



Queensland

Hospital Foundations Act 2018

Act No. 5 of 2018

An Act to provide for the establishment, administration and oversight of entities to hold and manage property for particular objects to benefit public health in Queensland, and to amend this Act, the Drugs Misuse Act 1986, the Drugs Misuse Regulation 1987, the Fair Work (Commonwealth Powers) and Other Provisions Act 2009, the Hospital and Health Boards Act 2011, the Justice and Other Information Disclosure Act 2008, the Mental Health Act 2016 and the Penalties and Sentences Act 1992 for particular purposes

[Assented to 29 March 2018]



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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Hospital Foundations Act 2018*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) part 10, division 2, subdivisions 1 and 2;
- (b) part 10, division 3, subdivisions 1 and 2;
- (c) part 10, divisions 5 to 8.

3 Main purpose of Act

The main purpose of this Act is to establish a legislative framework under which entities may support and improve public health in Queensland.

4 How main purpose is primarily achieved

The main purpose is primarily achieved by providing for—

- (a) the objects for which a foundation may hold and manage property; and
- (b) the establishment of foundations and boards for foundations; and
- (c) matters relating to the administration and oversight of foundations and boards.

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5 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

Part 2 Foundations generally

Division 1 Objects

7 Objects for which foundation may hold and manage property

The objects for which a foundation may hold and manage property are as follows—

- (a) to support, improve or promote an existing public sector hospital, public sector health service facility or public sector health service;

Examples—

- 1 buying medical equipment
 - 2 funding the improvement of a building from which public sector health services are provided
- (b) to support or promote a proposed public sector hospital, public sector health service facility or public sector health service;
 - (c) to give financial support for the education, training or development of the employees of a Hospital and Health Service or persons working as volunteers for a Hospital and Health Service;

Example—

funding educational or professional development courses

- (d) to give financial support for persons studying or teaching medical or health science, allied health or health administration;
- (e) to give financial support for research in medical or health science or to promote the results of that research;

Example—

funding research centres or research projects

- (f) to do anything else that is likely to support, improve or promote public health.

Examples—

- 1 funding a preventative health program
- 2 providing a patient transport service
- 3 subsidising the provision of car parking for patients of a public sector hospital and their support persons

Division 2 Establishment

8 Applying for establishment of foundation

A person may apply to the Minister for approval to establish a foundation under this Act for an object mentioned in section 7.

9 Requirements for application

- (1) The application must state—
 - (a) the proposed name of the foundation; and
 - (b) the objects for which the foundation will hold and manage property; and
 - (c) the name of the Hospital and Health Service proposed to be the associated Hospital and Health Service for the foundation.

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- (2) Subsection (3) applies if the foundation is to be established for an existing or proposed public sector hospital, public sector health service facility or public sector health service.
- (3) The application must also state the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service.

10 Minister may ask for additional information or documents

The Minister may, by notice given to the applicant, ask the applicant to give the Minister within a stated reasonable period information or documents the Minister considers necessary to decide the application.

11 Deciding application

- (1) The Minister must consider the application and decide to approve or not approve the application.
- (2) In considering the application, the Minister may have regard to—
 - (a) the financial standing of the applicant; and
 - (b) whether the stated objects of the proposed foundation are consistent with the objects mentioned in section 7; and
 - (c) whether the applicant has a sufficient understanding of legislation applying to foundations; and
 - (d) other matters the Minister considers appropriate.
- (3) The Minister must recommend to the Governor in Council the making of a regulation under section 12 to establish the foundation if the Minister is satisfied—
 - (a) the foundation is likely to support or improve public health; and
 - (b) it is in the public interest to establish the foundation.
- (4) The Minister must as soon as practicable give the applicant notice of the Minister's decision.

12 Establishment of foundations

- (1) A regulation may establish a foundation.
- (2) The regulation must state the name of the foundation.

13 Legal status of foundations

A foundation—

- (a) is a body corporate; and
- (b) may sue and be sued in its corporate name.

