about the decision; or
 - (b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.
- (3) The chief executive may extend the period for applying for the review.
- (4) The application must not be dealt with by—
 - (a) the person who made the decision; or
 - (b) a person in a less senior office than the person who made the decision.
- (5) Subsection (4)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
 - (b) does not apply to a decision made by the chief executive.

258 Stay of operation of decision

- (1) An application for review of a decision does not stay the decision.
- (2) However, the applicant may immediately apply for a stay of the decision to the court.
- (3) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.
- (4) The stay—
 - (a) may be given on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (5) The period of the stay must not extend past the time when the chief executive makes a review decision about the decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (6) An application for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

259 Review decision

- (1) The chief executive must, within 30 business days after receiving the application—
 - (a) review the decision (the *original decision*); and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the applicant notice (the *review notice*) of the review decision.

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- (2) If the review decision is not the decision sought by the applicant, the review notice must state the following—
 - (a) the day the notice is given to the applicant (the *review notice day*);
 - (b) the reasons for the decision;
 - (c) that the applicant may appeal against the decision to the court within 28 days after the review notice day;
 - (d) how to appeal;
 - (e) that the applicant may apply to the court for a stay of the decision.
 - (3) If the chief executive does not give the review notice within the 30 days, the chief executive is taken to have made a review decision confirming the original decision.

260 Who may appeal

A person who has applied for review of an original decision and is dissatisfied with the review decision may appeal to the court against the decision.

261 Procedure for an appeal to the court

- (1) An appeal to the court is started by filing a notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the chief executive.
- (3) The notice of appeal must be filed within 28 days after the review notice day.
- (4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

[s 262]

262 Stay of operation of review decision

- (1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be granted on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

263 Powers of court on appeal

- (1) In deciding an appeal, the court—
 - (a) has the same powers as the chief executive in making the review decision appealed against; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
 - (a) confirm the review decision; or
 - (b) set aside the review decision and substitute another decision; or
 - (c) set aside the review decision and return the matter to the chief executive with directions the court considers appropriate.

264 Effect of decision of court on appeal

- (1) If the court acts to set aside the review decision and return the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new decision, the new decision is not subject to review or appeal under this division.
- (2) If the court substitutes another decision, the substituted decision is taken to be the decision of the chief executive, and the chief executive may give effect to the decision as if the decision was the original decision of the chief executive and no application for review or appeal had been made.

Part 11 Legal proceedings

Division 1 Application

265 Application of pt 11

This part applies to a legal proceeding under this Act.

Division 2 Evidentiary aids

266 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) the chief health officer's appointment;
- (c) a health service chief executive's appointment;
- (d) an inspector's appointment;
- (e) an authorised person's appointment;

[s 267]

- (f) a security officer's appointment;
- (g) the authority of the following to do anything under this Act—
 - (i) the Minister;
 - (ii) the chief executive;
 - (iii) the chief health officer;
 - (iv) a health service chief executive;
 - (v) an inspector;
 - (vi) an authorised person;
 - (vii) a security officer.

267 Signatures

A signature purporting to be the signature of the following is evidence of the signature it purports to be—

- (a) the Minister;
- (b) the chief executive;
- (c) the chief health officer;
- (d) a health service chief executive;
- (e) an inspector;
- (f) an authorised person;
- (g) a security officer.

268 Evidentiary provisions

A certificate purporting to be signed by the chief executive or a health service chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
 - (i) an appointment or decision;

- (ii) a notice or requirement;
- (iii) a record or report, or an extract from a record or report;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, an appointment as an inspector, an authorised person or a security officer was, or was not, in force for a stated person;
- (e) on a stated day, a stated person was given a stated notice under this Act;
- (f) on a stated day, a stated requirement was made of a stated person;
- (g) a stated amount is payable under this Act by a stated person and has not been paid.

Division 3 Offence proceedings

269 Summary offences

A proceeding for an offence against this Act, other than an offence against section 121(1), is to be taken in a summary way under the *Justices Act 1886*.

270 Limitation on time for starting proceedings for summary offence

A summary proceeding under the *Justices Act 1886* for a summary offence against this Act must start within whichever is the longer of the following—

- (a) 1 year after the commission of the offence;

[s 271]

- (b) 1 year after the offence comes to the knowledge of the complainant, but within 2 years after the commission of the offence.

271 Proceedings for indictable offences

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
 - (a) by way of summary proceeding under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
 - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

272 Limitation on who may summarily hear indictable offence

- (1) The proceeding must be before a magistrate if it is a proceeding—

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- (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

273 Allegations of false or misleading information or document

In any proceeding for an offence against this Act involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

Part 12 Miscellaneous

274 Disclosure of personal information of health service employees and health professionals

- (1) Subsection (2) applies to personal information held in a health agency, about a person who is, or was, a health service employee or health professional engaged in delivering a public sector health service.
- (2) The health agency may disclose the person’s personal information to another health agency if the information is relevant to the person’s suitability for employment or engagement, or continuing employment or engagement, with the other health agency.
- (3) In this section—

health agency means the department or a Service.

[s 275]

personal information see the *Information Privacy Act 2009*, section 12.

275 Governor in Council may dismiss members of board

- (1) The Governor in Council may at any time, on the recommendation of the Minister, dismiss all the members of a board.
- (2) If the Governor in Council acts under subsection (1) the members go out of office.
- (3) The Minister may make a recommendation under subsection (1) only if the Minister is satisfied it is in the public interest to do so.
- (4) No compensation is payable to a member of the board in relation to the dismissal of the member from the board.

276 Governor in Council may appoint administrator for Service

- (1) This section applies—
 - (a) if the members of a board are dismissed under section 275; or
 - (b) if at any other time there are no members of a Service's board; or
 - (c) if, at the commencement of this section, a Service's board has not been appointed.
- (2) The Governor in Council may, on the recommendation of the Minister, appoint the chief executive or another qualified person to administer the Service.
- (3) In this section—

qualified person means a person the Minister considers has the necessary qualifications and experience to administer the Service.

277 Term and role of administrator

- (1) This section applies to the appointment of a person under section 276 as an administrator of a Service under this part.
- (2) The administrator must administer the Service's affairs for the term stated in the administrator's appointment.
- (3) The Governor in Council may revoke the appointment for any reason before the term of appointment expires, either to appoint a different person as administrator or to appoint new members of the board.
- (4) While the appointment continues, the administrator is taken to constitute the board instead of the members.

278 Ministerial advisory committees

- (1) The Minister may establish the advisory committees the Minister considers appropriate for this Act.
- (2) An advisory committee has the functions the Minister decides.
- (3) A member of an advisory committee is entitled to the fees and allowances fixed by the Governor in Council.
- (4) However, a member may waive payment in whole or part.

279 Delegation by Minister

- (1) The Minister may delegate the Minister's functions under this Act to the chief executive.
- (2) However, the Minister must not delegate—
 - (a) the function to decide the terms of a service agreement under section 38 or the amendment of a service agreement under section 39; or
 - (b) the function to give a direction to a Service under section 44; or
 - (c) the function to appoint a person to be an adviser to a board under section 44A; or

[s 280]

- (d) the functions under part 3A, division 4 in relation to the appointment, suspension or removal of the administrator.

280 Protecting officials

- (1) This section applies to each of the following persons—
 - (a) a member of a board;
 - (b) a member of a committee of a board;
 - (c) a health service chief executive;
 - (d) a health service auditor, clinical reviewer or health service investigator appointed by a health service chief executive;
 - (e) an authorised person or security officer;
 - (f) the chief executive;
 - (g) a health service auditor, clinical reviewer or health service investigator appointed by the chief executive;
 - (h) an inspector or a person acting under the direction or authority of an inspector.
- (2) The person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to—
 - (a) for a person mentioned in subsection (1)(a) to (e)—the Service; or
 - (b) for a person mentioned in subsection (1)(f) to (h)—the State.

281 Approval of forms

The chief executive may approve forms for use under this Act.

