

# Hospital and Health Boards Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 49

made under the

*Hospital and Health Boards Act 2011*

## General Outline

### Short title

*Hospital and Health Boards Amendment Regulation (No. 1) 2014.*

### Authorising law

Section 282 of the *Hospital and Health Boards Act 2011*.

### Policy objectives and the reasons for them

The objectives of the regulation are to:

- amalgamate the Cape York Hospital and Health Service (HHS) and the Torres Strait-Northern Peninsula HHS, to form the Torres and Cape HHS; and
- ensure the amalgamated HHS is able to fully commence functions under the *Hospital and Health Boards Act 2011* from 1 July 2014.

The *Hospital and Health Boards Act 2011* provides for the establishment of HHSs, which are statutory bodies and the principal providers of public sector health services in Queensland. Each HHS is independently and locally controlled by a Hospital and Health Board (Board), which appoints a Health Service Chief Executive (HSCE). There are currently 17 HHSs established under the Act, which are prescribed in Schedule 1 of the *Hospital and Health Boards Regulation 2012*. In December 2013, it was publicly announced that two of these HHSs – Cape York and Torres Strait-Northern Peninsula – will be amalgamated.

Since the Cape York HHS was established on 1 July 2012, its ability to continue to operate efficiently as a stand-alone entity has been identified as a significant challenge. Due to their small size, neither Cape York nor Torres Strait–Northern Peninsula HHS has the critical mass for efficient stand-alone administration. The two services, which had previously operated as a single entity in the 1990s, have similar budgets, staffing levels and challenges in providing efficient and effective health care services. Amalgamating the two services will allow for improved governance and greater efficiencies to be achieved and will present a great opportunity for achieving improved patient outcomes in that region.

The *Hospital and Health Boards Act 2011* contains a prescriptive regulation-making power, which includes provision for a regulation to be made about the amalgamation of HHSs. It is this power that is being relied upon to make a regulation to amalgamate the Cape York and Torres Strait-Northern Peninsula HHSs.

## Achievement of policy objectives

To achieve the policy objectives, the regulation:

- provides for the Cape York and Torres Strait-Northern Peninsula HHSs to be amalgamated on 1 July 2014, by prescribing the Torres and Cape HHS in Schedule 1 of the *Hospital and Health Boards Regulation 2012*;
- enables appointment of a Board, and for the persons comprising the Board to appoint an HSCE, with both appointments to take effect from 1 July 2014;
- provides for transitional matters, including:
  - employment matters (for example, transfer of contracted staff, continued appointments for officials and authorised persons);
  - continuation of Quality Assurance Committees, Root Cause Analysis (RCA) teams and RCA investigations;
  - continuation of information applications under the *Information Privacy Act 2009* and the *Right to Information Act 2009* (to enable applications to continue to be dealt with by the amalgamated HHS);
  - transfer of assets and liabilities;
  - continuation of pending legal proceedings by the amalgamated HHS;
  - transfer and ownership of records; and
- makes consequential amendments to Schedules and definitions to remove references to the two existing HHSs and replace them with a reference to the amalgamated HHS.

Consistent with the process used to first establish the 17 HHSs on 1 July 2012, it is necessary to enable a Board to be appointed, and for the persons comprising that Board to appoint a HSCE (if a suitable person is identified for appointment), prior to 1 July 2014. This will ensure the amalgamated HHS is able to fully commence functions under the *Hospital and Health Boards Act 2011* from 1 July 2014. The regulation provides for these appointments to occur and deems those appointments to have been made under the *Hospital and Health Boards Act 2011*.

## **Consistency with policy objectives of authorising**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

The regulation is the only effective means of amalgamating the Cape York and Torres Strait-Northern Peninsula HHSs, to establish the Torres and Cape HHS.

## **Benefits and costs of implementation**

The delivery of health services will not be negatively affected in either HHS as a result of the transition. In fact, the two communities can expect to receive improved patient outcomes as a result of this transition and the broader enhancements and revitalisation occurring across the health system. Under the current health reforms, the new combined health service will enable Aboriginal and Torres Strait Islander communities and remote communities in Cape York to have a greater voice, a greater scale of operation and more control of their health services. Budget allocations are expected to remain the same.