Division 3 Functions and powers

14 Functions

The functions of a foundation are as follows—

- (a) to pursue the registered objects of the foundation;
- (b) to manage property held by the foundation, including income generated by the holding of property—
 - (i) to achieve the foundation's registered objects; and
 - (ii) to cover costs or expenses associated with the administration of the foundation;
- (c) another function given to the foundation under this Act or another Act.

15 Performance of functions

- (1) A foundation is to perform its functions in association with a Hospital and Health Service.
- (2) In performing its functions, a foundation must have regard to any needs or priorities the foundation has been advised about by its associated Hospital and Health Service.
- (3) Subsection (2) does not—

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- (a) limit the matters the foundation may have regard to in performing its functions; or
- (b) require a foundation to hold or manage property for a particular need or priority of its associated Hospital and Health Service.

16 Powers

- (1) A foundation has all the powers of an individual, and may, for example—
 - (a) enter into contracts and agreements; and
 - (b) hold and manage property; and
 - (c) establish and administer trust funds; and
 - (d) appoint a person to manage all or part of its funds; and
 - (e) do anything else necessary or convenient to be done in performing its functions or exercising its powers.
- (2) A foundation also has the powers given to it under this Act or another Act.
- (3) However, a foundation's powers are subject to any limitations under this Act or another Act.

17 Particular powers

- (1) A foundation's banking powers are limited to the powers under the *Statutory Bodies Financial Arrangements Act 1982*, part 4.
- (2) A foundation's borrowing powers are limited to the powers under the *Statutory Bodies Financial Arrangements Act 1982*, part 5.

Note—

Under the *Statutory Bodies Financial Arrangements Act 1982*, a foundation may, with the approval of the Minister administering that Act, under part 9 of that Act, operate an account with an overdraft facility or borrow.

Division 4 Administration

18 Employment of staff

- (1) A foundation—
 - (a) must employ a managing executive officer; and
 - (b) may employ other staff it considers appropriate to perform its functions or exercise its powers.
- (2) A member of the staff of a foundation, other than a person made available to the foundation under section 19—
 - (a) is to be paid the remuneration and allowances decided by the foundation; and
 - (b) is employed under this Act and not the *Public Service Act 2008*.

19 Alternative staffing arrangements

- (1) A foundation may arrange with the health service chief executive of the foundation's associated Hospital and Health Service for the services of employees of the Hospital and Health Service to be made available to the foundation.
- (2) An employee whose services are made available under subsection (1)—
 - (a) continues to be an employee of the associated Hospital and Health Service; and
 - (b) continues to be employed or otherwise engaged by the Hospital and Health Service on the same terms and conditions applying to the employee before the services were made available; and
 - (c) is, while the services are made available and for the carrying out of the foundation's functions, taken to be a member of the staff of the foundation.

20 Use of Hospital and Health Service premises

In performing its functions, a foundation may, with the agreement of the health service chief executive of the foundation's associated Hospital and Health Service use premises, office furniture and equipment occupied, owned or used by the Service.

21 Authentication of documents

A document made by a foundation, other than a document required to be sealed, is sufficiently made if it is made or signed by the chairperson of the board of the foundation, or the managing executive officer of the foundation.

22 Change of registered objects

- (1) If the board of a foundation wishes to change a registered object of the foundation, the board must apply in writing to the Minister for approval of the change.
- (2) The application must include the following information—
 - (a) details of the change;
 - (b) the reason for the change;
 - (c) information to show the change is consistent with the objects mentioned in section 7.
- (3) The Minister must consider the application and decide to approve or not approve the application.
- (4) The Minister must, as soon as practicable, give the board notice of the Minister's decision.
- (5) If the Minister approves the change to the foundation's registered objects, the chief executive must amend the current objects of the foundation contained in the register.