282 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
 - (a) the amalgamation, dissolution or division of Services or any other change in relation to Services;
 - (b) changing the services to be provided by a Service or the department, including by transferring the services to be provided from one to another;
 - (c) any matter or thing necessary or convenient to facilitate or support a thing mentioned in paragraphs (a) and (b);
 - (d) the operation or management of a public sector health service or a public sector health service facility, including any land or buildings used in connection with any service or facility;
 - (e) the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event;
 - (f) the preservation of the terms, conditions and entitlements of employees moving between the department and a Service.
- (3) Without limiting subsection (2)(c), a regulation may provide for the following—
 - (a) the transfer of staff;
 - (b) staff entitlements;
 - (c) the transfer of assets and liabilities, including that no government duties are payable on the transfer;
 - (d) matters relating to contracts, agreements or other documents entered into by a Service or the department;
 - (e) the continuation of proceedings involving a Service or the department;
 - (f) the appointment of Act officials, authorised persons and security officers;

[s 282]

- (g) the control of traffic and conduct on health services land;
 - (h) the continuation of RCA teams, quality assurance committees, health service audits, clinical reviews and health service investigations;
 - (i) the giving of stated directions by the chief executive for stated matters.
- (4) Also, a regulation may provide for matters relating to the movement of health service employees between Services or between a Service and the department.
- (5) Without limiting subsection (4), a regulation may provide for the following—
- (a) movements of health service employees by agreement of the chief executive, health service chief executives or chairs of boards;
 - (b) movements of health service employees by the written direction of the Minister or the chief executive;
 - (c) health service employees establishing reasonable grounds to refuse movements;
 - (d) the rights and entitlements of health service employees who are subject to movements, including matters relating to employment contracts.
- (6) Also, a regulation may prescribe a matter relating to the transition of employees from the department to a prescribed Service under part 5, division 4 if this Act does not make provision or sufficient provision for the matter.
- (7) Also, a regulation made under this Act may impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

Part 13 **Repeal, savings and transitional provisions**

Division 1 **Repeal**

283 **Repeal of Health Services Act 1991**

The Health Services Act 1991, No. 24 is repealed.

Division 2 **Savings and transitionals for Act No. 32 of 2011**

284 **Definitions for div 2**

In this division—

commencement means the commencement of the provision in which the term is used.

district manager means a manager of a health service district appointed under the repealed Act.

health service district means a health service district established under the repealed Act.

information commissioner means the information commissioner under the *Right to Information Act 2009*.

285 **Existing health service employees**

- (1) This section applies to a person employed in the department under the repealed Act as a health service employee immediately before the commencement.
- (2) However, this section does not apply to a health executive employed in a health service district immediately before the commencement.

[s 286]

- (3) The person's employment continues under this Act on the same terms, conditions and entitlements as those applying to the person immediately before the commencement.

286 Existing health executives employed in health service districts

- (1) This section applies to a person employed as a health executive in a health service district under the repealed Act immediately before the commencement, other than as a district manager.
- (2) On the commencement, the person is appointed—
 - (a) to the Service prescribed under a regulation; and
 - (b) on the same terms, conditions and entitlements as those applying to the person immediately before the commencement.
- (3) Also, the following apply for the person—
 - (a) the person retains and is entitled to all rights, benefits and entitlements that have accrued to the person because of the person's previous employment as a health service employee;
 - (b) the person's accruing rights, including to superannuation or recreation, sick, long service or other leave, are not affected;
 - (c) continuity of service is not interrupted, 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;
 - (d) the appointment does not constitute a termination of employment or a retrenchment or redundancy;
 - (e) the person is not entitled to a payment or other benefit because he or she is no longer employed in the department.

- (4) Subject to this section, the chief executive may issue a direction to a person to facilitate the transition of health executives from health service districts to a Service.
- (5) A person given a direction must comply with the direction.
- (6) A person appointed under subsection (2) is taken to be employed by the Service under the contract under which the person was employed before the commencement.

287 Chief health officer

- (1) This section applies to the person who, immediately before the commencement, was the chief health officer under the repealed Act.
- (2) The person continues as the chief health officer under this Act on the same terms of appointment that applied to the person immediately before the commencement.

288 Continued appointment of inspectors

- (1) This section applies to a person who, immediately before the commencement, was appointed as an inspector under the repealed Act.
- (2) The person continues as an inspector under this Act on the same terms of appointment that applied to the person immediately before the commencement.
- (3) The inspector may exercise the powers in a Service or the department.

289 Continued appointment of authorised persons

- (1) This section applies to a person who, immediately before the commencement, was appointed as an authorised person for a health service district under the repealed Act.
- (2) The person continues as an authorised person under this Act—

[s 290]

- (a) on the same terms of appointment that applied to the person immediately before the commencement; and
 - (b) for the corresponding Service.
- (3) In this section—
- corresponding Service* means the Service prescribed under a regulation as replacing a health service district.

290 Continued appointment of security officers

- (1) This section applies to a person who, immediately before the commencement, was appointed as a security officer under the repealed Act for a health service district.
 - (2) The person continues as a security officer under this Act—
 - (a) on the same terms of appointment that applied to the person immediately before the commencement; and
 - (b) for the corresponding Service.
 - (3) In this section—
- corresponding Service* means the Service prescribed under a regulation as replacing a health service district.

291 Continued appointment of auditors

- (1) This section applies to a person who, immediately before the commencement, was appointed as an auditor under the repealed Act.
- (2) Subject to subsection (3), the person continues as a health service auditor under this Act on the same terms of appointment that applied to the person immediately before the commencement.
- (3) The health service auditor may exercise the powers in a Service or the department.

292 Continued appointment of investigators

- (1) This section applies to a person who, immediately before the commencement, was appointed as an investigator under the repealed Act.
- (2) Subject to subsection (3), the person continues as a health service investigator under this Act on the same terms of appointment that applied to the person immediately before the commencement.
- (3) The health service investigator may exercise the powers in a Service or the department.

293 Continuation of RCA teams

- (1) Subsection (2) applies if an RCA team—
 - (a) was appointed under the repealed Act to conduct an RCA of a reportable event before the commencement; and
 - (b) at the commencement had not completed the RCA.
- (2) The RCA team may complete the RCA and the RCA report under the repealed Act as if the provisions of this Act had not commenced.
- (3) The provisions of the repealed Act continue to apply to the RCA and the RCA report as if the provisions of this Act had not commenced.
- (4) However, if the commissioning authority is the chief executive, the RCA report may be given by the chief executive to the health service chief executive who has responsibility for the relevant health service.

294 Continuation of quality assurance committees

- (1) This section applies to a quality assurance committee established under the repealed Act.
- (2) The committee continues in force under this Act and is taken to be established by the entity prescribed under a regulation.

[s 295]

295 Continuation of Ministerial advisory committees

- (1) This section applies to an advisory committee established by the Minister under the repealed Act.
- (2) The committee continues in force under this Act.

296 Health service audits

- (1) This section applies if, at the commencement, an auditor is performing his or her functions under the repealed Act, section 54 for a matter.
- (2) The auditor may continue to perform the functions for the matter under this Act as a health service auditor in a Service or the department.

297 Health service investigations

- (1) This section applies if, at the commencement, an investigator is performing his or her functions under the repealed Act, section 55 for a matter.
- (2) The investigator may continue to perform the functions for the matter under this Act as a health service investigator in a Service or the department.

298 Regulatory notices and information notices

- (1) This section applies to regulatory notices or information notices erected and displayed on health services land at the commencement.
- (2) The notices are, for notices erected and displayed on health services land under the control of a Service, taken to have been erected or displayed under this Act by the health service chief executive from the commencement.

299 Authorisations and considerations by chief executive

- (1) This section applies to—

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- (a) an authorisation made in writing by the chief executive under the repealed Act, section 62F, 62G or 62I; and
 - (b) a consideration by the chief executive that the disclosure of confidential information is in the public interest under the repealed Act, section 62N(1)(a)(ii) or (1)(b)(ii).
- (2) Authorisations are taken to be made by the chief executive—
- (a) for an authorisation under the repealed Act, section 62F—under section 160; or
 - (b) for an authorisation under the repealed Act, section 62G—under section 149; or
 - (c) for an authorisation under the repealed Act, section 62I—under section 147.
- (3) Considerations are taken to be made by the chief executive—
- (a) for a consideration under the repealed Act, section 62N(1)(a)(ii)—under section 151(1)(a)(ii); or
 - (b) for a consideration under the repealed Act, section 62N(1)(b)(ii)—under section 151(1)(b)(ii).