Amalgamating the two HHSs into a single larger organisation will enable a single, efficient administrative structure and allow the health service to focus more on delivering quality health care to the community. Amalgamating the two HHSs will result in stronger governance, better representation for the community and will ultimately improve patient outcomes. Furthermore, the amalgamation will allow for better integration of administrative services across the region and will allow for a better use of the available workforce to deliver better health services.

Any potential costs arising from the amalgamation will be met from within existing budgets.

## **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The amalgamation was publicly announced on 4 December 2013 and affected staff members have been kept informed about the progress and impact of the amalgamation via internal communication processes.

The Office of Best Practice Regulation (OBPR) within the Queensland Competition Authority was consulted with regard to Regulatory Impact Statement (RIS) System requirements. The OBPR advised that the regulation is excluded from the RIS System on the basis that it aligns with an identified exclusion category.

## Notes on provisions

### Short Title

*Clause 1* provides the short title of the regulation.

### Commencement

*Clause 2* provides for the commencement of the regulation. Sections 11 and 13 of the regulation, which provide for the establishment of the Torres and Cape HHS and consequential amendments to definitions in the Dictionary (Schedule 6), commence on 1 July 2014. The remainder of the regulation commences upon notification of the regulation.

### Regulation amended

*Clause 3* specifies that the regulation amends the *Hospital and Health Boards Regulation 2012*.

### Insertion of new pt 2, div 1 heading

*Clause 4* inserts a new division heading in Part 2, to separate the existing provisions in Part 2 from new provisions to be inserted under this regulation to provide for the amalgamation of the Cape York and Torres Strait-Northern Peninsula HHSs.

### Amendment of s 3 (Establishment of Hospital and Health Services—Act, s 17)

*Clause 5* amends the reference to ‘the schedule’ to refer to ‘schedule 1’, to clarify which of the six schedules in the *Hospital and Health Boards Regulation 2012* provides for the establishment of HHSs.

### Insertion of new pt 2, div 2

*Clause 6* inserts a new division heading in Part 2, as a consequence of the amendment in clause 4. This clause also inserts a new section 3A, which provides for the amalgamation of the Cape York and Torres Strait-Northern Peninsula HHSs, and specifies that the name assigned to the new Service is the “Torres and Cape Hospital and Health Service”.

### Replacement of pt 9, div 1 hdg

*Clause 7* amends the heading in Part 9 to insert a new heading for Division 1 and insert a heading for Division 1, Subdivision 1, which relates only to the existing transitional provisions for SL No. 90 of 2012. This enables a new Division 2 to be inserted for transitional provisions that apply as a result of this regulation (see clause 10).

### **Amendment of s 38 (Definition for pt 9)**

*Clause 8* amends section 38 and the section heading to refer to Part 9, Division 1, as a consequence of the amendment in clause 7.

### **Replacement of pt 9, div 2 heading**

*Clause 9* amends the heading for Part 9, Division 2 to replace this with “Subdivision 2” as a consequence of the amendment in clause 7.

### **Insertion of new pt 9, div 2**

*Clause 10* inserts a new Part 9, Division 2, to provide transitional provisions that will apply as a result of this regulation. A heading is inserted after section 41 for new Part 9, Division 2.

This clause also inserts new section 42, which applies new Schedule 5A from 1 July 2014. New Schedule 5A sets out general provisions for amalgamation of HHSs that may be applied to the current, and future, amalgamations (with modification as required) (see clause 12). This clause also defines the term ‘amalgamation day’ as meaning 1 July 2014.

### **Amendment of sch 1 (Hospital and Health Services)**

*Clause 11* amends Schedule 1 to omit the entries for the Cape York HHS and the Torres Strait-Northern Peninsula HHS and insert an entry for the Torres and Cape HHS. The prescribed local government areas associated with the Torres and Cape HHS are also prescribed, and these local government areas are consistent with the areas currently prescribed for the Cape York and Torres Strait-Northern Peninsula HHSs.

### **Insertion of new sch 5A**

*Clause 12* inserts new Schedule 5A into the *Hospital and Health Boards Regulation 2011*, which sets out general provisions for the current and future amalgamation of HHSs. The new schedule consists of new sections 1 to 15. For the current amalgamation, these provisions will be applied to the Cape York and Torres Strait-Northern Peninsula HHSs as the “merging Services” and the Torres and Cape HHS as the “new Service”.