Division 5 Application of particular Acts

23 Foundation is statutory body

- (1) A foundation is a statutory body under—
 - (a) the *Financial Accountability Act 2009*; and
 - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) However, the *Financial Accountability Act 2009*, section 64 does not apply to a foundation.
- (3) Also, the *Statutory Bodies Financial Arrangements Act 1982* is subject to this Act and the following provisions of that Act do not apply to a foundation—
 - (a) sections 10 to 12 and 14;
 - (b) part 3, other than section 21;
 - (c) parts 6 to 8.
- (4) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B explains how that Act, to the extent it applies to a foundation, affects the foundation's powers.

24 Application of Crime and Corruption Act 2001

A foundation is a unit of public administration under the *Crime and Corruption Act 2001*.

25 Application of Collections Act 1966

- (1) For the *Collections Act 1966*, part 3, a registered object of a foundation is taken to be a purpose that is sanctioned for that Act.
- (2) The *Collections Act 1966*, other than section 31, applies to a foundation in the performance of its functions and exercise of its powers.

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26 Application of Property Law Act 1974, pt 14

For the application of the *Property Law Act 1974*, part 14 to a gift, devise or bequest to a foundation, a registered object of the foundation is taken to be a charitable purpose.

Part 3 Boards

Division 1 Establishment, functions, powers and membership of boards

27 Establishment

For each foundation, a board is established as the governing body of the foundation.

28 Functions

- (1) The board of a foundation has the following functions—
 - (a) to manage the foundation generally;
 - (b) to ensure the foundation pursues its registered objects effectively and efficiently;
 - (c) to set strategies and policies for the management of property held by the foundation.
- (2) The board also has the other functions given to the board under this Act or another Act.

29 Powers of board

- (1) The board of a foundation has the power to do anything necessary or convenient to be done in performing its functions.
- (2) Anything done in the name of, or for, the foundation by the board, or with the authority of the board, is taken to have been done by the foundation.

30 Membership

- (1) The board of a foundation consists of the following persons (each a *member*)—
 - (a) at least 6 persons recommended by the Minister;
 - (b) 1 person who is—
 - (i) the chairperson of the Hospital and Health Board (the *relevant board*) for the foundation's associated Hospital and Health Service; or
 - (ii) a member of the relevant board nominated by the chairperson of the board.
- (2) In recommending a person for appointment to the board under subsection (1)(a), the Minister may have regard to whether the person has—
 - (a) a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of legislation applying to the foundation; and
 - (b) the skills, experience or expertise in business or financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the board in performing its functions.
- (3) Before recommending a person for appointment to the board under subsection (1)(a), the Minister must consult the chairperson of the Hospital and Health Board for the foundation's associated Hospital and Health Service.
- (4) The members, other than the person mentioned in subsection (1)(b), are appointed by the Governor in Council.

31 Chairperson and deputy chairperson

- (1) The chairperson of the board is the member appointed by the Governor in Council as the chairperson.
- (2) A person may be appointed as the chairperson when the person is appointed as a member.

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- (3) The members of a board must appoint another member, other than the chairperson, as the deputy chairperson.
- (4) The chairperson or deputy chairperson holds office for the term, ending no later than the person's term of appointment as a member, stated in the person's appointment as chairperson or deputy chairperson.
- (5) However, if a member who is a chairperson or deputy chairperson continues to hold office under section 32(2) the member continues to hold office as the chairperson or deputy chairperson.
- (6) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.
- (7) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding office—
 - (a) resigns from office by giving notice of the resignation to—
 - (i) for a chairperson—the Minister; or
 - (ii) for a deputy chairperson—the board; or
 - (b) stops being a member.
- (8) However, a person may continue to be a member after resigning the office of chairperson or deputy chairperson.

32 Term of appointment

- (1) A member, other than a member mentioned in section 30(1)(b), holds office for the term, not longer than 5 years, stated in the member's instrument of appointment.
- (2) If a successor has not been appointed by the end of the member's term, the member continues to hold office until a successor is appointed.
- (3) Subsection (1) does not prevent a member being reappointed.