300 Applications under Information Privacy Act 2009, s 43, 44 or 94

- (1) This section applies if, immediately before the commencement—
- (a) the department had started dealing with, but had not finally dealt with, an application under the *Information Privacy Act 2009*, section 43, 44 or 94; and
 - (b) documents the subject of the application are, on the commencement, in the possession, or under the control, of a Service.
- (2) The department must continue to deal with the application as if this Act had not commenced.

[s 301]

301 Applications under Information Privacy Act 2009, s 99

- (1) This section applies if, immediately before the commencement—
 - (a) the information commissioner had started dealing with, but had not finally dealt with, an application under the *Information Privacy Act 2009*, section 99 for a reviewable decision made by the department; and
 - (b) documents the subject of the application are, on the commencement, in the possession, or under the control, of a Service.
- (2) The commissioner must continue to deal with the application as if this Act had not commenced.

302 Persons affected by reviewable decision under the Information Privacy Act 2009

- (1) This section applies if—
 - (a) a person was affected by a reviewable decision under the *Information Privacy Act 2009* made before the commencement by the department; and
 - (b) immediately before the commencement, the person could have applied for a review of the decision under the *Information Privacy Act 2009*, section 94 or 99; and
 - (c) the person had not applied for the review before the commencement; and
 - (d) the documents the subject of the reviewable decision are, on the commencement, in the possession, or under the control, of a Service.
- (2) The person may, within the period allowed under the *Information Privacy Act 2009*, section 96(c) or 101(1)(d), apply for a review of the decision as if this Act had not commenced.

303 Applications under Right to Information Act 2009, s 24 or 80

- (1) This section applies if, immediately before the commencement—
 - (a) the department had started dealing with, but had not finally dealt with, an application under the *Right to Information Act 2009*, section 24 or 80; and
 - (b) the documents the subject of the application are, on the commencement, in the possession, or under the control, of a Service.
- (2) The department must continue to deal with the application as if this Act had not commenced.

304 Applications under Right to Information Act 2009, s 85

- (1) This section applies if, immediately before the commencement—
 - (a) the information commissioner had started dealing with, but had not finally dealt with, an application under the *Right to Information Act 2009*, section 85 for a reviewable decision made by the department; and
 - (b) the documents the subject of the application are, on the commencement, in the possession, or under the control, of a Service.
- (2) The commissioner must continue to deal with the application as if this Act had not commenced.

305 Persons affected by reviewable decision under the Right to Information Act 2009

- (1) This section applies if—
 - (a) a person was affected by a reviewable decision under the *Right to Information Act 2009*, made before the commencement by the department; and

[s 306]

- (b) immediately before the commencement, the person could have applied for a review of the decision under the *Right to Information Act 2009*, section 80 or 85; and
 - (c) the person had not applied for the review before the commencement; and
 - (d) the documents the subject of the reviewable decision are, on the commencement, in the possession, or under the control, of a Service.
- (2) The person may, within the period allowed under the *Right to Information Act 2009*, section 82(c) or 88(1)(d), apply for a review of the decision as if this Act had not commenced.

306 Assistance must be provided

- (1) This section applies if a Service has possession or control of the documents mentioned in sections 300 to 305.
- (2) The Service must assist the department or information commissioner in dealing with the application, including by providing documents relevant to the application under the *Information Privacy Act 2009* or the *Right to Information Act 2009*.
- (3) If the provision of documents includes the disclosure of confidential information, then the disclosure is required or permitted by law for the purposes of section 143 of this Act.

307 Transfer notice

- (1) This section applies to something that—
 - (a) was a function of, or done by, the chief executive or the State before the commencement; and
 - (b) becomes a function of a Service on or after the commencement.
- (2) The Minister may, to facilitate the transfer of a function mentioned in subsection (1), do any of the following by gazette notice (a *transfer notice*)—

- (a) transfer an asset or liability from the State to a Service;
- (b) transfer a lease, licence or other right from the State to a Service;
- (c) grant a lease, licence or other right from the State to a Service;
- (d) vary or extinguish a lease, easement or other right held by the State;
- (e) in relation to a lease held under the *Land Act 1994*—
 - (i) transfer the lease; or
 - (ii) change a purpose for which the lease is issued; or
 - (iii) change a condition imposed on the lease; or
 - (iv) grant a sublease;
- (f) in relation to a reserve under the *Land Act 1994*—
 - (i) change a community purpose for which the reserve is dedicated; or
 - (ii) remove a trustee of the reserve; or
 - (iii) appoint a trustee of the reserve, subject to conditions or without conditions;
- (g) provide whether and, if so, the extent to which a Service is the successor in law of the State;
- (h) make provision for a legal or other proceeding that is being, or may be, taken by or against the State to be continued or taken by or against a Service;
- (i) make provision for or about the issue, transfer or application of a contract, agreement or other instrument to the State or a Service, including—
 - (i) whether the State or a Service holds, or is a party to, an instrument; and
 - (ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of the State or a Service; and

[s 307]

- (iii) whether a reference to an entity in an instrument is a reference to the State or a Service; and
 - (iv) whether a right or entitlement under an instrument is held by the State or a Service; and
 - (v) whether, under an instrument, an amount is, or may become, payable to or by the State or a Service or other property is, or may be, transferred to or by the State or a Service;
 - (j) transfer a business or shares from the State to a Service;
 - (k) make provision about the consideration for shares or a business, asset or liability transferred under this subsection;
 - (l) make provision about an incidental, consequential or supplemental matter the Minister considers necessary to allow or facilitate the transfer of functions to Services.
- (2A) A transfer notice may amend an earlier transfer notice, or a further transfer notice may be made, to correct an error in an earlier transfer notice.
- (2B) Nothing prevents an amending or further transfer notice from transferring something mentioned in subsection (2) from a Service to the State.
- (3) A transfer notice may include conditions applying to something done or to be done under the notice.
- (4) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—
- (a) signed by the Minister; and
 - (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
- (5) The transfer of a liability of the State under a transfer notice discharges the State from the liability, except to the extent stated in the notice.

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- (6) A transfer notice has effect despite any other law or instrument.
- (7) A transfer notice—
- (a) has effect on the day it is published in the gazette or another day stated in the notice; and
 - (b) may have retrospective operation to a day not earlier than the day this section commences.
- (8) If a transfer notice makes provision for a matter under subsection (2)(i) in relation to an instrument, the responsible entity for the instrument must take the action necessary to register or record the effect of the transfer notice, including—
- (a) updating a register or other record; and
 - (b) amending, cancelling, issuing or transferring an instrument.
- (9) No government duties, fees or charges are payable for anything done under a transfer notice under this section.
- (10) A transfer notice must not be made under this section after 30 June 2013.
- (11) In this section—
- authority* includes accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.
- instrument* includes an application or authority under an Act.
- responsible entity*, for an instrument, means the entity required or authorised by law to register or record matters in relation to the instrument.

308 Decisions not reviewable

- (1) A decision relating to a transfer notice—
- (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way,

[s 309]

under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
- decision** includes—
- (a) a decision to give a transfer notice; and
 - (b) a decision or conduct leading up to or forming part of the process of making a decision.

309 Severability

- (1) Subsection (2) applies if a provision of a transfer notice is held by a court or judge to be beyond power, invalid or unenforceable.
- (2) The provision is to be disregarded or severed and the court's or judge's decision does not affect the remaining provisions of the transfer notice which continue to have effect.
- (3) This section does not limit the *Acts Interpretation Act 1954*, section 9.

310 Registering authority to note transfer or other dealing

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
 - (a) may, without formal application, register or record in the appropriate way a transfer or other dealing affecting an asset or liability under a transfer notice; and
 - (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity.

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- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.
 - (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.
 - (4) In this section—

transferee entity means the entity to which an asset or liability is transferred under a transfer notice.

transferor entity means the entity from which an asset or liability is transferred under a transfer notice.