#### ***New section 1 – Definition for sch 5A***

New section 1 provides a definition for the term, ‘new health service chief executive’.

#### ***New section 2 – Appointment of new health service chief executive***

New section 2 provides for the appointment of a new health service chief executive prior to the amalgamation day (1 July 2014); however, the appointment does not take effect until 1 July 2014. The making of this regulation will enable a Board for the Torres and Cape HHS to be appointed under section 23 of the *Hospital and Health Boards Act 2011*. New section 2 provides for that appointment to take effect on 1 July 2014, but also enables the persons who are to constitute that Board to appoint a health service chief executive for the Torres and Cape HHS prior to 1 July 2014.

This section is a deeming provision, in that it states that an appointment of a Board and a health service chief executive made under this section are deemed to have been made under sections 23 and 33 (respectively) of the *Hospital and Health Boards Act 2011*.

***New section 3 – Continued appointment as authorised person or security officer***

New section 3 provides for the transfer of authorised persons and security officers from the merging Services to the new Service on 1 July 2014.

***New section 4 – Continued appointments to relevant offices to undertake official functions***

New section 4 provides for the continued appointment of health service auditors, clinical reviewers and health service investigators appointed by the merging Services, in the new Service. However, these appointments only continue if those persons have not finished an audit, review or investigation before the amalgamation day.

***New section 5 – Continuation of quality assurance committees***

New section 5 provides for the continuation of quality assurance committees established by the merging Services, if they were in existence immediately before the amalgamation day. Any procedures that were decided by those committees continue to apply.

***New section 6 – Continuation of RCA teams and RCAs***

New section 6 provides for the continuation of RCA teams established by the merging Services, if the RCA team has not finished conducting an RCA before the amalgamation day. The appointment continues until the team provides the RCA report or until the conduct of the RCA is stopped.

***New section 7 – Application for internal review***

New section 7 provides for the continuation of an application for internal review made under the *Information Privacy Act 2009* or the *Right to Information Act 2009*. The new Service will continue these applications as if the application had been made to the new Service, rather than a merging Service.

***New section 8 – Application for external review***

New section 8 provides for the continuation of an application for external review made under the *Information Privacy Act 2009* or the *Right to Information Act 2009*. On the amalgamation day, the new Service becomes the participant in the external review, replacing the merging Service/s.

***New section 9 – Persons affected by reviewable decisions***

New section 9 provides that where a merging Service makes a reviewable decision under the *Information Privacy Act 2009* or the *Right to Information Act 2009*, the Act applies as if the decision was made by the new Service. Therefore, providing the time limit to apply for a review has not expired, the affected person may apply to the new Service for a review of a decision of a merging Service.

***New section 10 – Divestment of assets, release of liabilities and transfer of assets and liabilities***

New section 10 provides that all assets and liabilities of a merging Service transfer to the new Service on the amalgamation day, and that each merging Service is divested of all its assets and released from all its liabilities.

***New section 11 – Successor in law***

New section 11 provides that the new Service is the successor in law of each merging Service.

***New section 12 – Instruments***

New section 12 provides that a merging Service instrument applies to the new Service in place of the merging Service. This provision will enable any instruments, such as contracts or agreements, to be transferred to the new Service.

***New section 13 – Particular health service employees***

New section 13 provides for the transfer of health executives or contracted senior health service employees, who are employed immediately before the amalgamation day, to the new Service. These employees continue to be employed until the term of their employment ends and on the same conditions of employment.

***New section 14 – Pending legal proceedings***

New section 14 provides that a legal proceeding by or against a merging Service must be continued and finished by or against the new Service.

***New section 15 – Transfer of records***

New section 15 provides that the records of a merging Service transfer to the new Service.

**Amendment of sch 6 (Dictionary)**

*Clause 13* amends the definition for ‘rural Service’ as a consequence of amalgamating the Cape York and Torres Strait-Northern Peninsula HHSs, to refer to the Torres and Cape HHS. This clause also renumbers paragraphs as a result of removing the entries for Cape York and Torres Strait-Northern Peninsula and replacing them with the one entry for Torres and Cape.