33 Disqualification from becoming member

- (1) A person is disqualified from becoming a member if the person—
- (a) has a conviction, other than a spent conviction, for an indictable offence; or
 - (b) does not consent to the chief executive requesting a report about the person's criminal history under section 36; or
 - (c) is an insolvent under administration; or
 - (d) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
 - (e) is employed by the foundation.
- (2) In this section—
- insolvent under administration* see the Corporations Act, section 9.

34 Removal from office

The Governor in Council may, at any time, remove a member from office if—

- (a) the member would be disqualified from becoming a member under section 33; or
- (b) the member consented to the borrowing of an amount that the foundation is not lawfully authorised to borrow under the *Statutory Bodies Financial Arrangements Act 1982*; or
- (c) the Minister recommends the removal because the Minister is satisfied the member—
 - (i) has not complied with section 46; or
 - (ii) is incapable of performing the member's functions; or
 - (iii) has neglected the member's functions or performed the member's functions incompetently; or

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- (iv) has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or foundation; or
- (v) has been absent from 3 consecutive meetings of the board without the board's permission and without reasonable excuse.

35 Vacancy in office

The office of a member becomes vacant if the member—

- (a) resigns from office by giving notice of resignation to the Minister; or
- (b) is removed from office under section 34.

Division 2 Criminal history

36 Criminal history report

- (1) This section applies for deciding if a person—
 - (a) is disqualified from becoming a member under section 33; or
 - (b) may be removed as a member of the board under section 34.
- (2) The chief executive may ask the commissioner of the police service for a written report about the criminal history of the person that includes a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) However, the chief executive may make the request only if the person has given the chief executive written consent for the request.
- (4) The commissioner of the police service must comply with the request.

-
- (5) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

37 Changes in criminal history must be disclosed

- (1) This section applies if a person who is a member is convicted of an indictable offence.
- (2) The person must, unless the person has a reasonable excuse, immediately give notice of the conviction to the chief executive.

Maximum penalty—100 penalty units.

- (3) The notice must include the following information—
- (a) the existence of the conviction;
 - (b) details adequate to identify the offence;
 - (c) when the offence was committed;
 - (d) the sentence imposed on the person.

38 Confidentiality of criminal history information

- (1) This section applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the department.
- (2) The person must not, directly or indirectly, disclose the criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the criminal history information to another person—
- (a) to the extent necessary to perform the person's functions under this Act; or
 - (b) if the disclosure is authorised under an Act; or

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- (c) if the disclosure is otherwise required or permitted by law; or
 - (d) if the person to whom the information relates consents to the disclosure; or
 - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
 - (f) if the information is, or has been, lawfully accessible to the public.
- (4) The chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.
- (5) In this section—
- criminal history information* means—
- (a) a report given to the chief executive under section 36; or
 - (b) a notice given to the chief executive under section 37.

Division 3 Business and meetings

39 Conduct of business

Subject to this division, a board may conduct its business, including its meetings, in the way it considers appropriate.

40 Presiding at meetings

- (1) The chairperson of the board of a foundation is to preside at all board meetings at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting, the deputy chairperson of the board is to preside.
- (3) If neither the chairperson nor deputy chairperson is present at a board meeting, the member chosen by the members of the board present is to preside.

41 Quorum at meetings

- (1) A quorum for a meeting of a board is a majority of its members for the time being.
- (2) However, if at a meeting a member present at the meeting is required under section 45 not to be present during deliberations, or not to take part in any decision, of the board for a particular matter, the remaining members present at the meeting constitute a quorum for the meeting.

42 Conduct of meetings

- (1) A question at a meeting of a board is decided by a majority of the votes of the members present at the meeting and able to vote on the question.
- (2) If the votes are equal, the member presiding at the meeting also has a casting vote.
- (3) A member who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meetings, including, for example, teleconferencing.
- (5) A member who takes part in a meeting of the board under subsection (4) is taken to have been present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a meeting, if—
 - (a) notice of the resolution is given under procedures approved by the board; and
 - (b) a majority of members agree in writing to the resolution.