311 Effect on legal relationships

- (1) Nothing done under a transfer notice—
 - (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
 - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—
 - (i) terminates, or allows a person to terminate, an instrument or obligation; or
 - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or

[s 312]

- (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iv) requires any money to be paid before its stated maturity; or
 - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under a transfer notice, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

Example—

A contract entered into by the State provides that the State agrees not to transfer a particular asset without a particular person's consent and that, if the consent is given, it may be subject to particular conditions. If the asset is transferred to another entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under a transfer notice, the notice is taken to have been given.
- (4) A reference in this section to things done under a transfer notice includes the steps taken, before the transfer notice is made, for the purpose of doing the things.
- (5) In this section—

relevant entity means the State or an employee or agent of the State.

312 Things done under transfer notice

To remove any doubt, it is declared that a thing is taken to be done under a transfer notice if it is done by, or in compliance with, a transfer notice, even if the thing includes taking steps under another Act.

313 Requirement for Service to develop engagement strategies

- (1) This section applies to the requirement for a Service to develop and publish the following strategies under section 40—
 - (a) a clinician engagement strategy;
 - (b) a consumer and community engagement strategy.
- (2) The Service must develop and publish each of the strategies within 6 months after the commencement of this section.

314 Requirement for Service to develop protocol

- (1) This section applies to the requirement for a Service to use its best endeavours to agree on and publish a protocol under section 42.
- (2) The Service must use its best endeavours to agree on and publish the protocol within 6 months after the commencement of this section.

315 Advertising for members of boards before commencement

- (1) Subsection (2) applies if, before the commencement, the Minister has advertised for expressions of interest from suitably qualified persons interested in being members of a board.
- (2) The advertisement is taken to have been made under section 24.

316 Reporting obligations for prescribed public hospitals to continue

- (1) This section applies to the obligations under the repealed Act, part 4A about reporting the performance of prescribed public hospitals.

[s 317]

- (2) The obligations under the repealed Act, part 4A continue to apply until a day prescribed by regulation.

317 When chief executive may decide service agreement

- (1) This section applies if the chief executive considers that there is not a reasonable time to negotiate and enter into the first service agreement with a Service.
- (2) The chief executive may decide the terms of the service agreement and give the chair of the Service's board a copy of the agreement.
- (3) The term of the service agreement must not be longer than 1 year.
- (4) The service agreement is taken to have been entered into under section 35.

319 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the establishment of, and the transfer of functions to, a Service; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire on 30 June 2013.

Division 3 **Savings and transitionals for the
Health and Hospitals Network and
Other Legislation Amendment Act
2012**

319A **Definitions for div 3**

In this division—

amendment Act means the *Health and Hospitals Network and Other Legislation Amendment Act 2012*.

commencement means 1 July 2012.

319B **Governing councils continue in existence as Hospital and Health Boards**

- (1) A governing council in existence immediately before the commencement continues in existence as a Hospital and Health Board under this Act.
- (2) If something is done by or in relation to a governing council before the commencement, the thing is taken to be done by or in relation to the board.
- (3) Without limiting subsection (2), an appointment of a member of a governing council is taken to be an appointment to the board.

319C **Networks continue in existence as Hospital and Health Services**

- (1) A network in existence immediately before the commencement continues in existence as a Hospital and Health Service under this Act.
- (2) If something is done by or in relation to a network before the commencement, the thing is taken to be done by or in relation to the Service.

[s 319D]

319D Transitional regulation-making power for amendment Act

- (1) A regulation (a *transitional regulation*) may amend a provision of this or another Act to take account of, or give effect to, the renaming of an entity or other thing by the amendment Act.
- (2) The following are examples of the amendments that may be made by regulation—
 - (a) ‘Local Health and Hospital Network’ may be omitted and ‘Hospital and Health Service’ inserted;
 - (b) ‘Network’ may be omitted and ‘Hospital and Health Service’ inserted;
 - (c) ‘network’ may be omitted and ‘Service’ inserted;
 - (d) ‘network area’ may be omitted and ‘health service area’ inserted;
 - (e) ‘network chief executive’ may be omitted and ‘health service chief executive’ inserted;
 - (f) ‘governing council’ may be omitted and ‘Hospital and Health Board’ inserted;
 - (g) ‘governing council’ may be omitted and ‘board’ inserted.
- (3) For this section, a regulation may amend a provision of this or another Act—
 - (a) that has not been amended by the amendment Act; or
 - (b) that has been amended by the amendment Act but requires further amendment to give effect to the renaming of an entity or other thing by the amendment Act.
- (4) This section expires on 30 June 2013.

Schedule 1 Conduct of business by boards

section 32

1 Application of sch 1

This schedule applies to the conduct of business by a board.

2 Conduct of business by board

The board may conduct its business, including its meetings, in the way it considers appropriate.

3 Times and places of meetings

- (1) Meetings of the board are to be held at the times and places the chair decides.
- (2) However, the chair must call a meeting if asked, in writing, to do so by the Minister or at least the number of members forming a quorum for the board.

4 Quorum

A quorum for a meeting of the board is one-half the number of its members, or if one-half is not a whole number, the next highest whole number.

5 Presiding at meetings

- (1) The chair is to preside at all meetings of the board at which the chair is present.
- (2) If the chair is not present at a meeting, the deputy chair is to preside.
- (3) If neither the chair nor deputy chair is present at a meeting, a member of the board chosen by the members is to preside.

6 Conduct of meetings

- (1) A question at a meeting of the board is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or permit members to take part in meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

- (5) A member who takes part in a meeting of the board under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a meeting of the board, if—
 - (a) a majority of the board members gives written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the board.

7 Minutes

- (1) The board must keep—
 - (a) minutes of its meetings; and
 - (b) a record of any resolutions made under section 6(6) of this schedule.
- (2) Subsection (3) applies if a resolution is passed at a meeting of the board by a majority of the members present.
- (3) If asked by a member who voted against the passing of the resolution, the board must record in the minutes of the meeting that the member voted against the resolution.

8 Committees

- (1) The board—
 - (a) may establish committees of the board for effectively and efficiently performing its functions; and
 - (b) must establish the committees prescribed under a regulation.
- (2) A committee may include a person who is not a member of the board.
- (3) The board is to decide the terms of reference of a committee.
- (4) The functions of a committee are to—
 - (a) advise and make recommendations to the board about matters, within the scope of the board's functions, referred by the board to the committee; and
 - (b) exercise powers delegated to it by the board.

Note—

Section 30 states that a board may delegate powers to a committee of the board if all of the members of the committee are board members.

- (5) A committee must keep a record of the decisions it makes when exercising a power delegated to it by the board.
- (6) The board may decide matters about a committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings.
- (7) A member of a committee is entitled to the fees and allowances fixed by the Governor in Council for performing his or her functions as a committee member.

9 Disclosure of interests

- (1) This section applies to a member of the board or committee (the *interested person*) if—
 - (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the board or committee; and

- (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a board or committee meeting.
- (3) Unless the board or committee otherwise directs, the interested person must not—
 - (a) be present when the board or committee considers the issue; or
 - (b) take part in a decision of the board or committee about the issue.
- (4) The interested person must not be present when the board or committee is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
 - (a) be present when the board or committee is considering whether to give a direction under subsection (3) about the interested person; or
 - (b) take part in making the decision about giving the direction.
- (6) If—
 - (a) because of this section, a board or committee member is not present at a board or committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the member were present; the remaining persons present are a quorum of the board or committee for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded in the minutes of the board or committee.

Schedule 2 Dictionary

section 14

Act official see section 141(2).

administrator—

- (a) for sections 276 and 277—means the administrator appointed under section 276; or
- (b) otherwise—means the administrator appointed under section 53K.

ancillary board means a Hospital and Health Ancillary Board.

applied Public Service law, for a health service employee, means the following that are applied to the employee under a regulation under the *Public Service Act 2008*, section 23—

- (a) a provision of the *Public Service Act 2008*;
- (b) a directive issued under that Act.

appoint, a person as a health service employee, means—

- (a) for a person who is a health service employee—promote, transfer, second or redeploy the employee; or
- (b) for a person to whom paragraph (a) does not apply—employ the person as a health service employee.

appointer means—

- (a) for a health service audit under part 4, division 2—a person who appoints a health service auditor under section 56; or
- (b) for a clinical review under part 6, division 3—a person who appoints a clinical reviewer under section 125; or
- (c) for part 8—the person who appoints an authorised person under section 163 or a security officer under section 164; or

- (d) for a health service investigation under part 9—a person who appoints a health service investigator under section 190.

approved form means a form approved by the chief executive.

Australian Commission on Safety and Quality in Health Care means the body established under the *National Health Reform Act 2011* (Cwlth).

authorised person means a person appointed as an authorised person under section 163.

award see the *Industrial Relations Act 1999*, schedule 5.

blameworthy act, for part 6, division 2, see section 94.

board means a Hospital and Health Board.

building includes the building services' plant and equipment for the building.

Examples—

air-conditioning, electrical light and power, water and waste services, data and communication, and lifts

certified agreement see the *Industrial Relations Act 1999*, schedule 5.

chain of events document, for part 6, division 2, see section 94.

chief executive means the chief executive of the department administering this Act.

chief health officer means the chief health officer under section 52.

clinical review includes an assessment of whether a health service provided to a person was provided in accordance with recognised clinical standards.

clinical reviewer means a clinical reviewer appointed under section 125.

clinician engagement strategy see section 40(1)(a).

COAG, for part 3A, division 4, has the meaning given in section 53I.

commencement, for part 13, division 2, see section 284.

commissioning authority, for part 6, division 2, see section 94.

committee, for part 6, division 1, means a quality assurance committee.

confidential information, for part 7, see section 139.

consumer and community engagement strategy see section 40(1)(b).

contracted health service employee means a health service employee appointed on contract under section 67.

coroner, for part 6, division 2, see section 94.

corporate support service includes financial management, asset management, human resource management, information and communication technology, information management, purchasing and logistics, legal services and insurance arrangements.

court, for part 10, see section 201.

designated person, for part 7, see section 139.

director of mental health means the person appointed as director of mental health under the *Mental Health Act 2000*, section 488.

disposal order, for part 10, see section 201.

district manager, for part 13, division 2, see section 284.

electronic document, for part 10, see section 201.

excluded notifiable conduct, for a registered health practitioner, means the practitioner has—

- (a) practised the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) practised the practitioner's profession in a way that constitutes a significant departure from accepted professional standards but not in a way that placed the public at risk of substantial harm; or

- (c) engaged in sexual misconduct in connection with the practice of the practitioner's profession.

executive committee means an executive committee established under section 32A.

former owner, for part 10, see section 201.

functions includes powers.

funding arrangement, for a public sector health service, includes an activity-based funding arrangement.

general power, for part 10, see section 201.

guardian, for part 7, see section 139.

health executive means a person appointed as a health executive under section 67.

health executive service means the health executive service continued under section 70.

health practitioner registration Act means any of the following—

- (a) the *Dental Technicians Registration Act 2001*;
- (b) the Health Practitioner Regulation National Law;
- (c) the *Speech Pathologists Registration Act 2001*.

health professional means—

- (a) a person registered under a health practitioner registration Act; or
- (b) a person, other than a person referred to in paragraph (a), who provides a health service, including, for example, an audiologist, dietitian or social worker.

Health Quality and Complaints Commission means the Health Quality and Complaints Commission established under the *Health Quality and Complaints Commission Act 2006*.

health service see section 15.

health service area means a health service area declared under section 17.

health service audit see section 55(2).

health service auditor means a health service auditor appointed under section 56.

health service chief executive means a health service chief executive appointed for a Service under section 33.

health service directive means a health service directive issued by the chief executive to a Service under section 47.

health service district, for part 13, division 2, see section 284.

health service employee means a person appointed as a health service employee under section 67.

health service facility, for part 6, division 2, see section 94.

health service investigator means a health service investigator appointed under section 190.

health services land means land and buildings from which public sector health services are delivered.

help requirement, for part 10, see section 201.

hospital includes any premises providing medical or surgical treatment, and nursing care, for ill or injured persons.

Hospital and Health Board, for a Service, means the board appointed for the Service under section 23.

Hospital and Health Service—

- (a) for part 3A, division 4—has the meaning given in section 53I; and
- (b) otherwise—means a Hospital and Health Service established under section 17.

identity card—

- (a) for part 8—see section 162; or
- (b) for part 10—see section 201.

impairment, for a registered health practitioner, has the meaning given by the Health Practitioner Regulation National Law.

industrial instrument see the *Industrial Relations Act 1999*, schedule 5.

information, for part 6, subdivision 5, see section 104.

information commissioner, for part 13, division 2, see section 284.

information notice, for part 10, see section 201.

inspector means a person who holds office under part 10, division 2 as an inspector.

licensee, of a private health facility, see the *Private Health Facilities Act 1999*, schedule 3.

local clinical governance arrangements means the policies, processes and accountabilities for improving patient safety and the quality, effectiveness and dependability of services provided by a Service.

local primary healthcare organisation, for a Service, means a primary healthcare organisation whose geographic area coincides in whole or in part with the health service area for the Service.

major capital works means the capital works prescribed by regulation.

member, of a board, means a member appointed under section 23.

minor capital works means capital works other than major capital works.

misconduct, for a member of a board, means—

- (a) inappropriate or improper conduct in performing the member's duties; or
- (b) inappropriate or improper conduct in a private capacity that reflects seriously or adversely on the board.

National Agency has the meaning given by the Health Practitioner Regulation National Law.

national clinical standards means clinical standards the Commonwealth and the States have agreed apply to health

services, including standards developed by the Australian Commission on Safety and Quality in Health Care.

National Health Funding Pool has the meaning given in section 53I.

National Health Reform Agreement has the meaning given in section 53I.

notice, for part 10, see section 201.

occupier, for part 10, see section 201.

of, a place, for part 10, see section 201.

offence warning—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

official traffic sign, for part 8, see section 162.

owner—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

parent, for part 7, see section 139.

performance data includes patient activity, financial, human resource, facility and clinical performance data.

personal details requirement—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

person in control, for part 10, see section 201.

place, for part 10, see section 201.

premises, for part 10, see section 201.

prescribed day, for a Service, means the day the Service is prescribed under section 20(4).

prescribed Service means a Service prescribed under section 20(4).

primary healthcare organisation means a body or organisation recognised as a primary healthcare organisation under a law of the Commonwealth.

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

promote, a health service employee, means employ the employee at a higher classification level, other than temporarily.

public patient means an individual who is a patient in a hospital but is not the patient of a medical practitioner in private practice while in the hospital.

public place, for part 10, see section 201.

public risk notifiable conduct, for a registered health practitioner, means the practitioner has—

- (a) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (b) placed the public at risk of substantial harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

public sector health service means a health service provided by a Service or the department and includes a health service declared under a regulation to be a public sector health service, but does not include a health service declared under a regulation not to be a public sector health service.

public sector health service facility means a facility at which public sector health services are provided.

public sector hospital means a hospital operated by a Service or the State.

quality assurance committee means a quality assurance committee established under section 82.

RCA, of a reportable event, for part 6, division 2, see section 94.

RCA report, for part 6, division 2, see section 94.

RCA team, for part 6, division 2, see section 94.

reasonably believes, for part 10, see section 201.

reasonably suspects, for part 10, see section 201.

redeploy, a health service employee, means employ the employee at a lower classification level, other than temporarily.

registered health practitioner means an individual who—

- (a) is registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student; or
- (b) holds non-practising registration under the Health Practitioner Regulation National Law in a health profession.

regulatory notice, for part 8, see section 162.

relevant chief executive means—

- (a) for information held by a Service—the health service chief executive or the chief executive; or
- (b) for information held by the department—the chief executive.

relevant health service, for part 6, division 2, see section 94.

relevant person means—

- (a) for a quality assurance committee, a person authorised by the committee to help the committee in the performance of its functions, including by—
 - (i) providing administrative or secretarial services to the committee; or
 - (ii) advising the committee about the performance of its functions; or
 - (iii) preparing reports and other information for the committee; or
- (b) for a commissioning authority, a person authorised by the authority to help the authority in the performance of its functions, including by—

- (i) providing administrative or secretarial services to the authority; or
 - (ii) advising the authority about the performance of its functions; or
 - (iii) preparing reports and other information for the authority; or
- (c) for an RCA team, a person authorised by the RCA team to help the RCA team in the performance of its functions, including by—
- (i) providing administrative or secretarial services to the RCA team; or
 - (ii) advising the RCA team about the performance of its functions; or
 - (iii) preparing reports and other information for the RCA team.

repealed Act means the *Health Services Act 1991*.

reportable event, for part 6, division 2, see section 94.

reprisal, for part 6, division 2, means a reprisal as mentioned in section 120(3).

responsible Minister, for part 3A, division 4, has the meaning given in section 53I.