43 Minutes

A board must keep minutes of its board meetings.

44 Validity of decisions

A decision of a board is not invalidated only because there is a vacancy in the membership of the board.

Division 4 Other provisions about boards and members

45 Disclosure of interests at board meeting

- (1) This section applies to a member if—
 - (a) the member has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting of the board of a foundation; and
 - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to the other members of the board at the meeting.
- (3) The member may further participate in the meeting only if a majority of the other members of the board vote in favour of the member's further participation.
- (4) However, the member can not participate in any vote on the matter at the meeting.
- (5) A disclosure under subsection (2) must be recorded in the minutes of the board.
- (6) A person does not have an interest that could conflict with the proper performance of the member's functions about the consideration of a matter merely because the person holds office as a member under section 30(1)(b).

46 Member to act in foundation's interest

A member must at all times act impartially and in the interest of the foundation in performing the member's functions.

Part 4 Oversight of foundations and boards

Division 1 Interaction between Minister and foundations

47 Board must notify Minister about particular matters

(1) The board of a foundation must give the Minister notice of a matter that raises a significant concern about—

(a) the financial viability of the foundation; or

Examples of matters that may raise a significant concern about a foundation's financial viability—

- 1 a proceeding started against the foundation that may result in payment of a significant amount of damages or legal costs
- 2 a significant decrease in the value of funds held on investment by the foundation

(b) the administration or management of the foundation.

Example of matter that may raise a significant concern about the administration or management of a foundation—

distributing funds held by the foundation towards something that is outside the scope of the foundation's registered objects

(2) The notice must be given immediately after the board becomes aware of the matter.

48 Minister may require information or documents

(1) This section applies if the Minister has a concern about the financial viability of a foundation or the administration or

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management of a foundation, whether or not the concern is based on notice received from the board of the foundation under section 47.

- (2) The Minister may, by notice given to the board of a foundation, ask the board to do the following within a stated reasonable period and in a stated reasonable way—
 - (a) give the Minister relevant information in the board's knowledge about a stated matter;
 - (b) give the Minister, or make available for inspection by the Minister, a relevant document or copy of a relevant document about a stated matter in the foundation's possession or control.
- (3) The board must comply with the request.
- (4) Unless the Minister is satisfied there are exceptional circumstances, the Minister must consult with the board about the information or documents that may be sought by the Minister before giving a notice.
- (5) If an original document is given to the Minister, the Minister may keep the document to copy it and must return the document to the board as soon as practicable after copying it.
- (6) The Minister may disclose the information, or give the document or copy of the document, to an entity the Minister considers appropriate to help the Minister assess—
 - (a) the foundation's financial viability; or
 - (b) the administration or management of the foundation.
- (7) In this section—

relevant, in relation to information or a document, means relating to the board's functions under this Act.

Division 2 Administrators

49 Removal of all board members

- (1) The Governor in Council may, at any time, on the recommendation of the Minister, remove all members of a board.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister is satisfied it is in the public interest to do so, having regard to the Minister's consideration of the financial viability of the foundation or the administration or management of the foundation.
- (3) If the Governor in Council acts under subsection (1), the members go out of office.
- (4) No compensation is payable to a member in relation to the removal of the member.

50 Appointment of administrator

- (1) This section applies if—
 - (a) the members of a board are removed under section 49;
or
 - (b) at any other time there are no members of a board.
- (2) The Governor in Council may, on the recommendation of the Minister, appoint a qualified person as administrator of the board.
- (3) In this section—

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

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51 Term and role of administrator

- (1) A person appointed as an administrator of the board of a foundation must administer the foundation's affairs for the term stated in the administrator's appointment.
- (2) The Governor in Council may revoke the appointment for any reason before the term of appointment ends, either to appoint a different person as administrator or to appoint new members of the board.
- (3) While the appointment continues, the administrator constitutes the board instead of the members.