Root cause analysis, of a reportable event, for part 6, division 2, see section 94.

second, a health service employee, means temporarily employ the person at the same or different classification level, on different duties or at a different location.

security officer means a person appointed as a security officer under section 164.

Service means a Hospital and Health Service.

service agreement, for a Service, see section 16.

specialised health service means a health service provided by the department.

Standing Council on Health, for part 3A, division 4, has the meaning given in section 53I.

State, for part 3A, division 4, has the meaning given in section 53I.

State managed fund has the meaning given in section 53I.

State pool account has the meaning given in section 53I.

support service includes a corporate support service, business support service and clinical support service.

Examples of business support service—

- a cleaning service
- catering and laundry services
- a service providing food to hospital patients
- a service to maintain medical equipment

Examples of clinical support service—

- a pathology service
- a blood management service

takes a reprisal, for part 6, division 2, means contravenes section 120(1).

temporary health service employee means a health service employee appointed on a temporary basis under section 67.

tenured health service employee means a health service employee appointed on tenure under section 67.

transfer, a health service employee, means employ the employee at the same classification level, on different duties or at a different location, other than temporarily.

transfer notice, for part 13, see section 307(2).

vehicle—

- (a) for part 8—see section 162; or
- (b) for part 10—see section 201.

working for a Service, for a person employed in the department, means—

Schedule 2

- (a) working in and for a Service under an agreement between the chief executive and the Service for the chief executive to provide departmental employees to perform work for the Service; and
- (b) reporting directly or indirectly to the health service chief executive.

Example of a person who does not work for a Service—

a person employed in the department who provides pathology services to a hospital and health service and does not report directly or indirectly to a health service chief executive

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	213
3 Key	214
4 Table of reprints	214
5 List of legislation	215
6 List of annotations	215
7 Table of corrected minor errors	226

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2012. Future amendments of the Hospital and Health Boards Act 2011 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	17 February 2012	certain provs commenced
0B	none	1 June 2012	certain provs commenced
1	2011 Act No. 32 2012 Act No. 9 2012 Act No. 10	1 July 2012	majority of provs commenced

5 List of legislation

Hospital and Health Boards Act 2011 No. 32 (prev Health and Hospitals Network Act 2011)

date of assent 28 October 2011

ss 1–2 commenced on date of assent

ss 3–18, 19(2)(b), pt 2 div 2, ss 35–36, 38, 45(j)–(k), pt 3 div 2 (other than s 48), pt 11, ss 280, 282, 315, 317, schs 2–3 commenced 17 February 2012 (2012 SL No. 23 item 1)

s 37 commenced 1 June 2012 (2012 SL No. 23 item 2)

s 48 commences 1 September 2012 (2012 SL No. 61 item 2)

ss 276–277 commenced 1 June 2012 (2012 SL No. 61 item 1)

s 318 never proclaimed into force and om 2012 No. 9 s 54 sch pt 14 commenced 18 November 2011 (2011 SL No. 228)

remaining provisions commenced 1 July 2012 (2012 SL No. 61 item 3) (previous proclamation 2012 SL No. 23 item 3 was rep (2012 SL No. 61))

amending legislation—

Hospital and Health Boards Act 2011 No. 32 (prev Health and Hospitals Network Act 2011) ss 1–2, 332 sch 1 pt 1

date of assent 28 October 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2012 (2012 SL No. 61 item 3) (previous proclamation 2012 SL No. 23 item 3 was rep (2012 SL No. 61))

Health and Hospitals Network and Other Legislation Amendment Act 2012 No. 9 pts 1–2, s 54 sch

date of assent 27 June 2012

ss 1–2 commenced on date of assent

ss 7, 18, 26, 42 not yet proclaimed into force (see s 2(2))

remaining provisions commenced 1 July 2012 (see s 2(1))

Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2012 No. 10 pts 1, 9

date of assent 27 June 2012

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2012 (see s 2)

6 List of annotations

Long title amd 2011 No. 32 s 332 sch 1 pt 1

Short title

s 1 amd 2012 No. 9 s 4

Establishment of Hospital and Health Services

s 7 sub 2012 No. 9 s 5

Management of the public sector health system

s 8 amd 2012 No. 9 ss 6, 54 sch

Management of health system performance

s 9 amd 2012 No. 9 s 54 sch

Statewide employment and industrial relations arrangements

s 10 amd 2012 No. 9 s 8

Definitions

s 14 amd 2011 No. 32 s 332 sch 1 pt 1

Meaning of “service agreement”

s 16 amd 2012 No. 9 s 54 sch

PART 2—HOSPITAL AND HEALTH SERVICES

pt hdg sub 2012 No. 9 s 54 sch

Division 1—Establishment, functions and powers of Services

div hdg amd 2012 No. 9 s 54 sch

Establishment of Services

prov hdg amd 2012 No. 9 s 54 sch

s 17 amd 2012 No. 9 s 54 sch

Legal status

s 18 amd 2012 No. 9 s 54 sch

Functions of Services

prov hdg amd 2012 No. 9 s 54 sch

s 19 amd 2012 No. 9 ss 9, 54 sch

Powers of Services

prov hdg amd 2012 No. 9 s 54 sch

s 20 amd 2012 No. 9 ss 10, 54 sch

Limitation on Service’s dealing with land or buildings

s 20A ins 2012 No. 9 s 11

Application of other Acts

s 21 amd 2012 No. 9 s 54 sch

Division 2—Hospital and Health Boards for Services

div hdg amd 2012 No. 9 s 54 sch

Subdivision 1—Role of Hospital and Health Boards

sdiv hdg amd 2012 No. 9 s 54 sch

Role of exercising control over Service

prov hdg amd 2012 No. 9 s 54 sch

s 22 amd 2012 No. 9 s 54 sch

Membership of boards

prov hdg amd 2012 No. 9 s 54 sch

s 23 amd 2012 No. 9 ss 12, 54 sch

Minister to advertise for members of boards

prov hdg amd 2012 No. 9 s 54 sch
s 24 amd 2012 No. 9 s 54 sch

Chair and deputy chair

prov hdg amd 2012 No. 9 s 54 sch
s 25 amd 2012 No. 9 s 54 sch

Conditions of appointment

s 26 amd 2012 No. 9 s 54 sch

Vacation of office of board member

prov hdg amd 2012 No. 9 s 54 sch
s 27 amd 2012 No. 9 s 54 sch

Suspension from office of Hospital and Health Board members

s 27A ins 2012 No. 9 s 13

Removal from office of board members

prov hdg amd 2012 No. 9 s 54 sch
s 28 amd 2012 No. 9 s 14

Defects in appointment of members

s 29 amd 2012 No. 9 s 54 sch

Subdivision 3—Delegation by Hospital and Health Boards

sdiv 3 (s 30) sub 2012 No. 9 s 15

Members to act in public interest

s 31 amd 2012 No. 9 s 54 sch

Conduct of business by boards

prov hdg amd 2012 No. 9 s 54 sch
s 32 amd 2011 No. 32 s 332 sch 1 pt 1

Division 2A—Executive committees

div 2A (ss 32A–32D) ins 2012 No. 9 s 16

Division 3—Health service chief executives

div 3 (ss 33–34) sub 2012 No. 9 s 17

Chief executive and Service must enter into service agreements

prov hdg amd 2012 No. 9 s 54 sch
s 35 amd 2012 No. 9 s 54 sch

Negotiations for service agreement

s 37 amd 2012 No. 9 s 54 sch

Minister may decide on terms of service agreement

s 38 amd 2012 No. 9 s 54 sch

Procedure to amend service agreement

s 39 amd 2012 No. 9 s 54 sch

Engagement strategies

s 40 amd 2012 No. 9 s 54 sch

Review of strategies

s 41 amd 2012 No. 9 s 54 sch

Protocol with primary healthcare organisations

s 42 amd 2012 No. 9 s 54 sch

Review of protocol

s 43 amd 2012 No. 9 s 54 sch

Division 4A—Hospital and Health Ancillary Boards

div 4A (s 43A) ins 2012 No. 9 s 19

Division 5—Directions to Hospital and Health Services and appointment of advisers to Hospital and Health Boards

div hdg sub 2012 No. 9 s 20

Minister may give directions to Service

prov hdg amd 2012 No. 9 s 54 sch

s 44 amd 2012 No. 9 ss 21, 54 sch

Minister may appoint advisers to boards

s 44A ins 2012 No. 9 s 22

Matters to which Minister may have regard in deciding whether to appoint adviser

s 44B ins 2012 No. 9 s 22

Functions of advisers

s 44C ins 2012 No. 9 s 22

Adviser not a member of board but has duty of disclosure

s 44D ins 2012 No. 9 s 22

amd 2012 No. 9 s 54 sch

Obligations of board in relation to adviser

s 44E ins 2012 No. 9 s 22

Chief executive subject to direction of the Minister

s 44F ins 2012 No. 9 s 23

Functions of chief executive

s 45 amd 2012 No. 9 ss 24, 54 sch

Delegation by chief executive

s 46 amd 2012 No. 9 ss 25, 54 sch

Health service directives

s 47 amd 2012 No. 9 s 54 sch

Consultation on health service directives

s 48 amd 2012 No. 9 s 54 sch

Health service directives binding

s 50 amd 2012 No. 9 s 54 sch

Review of health service directives

s 51 amd 2012 No. 9 s 54 sch

Functions of chief health officer

s 53 amd 2012 No. 9 s 54 sch

Chief executive may provide data to Commonwealth

s 54 amd 2012 No. 9 ss 27, 54 sch

Function of health service auditors

s 55 amd 2012 No. 9 s 54 sch

Appointment of health service auditors

s 56 amd 2012 No. 9 s 54 sch

Powers of health service auditors

s 60 amd 2012 No. 9 s 28

Reports by health service auditors

s 64 amd 2012 No. 9 s 54 sch

Chief executive may request report from health service chief executive

prov hdg amd 2012 No. 9 s 54 sch

s 65 amd 2012 No. 9 s 54 sch

Appointment of health service employees

s 67 amd 2012 No. 9 s 29

Contracted health service employees other than health executives

s 68 amd 2012 No. 9 s 30

Modification of Industrial Relations Act 1999 for health service employees

s 69A ins 2012 No. 9 s 31

Principles of health executive service employment

s 72 amd 2012 No. 9 s 54 sch

Composition of health executive service

s 73 amd 2012 No. 9 s 54 sch

Basis of employment for health executives

s 74 amd 2012 No. 9 s 32

Transfer of health service employees

prov hdg amd 2012 No. 9 s 33(1)

s 78 amd 2012 No. 9 s 33(2)–(5)

Division 4—Matters relating to employment of health service employees by Services

div hdg ins 2012 No. 9 s 34

Departmental health service employees to be employed by Services

s 80 prev s 80 om 2012 No. 9 s 54 sch

pres s 80 ins 2012 No. 9 s 34

Appointment to perform functions or do other things not affected by becoming employees of prescribed Service

s 80A ins 2012 No. 9 s 34

Matters and proceedings not affected by persons becoming employees of prescribed Service

s 80B ins 2012 No. 9 s 34

Establishment of quality assurance committees

s 82 amd 2012 No. 9 s 54 sch

Disclosure of information

s 84 amd 2012 No. 9 s 54 sch

Protection for documents and information

s 87 amd 2012 No. 9 ss 35, 54 sch

Protection from liability

s 88 amd 2012 No. 9 s 54 sch

Division 2—Root cause analysis

Subdivision 1—Preliminary

Definitions for div 2

s 94 def “root cause analysis” amd 2012 No. 9 s 54 sch

Subdivision 2—RCA teams

Appointment of RCA team

s 98 amd 2012 No. 9 s 54 sch

Subdivision 5—Disclosure or release of information

Giving of copy of RCA report or chain of events document—patient safety entity

s 112 amd 2012 No. 9 s 54 sch

Subdivision 6—Protections

Protection from liability

s 116 amd 2012 No. 9 s 54 sch

Protection for documents and information

s 119 amd 2012 No. 9 s 36

Division 3—Clinical reviews

Functions of clinical reviewers

s 124 amd 2012 No. 9 s 54 sch

Appointment of clinical reviewers

s 125 amd 2012 No. 9 s 54 sch

Powers of clinical reviewers

s 129 amd 2012 No. 9 s 37

Duty of confidentiality of clinical reviewers

s 132 amd 2012 No. 9 s 54 sch

Reports by clinical reviewers other than to provide advice to investigator

s 135 amd 2012 No. 9 s 54 sch

Chief executive may request report from health service chief executive

prov hdg amd 2012 No. 9 s 54 sch

s 137 amd 2012 No. 9 s 54 sch

Protection for reports

prov hdg amd 2012 No. 9 s 38(1)

s 138 amd 2012 No. 9 s 38(2)

Definitions for pt 7

s 139 def “**designated person**” amd 2012 No. 9 s 54 sch

Disclosure required or permitted by law

s 143 amd 2012 No. 9 ss 39, 54 sch

Disclosure to Commonwealth, another State or Commonwealth or State entity

s 151 amd 2012 No. 9 s 54 sch

Disclosure to lawyers

s 158 amd 2012 No. 9 s 54 sch

Disclosure of confidential information in the public interest

s 160 amd 2012 No. 9 s 54 sch

Necessary or incidental disclosure

s 161 amd 2012 No. 9 s 54 sch

Appointment of authorised persons

s 163 amd 2012 No. 9 s 54 sch

Appointment of security officers

s 164 amd 2012 No. 9 s 54 sch

Health services land for which health service chief executives may exercise powers

prov hdg amd 2012 No. 9 s 54 sch

s 173 amd 2012 No. 9 s 54 sch

Regulatory notice

s 175 amd 2012 No. 9 s 54 sch

Notices that contravention of regulatory notice an offence

s 176 amd 2012 No. 9 s 54 sch

Removal and detention of illegally parked or abandoned vehicles

s 177 amd 2012 No. 9 s 54 sch

Disposal of unclaimed vehicles

s 178 amd 2012 No. 9 s 54 sch

Application of proceeds of sale

s 179 amd 2012 No. 9 s 54 sch

Health services land for which health service chief executives may exercise powers

prov hdg amd 2012 No. 9 s 54 sch

s 181 amd 2012 No. 9 s 54 sch

Prohibition of smoking

s 184 amd 2012 No. 9 s 54 sch

Appointment of health service investigators

s 190 amd 2012 No. 9 s 54 sch

Powers of health service investigators

s 194 amd 2012 No. 9 s 40

Reports by health service investigators

s 199 amd 2012 No. 9 s 54 sch

Chief executive may request report from health service chief executives

prov hdg amd 2012 No. 9 s 54 sch

s 200 amd 2012 No. 9 s 54 sch

Appointments and authority

s 266 amd 2012 No. 9 s 54 sch

Signatures

s 267 amd 2012 No. 9 s 54 sch

Evidentiary provisions

s 268 amd 2012 No. 9 s 54 sch

Disclosure of personal information of health service employees and health professionals

s 274 amd 2012 No. 9 s 54 sch

Governor in Council may dismiss members of board

prov hdg amd 2012 No. 9 s 54 sch

s 275 amd 2012 No. 9 s 54 sch

Governor in Council may appoint administrator for Service

prov hdg amd 2012 No. 9 s 54 sch

s 276 amd 2012 No. 9 s 54 sch

Term and role of administrator

s 277 amd 2012 No. 9 s 54 sch

Delegation by Minister

s 279 amd 2012 No. 9 s 41

Protecting officials

s 280 amd 2012 No. 9 s 54 sch

Regulation-making power

s 282 amd 2012 No. 9 ss 43, 54 sch

PART 13—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Division 2—Savings and transitionals for Act No. 32 of 2011