Part 5 Financial provisions

Division 1 Preliminary

52 Definitions for part

In this part—

derivative transactions means transactions entered into for—

- (a) managing or varying financial returns or financial or currency risks, including, for example, risks associated with the volatility of currency exchange, interest and discount rates; or
- (b) returning gains, or avoiding losses, by reference to financial or currency obligations or the movement of currency exchange, interest and discount rates or commodity prices.

Examples—

- 1 forward agreements, including, for example, forward bill agreements, forward commodity agreements, forward exchange agreements and forward rate agreements
- 2 futures contracts for bills, bonds, commodities, shares and the share price index

-
- 3 options, whether exchange traded or over-the-counter, including, for example, options on bonds, caps, collars, currencies, floors, interest rates and swaps
 - 4 swaps, including, for example, commodity, CPI linked, currency exchange, equity linked and interest rate swaps

special financial arrangement means an arrangement that provides for, relates to, is directed towards or includes 1 or more of the following—

- (a) acquiring the whole or a part of a business;
- (b) entering into a joint venture or partnership;
- (c) acquiring or issuing bonds, debentures, inscribed stock, shares, stock or other securities;
- (d) acquiring foreign currency;
- (e) funding a prize to a person or entity, whether the prize is money or other property, if the value of the prize is equal to or more than the amount prescribed by regulation or, if no amount is prescribed, \$5,000;

Example—

sponsoring a prize for excellence in nursing or clinical practice

- (f) disposing of land, an interest in land or a building.

Division 2 Special financial arrangements

53 Foundation may enter into special financial arrangement

- (1) A foundation may enter into a special financial arrangement under an approval under division 4.
- (2) However, a foundation does not need to obtain an approval under division 4 to—
 - (a) acquire, by way of a gift, devise or bequest, any of the following—
 - (i) the whole or a part of a business;

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- (ii) bonds, debentures, inscribed stock, shares, stock or other securities;
- (iii) foreign currency; or
- (b) dispose of land, an interest in land or a building if the land, interest in land or building was acquired by the foundation by way of a gift, devise or bequest.

Division 3 Derivative transactions

54 Derivative transactions permitted only for certain foundations

- (1) A foundation may enter into a derivative transaction—
 - (a) under an approval under division 4; and
 - (b) only if the foundation does so to hedge against a risk to which the foundation is or will be exposed.
- (2) A foundation may enter into a derivative transaction under this part—
 - (a) in its own name; or
 - (b) in the name of a person who, with the Minister's approval, has been appointed in writing by the foundation as its agent for this part.

55 Requirement to report to Minister about derivative transactions

- (1) For each derivative transaction entered into by a foundation, the foundation must give the Minister a report about the transaction at the times—
 - (a) stated in an approval under division 4; or
 - (b) if no times are stated in an approval under division 4—prescribed by regulation.
- (2) Each report must contain the following information—

-
- (a) details sufficient to identify the derivative transaction;
 - (b) a statement about the underlying exposure against which the foundation is trying to hedge;
 - (c) the stated purpose of the derivative transaction, including details of the Minister's approval under which the transaction was entered into and verification of compliance with the conditions of the approval;
 - (d) details of any realised or unrealised gains or losses from the derivative transaction.
- (3) However, if a foundation satisfies the Minister that, because of the number of derivative transactions entered into by the foundation, it is an undue burden on it to prepare a report under subsection (2) for each transaction, the report for subsection (1) may be a statement summarising the matters mentioned in subsection (2) for all of the foundation's derivative transactions.