div hdg sub 2012 No. 9 s 44

Existing health executives employed in health service districts

s 286 amd 2012 No. 9 s 54 sch

Continued appointment of inspectors

s 288 amd 2012 No. 9 s 54 sch

Continued appointment of authorised persons

s 289 amd 2012 No. 9 s 54 sch

Continued appointment of security officers

s 290 amd 2012 No. 9 s 54 sch

Continued appointment of auditors

s 291 amd 2012 No. 9 s 54 sch

Continued appointment of investigators

s 292 amd 2012 No. 9 s 54 sch

Continuation of RCA teams

s 293 amd 2012 No. 9 s 54 sch

Health service audits

s 296 amd 2012 No. 9 s 54 sch

Health service investigations

s 297 amd 2012 No. 9 s 54 sch

Regulatory notices and information notices

s 298 amd 2012 No. 9 s 54 sch

Applications under Information Privacy Act 2009, s 43, 44 or 94

s 300 amd 2012 No. 9 s 54 sch

Applications under Information Privacy Act 2009, s 99

s 301 amd 2012 No. 9 s 54 sch

Persons affected by reviewable decision under the Information Privacy Act 2009

s 302 amd 2012 No. 9 s 54 sch

Applications under Right to Information Act 2009, s 24 or 80

s 303 amd 2012 No. 9 s 54 sch

Applications under Right to Information Act 2009, s 85

s 304 amd 2012 No. 9 s 54 sch

Persons affected by reviewable decision under the Right to Information Act 2009

s 305 amd 2012 No. 9 s 54 sch

Assistance must be provided

s 306 amd 2012 No. 9 s 54 sch

Transfer notice

s 307 amd 2012 No. 9 ss 45, 54 sch

Requirement for Service to develop engagement strategies

prov hdg amd 2012 No. 9 s 54 sch

s 313 amd 2012 No. 9 s 54 sch

Requirement for Service to develop protocol

prov hdg amd 2012 No. 9 s 54 sch
s 314 amd 2012 No. 9 s 54 sch

Advertising for members of boards before commencement

prov hdg amd 2012 No. 9 s 54 sch
s 315 amd 2012 No. 9 s 54 sch

When chief executive may decide service agreement

s 317 amd 2012 No. 9 s 54 sch

When consultation on health service directive not required

s 318 om 2012 No. 9 s 54 sch

Transitional regulation-making power

s 319 amd 2012 No. 9 s 54 sch
exp 30 June 2013 (see s 319(4))

Division 3—Savings and transitionals for the Health and Hospitals Network and Other Legislation Amendment Act 2012

div hdg ins 2012 No. 9 s 46

Definitions for div 3

s 319A ins 2012 No. 9 s 46

Governing councils continue in existence as Hospital and Health Boards

s 319B ins 2012 No. 9 s 46

Networks continue in existence as Hospital and Health Services

s 319C ins 2012 No. 9 s 46

Transitional regulation-making power for amendment Act

s 319D ins 2012 No. 9 s 46
exp 30 June 2013 (see s 319D(4))

PART 14—AMENDMENT OF TOBACCO AND OTHER SMOKING PRODUCTS ACT 1998

pt 14 (ss 320–331) om R0B (see RA ss 7(1)(k) and 40)

PART 15—CONSEQUENTIAL AMENDMENTS

pt 15 (s 332) om R1 (see RA ss 7(1)(k) and 40)

SCHEDULE 1—CONDUCT OF BUSINESS BY BOARDS

sch 1 hdg prev sch 1 hdg om R1 (see RA s 7(1)(k))
pres sch 1 hdg (prev sch 2 hdg) amd 2012 No. 9 s 54 sch
sch 1 pres sch 1 (prev sch 2) renum 2011 No. 32 s 332 sch 1 pt 1

Application of sch 1

prov hdg amd 2011 No. 32 s 332 sch 1 pt 1
s 1 amd 2012 No. 9 s 54 sch

Conduct of business by board

prov hdg amd 2012 No. 9 s 54 sch
s 2 amd 2012 No. 9 s 54 sch

Times and places of meetings

s 3 amd 2012 No. 9 s 54 sch

Quorum

s 4 amd 2012 No. 9 s 54 sch

Presiding at meetings

s 5 amd 2012 No. 9 s 54 sch

Conduct of meetings

s 6 amd 2012 No. 9 s 54 sch

Minutes

s 7 amd 2012 No. 9 s 54 sch

Committees

s 8 amd 2012 No. 9 s 54 sch

Disclosure of interests

s 9 amd 2012 No. 9 s 54 sch

PART 1—AMENDMENT OF THIS ACT

pt 1 om R1 (see RA ss 7(1)(k) and 40)

PART 2—AMENDMENT OF OTHER LEGISLATION

pt 2 sub 2012 No. 9 s 47
om R1 (see RA ss 7(1)(k) and 40)

SCHEDULE 2—DICTIONARY

sch 2 pres sch 2 (prev sch 3) renum 2011 No. 32 s 332 sch 1 pt 1
def “**administrator**” ins 2012 No. 9 s 48(2)
def “**ancillary board**” ins 2012 No. 9 s 48(2)
def “**Australian Commission on Safety and Quality in Health Care**” amd
2012 No. 9 s 54 sch
def “**board**” ins 2012 No. 9 s 48(2)
def “**building**” ins 2012 No. 9 s 48(2)
def “**COAG**” ins 2012 No. 9 s 48(2)
def “**corporate support service**” amd 2012 No. 9 s 54 sch
def “**executive committee**” ins 2012 No. 9 s 48(2)
def “**governing council**” om 2012 No. 9 s 48(1)
def “**health practitioner registration Act**” amd 2012 No. 10 s 20
def “**health service area**” ins 2012 No. 9 s 48(2)
def “**health service chief executive**” ins 2012 No. 9 s 48(2)
def “**health service directive**” amd 2012 No. 9 s 54 sch
def “**Hospital and Health Board**” ins 2012 No. 9 s 48(2)
def “**Hospital and Health Service**” ins 2012 No. 9 s 48(2)
def “**local clinical governance arrangements**” amd 2012 No. 9 s 54 sch
def “**local primary healthcare organisation**” amd 2012 No. 9 s 54 sch
def “**member**” amd 2012 No. 9 s 54 sch
def “**misconduct**” ins 2012 No. 9 s 48(2)
def “**National Health Funding Pool**” ins 2012 No. 9 s 48(2)
def “**National Health Reform Agreement**” ins 2012 No. 9 s 48(2)
def “**network**” om 2012 No. 9 s 48(1)
def “**network area**” om 2012 No. 9 s 48(1)
def “**network chief executive**” om 2012 No. 9 s 48(1)

def “**network employee**” om 2012 No. 9 s 48(1)
def “**network health executive**” om 2012 No. 9 s 48(1)
def “**prescribed day**” ins 2012 No. 9 s 48(2)
def “**prescribed Service**” ins 2012 No. 9 s 48(2)
def “**public sector health service**” amd 2012 No. 9 s 54 sch
def “**public sector hospital**” amd 2012 No. 9 s 54 sch
def “**relevant chief executive**” amd 2012 No. 9 s 54 sch
def “**responsible Minister**” ins 2012 No. 9 s 48(2)
def “**Service**” ins 2012 No. 9 s 48(2)
def “**service agreement**” amd 2012 No. 9 s 54 sch
def “**Standing Council on Health**” ins 2012 No. 9 s 48(2)
def “**State**” ins 2012 No. 9 s 48(2)
def “**State managed fund**” ins 2012 No. 9 s 48(2)
def “**State pool account**” ins 2012 No. 9 s 48(2)
def “**working for a Service**” ins 2012 No. 9 s 48(2)

7 Table of corrected minor errors

under the Reprints Act 1992 s 44

Provision	Description
88(4)	om ‘3(a)’ ins ‘(3)(a)’
162, def “vehicle”	om ‘vehicle, see’ ins ‘vehicle see’
sch 2, def “transfer”	om ‘health service employee means’ ins ‘health service employee, means’

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