Division 4 Minister's approval for special financial arrangements or derivative transactions

Subdivision 1 General approvals

56 Approval may be general in nature

- (1) The Minister may approve foundations to enter into a special financial arrangement or derivative transaction.
- (2) The approval must be published on the department's website.
- (3) The approval may—
 - (a) apply generally to all foundations, special financial arrangements or derivative transactions or be limited in its application to—
 - (i) particular foundations, special financial arrangements or derivative transactions; or

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- (ii) particular classes of special financial arrangements or derivative transactions; or
 - (b) otherwise apply generally or be limited in its application by reference to stated exceptions or factors.
- (4) Also, the approval may—
- (a) make different provision for different foundations, special financial arrangements or derivative transactions, or different classes of arrangements or transactions; or
 - (b) apply differently to stated exceptions or factors.
- (5) The approval may be on conditions the Minister considers necessary or desirable.
- (6) To remove any doubt, it is declared that an approval may apply to a foundation even though the foundation was not established when the approval was given.

Subdivision 2 Specific approvals

57 Application for approval

A foundation may apply, in writing, for the Minister's approval to enter into a special financial arrangement or derivative transaction.

58 Minister may ask for information or documents

The Minister may, by notice given to the foundation, ask the foundation to give the Minister within a stated reasonable period the information or documents the Minister considers necessary to decide the application.

59 Deciding application

- (1) The Minister must consider the application and decide to approve or not approve the application.

- (2) The Minister may approve the application entirely or partly.
- (3) An approval may be given on the conditions the Minister considers necessary or desirable.
- (4) The Minister must give the applicant notice of—
 - (a) the decision; and
 - (b) if the application is approved, the conditions of the approval.

60 Minister may give approval for other foundations

If an application is made under this subdivision and the Minister considers an approval should be given under subdivision 1, the Minister may deal with the application by giving an approval under subdivision 1.

61 Minister may amend or repeal approval

- (1) The Minister may amend or repeal an approval under this division even if a foundation does not apply for the amendment or repeal.
- (2) The amendment or repeal of an approval under this division does not affect its previous operation.

62 Register about approvals

A foundation must keep a register of the Minister's approvals under this subdivision for the foundation.

Division 5 Offence

63 False or misleading documents

- (1) A person must not give a document under section 57 or 58 to the Minister containing information the person knows is false or misleading in a material particular.

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Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the Minister, in writing, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Division 6 Miscellaneous

64 Management of foundation's funds by funds manager

- (1) A funds manager for a foundation may enter into a special financial arrangement or derivative transaction for the foundation only if there is an approval under division 4 for the arrangement or transaction that applies to the foundation.
- (2) Subsection (3) applies if a funds manager enters into a derivative transaction for a foundation.
- (3) The funds manager is not required to give a report to the Minister under section 55 unless the approval under division 4 includes a condition that a funds manager acting under the approval for a foundation must give the report to the Minister.
- (4) Subsection (1) does not limit—
 - (a) the performance of a function by a funds manager that the funds manager is otherwise lawfully authorised to perform under the funds manager's contract of engagement with a foundation; or

Example of a function—

managing the sale of bonds, debentures, inscribed stock, shares, stock or other securities

- (b) a board or foundation from giving a direction to a funds manager in relation to the management of the foundation's funds, including, for example, a direction

to not manage the foundation's funds in reliance on an approval under division 4.

(5) In this section—

*fun***ds manager**, for a foundation, means a person engaged by the foundation to manage all or part of the foundation's funds.

65 Money borrowed other than under Statutory Bodies Financial Arrangements Act 1982

- (1) This section applies if a foundation borrows an amount it is not lawfully authorised to borrow under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The members of the board of the foundation who consented to the borrowing of the amount are jointly and severally liable to repay the amount, and any interest payable on it, to the person from whom the amount was borrowed.
- (3) If an amount is appropriated from a fund administered by the foundation to repay the borrowed amount or interest on it, the members of the board of the foundation who consented to the misappropriation of the amount are jointly and severally liable to refund—
 - (a) the misappropriated amount; and
 - (b) interest at the rate of 12% a year.
- (4) If the members fail to repay an amount and interest under subsection (2) or (3), the amount may be recovered from the members by the Minister as a debt.
- (5) On recovering all or part of an amount and interest under subsection (4), the Minister—
 - (a) must pay the amount recovered—
 - (i) for an amount mentioned in subsection (2)—to the person from whom the amount was borrowed; or
 - (ii) for an amount mentioned in subsection (3)—into the fund from which the amount was appropriated; and

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- (b) may recover from the members mentioned in subsection (4) the full costs incurred in recovering the amount, including legal costs.
- (6) Subsection (2) does not apply to a member if, when the member consented to the borrowing, the member believed on reasonable grounds that the foundation was authorised under the *Statutory Bodies Financial Arrangements Act 1982* to borrow the amount.

66 Disposal of particular property

- (1) This section applies if the board of a foundation considers any property vested in the foundation that is subject to a condition or trust is—
 - (a) unfit or not required for its purposes; or
 - (b) property of insufficient value.
- (2) The foundation may—
 - (a) sell the property; or
 - (b) exchange the property for other property; or
 - (c) dispose of the property in another way.
- (3) If the property is sold, the proceeds of sale must be applied in the following order—
 - (a) in payment of the reasonable expenses incurred in selling the property;
 - (b) the balance to be held and managed for the registered objects of the foundation.
- (4) If the property is exchanged for other property, the property acquired by way of the exchange must be held and managed for the registered objects of the foundation.
- (5) A person who acquires property from a foundation under this section acquires ownership of the property free from any condition or trust relating to the sale, disposal, exchange or use of the property to which the property was subject when vested in the foundation.

(6) In this section—

property of insufficient value means property that—

- (a) is of no value; or
- (b) if sold by a foundation, would not be likely to return sufficient proceeds of sale to cover the expenses reasonably incurred by the foundation in selling the property.

Part 6 Legal proceedings

67 Application of part

This part applies to a proceeding for an offence against this Act.

68 Proceedings for offences

- (1) The proceeding is to be heard and decided summarily.
- (2) The proceeding must be started within whichever is the longer of the following—
 - (a) 1 year after the commission of the offence;
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

69 Appointments and authority

- (1) In the proceeding, the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

[s 70]

- (a) the appointment under this Act of a member of a board;
 - (b) the authority of a member of a board, or the managing executive officer of a foundation, to do anything under this Act.
- (2) In this section—
- appointment*, of a member of a board, includes the holding of office under section 30(1)(b).

70 Signatures

A signature purporting to be the signature of the Minister, a member of a board or the managing executive officer of a foundation is evidence of the signature it purports to be.

71 Other evidentiary aids

- (1) A certificate purporting to be signed by the Minister, chief executive or chairperson of the board of a foundation stating any of the following matters is evidence of the matter—
- (a) a stated document is 1 of the following things made, given or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a direction, notice or requirement;
 - (iii) a record;
 - (iv) the register;
 - (b) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a).
- (2) In this section—
- appointment*, in relation to a member of a board, includes the holding of office under section 30(1)(b).

Part 7 Ending foundations

72 **Removal from register**

- (1) A foundation may apply to the Minister for its entry in the register to be removed.
- (2) The Governor in Council may, by gazette notice, order that the entry for a foundation be removed from the register—
 - (a) because of an application made by the foundation under subsection (1); or
 - (b) if the Governor in Council is satisfied the foundation should be dissolved.

73 **Dissolution**

- (1) This section applies in relation to a foundation whose entry in the register has been removed.
- (2) A regulation may dissolve the foundation.

74 **Status of particular property on dissolution of foundation**

- (1) This section applies if—
 - (a) a foundation is dissolved; and
 - (b) on the dissolution, there is land—
 - (i) granted, under the *Land Act 1994*, in trust to the foundation; or
 - (ii) reserved, under the *Land Act 1994*, for the purposes of the foundation.
- (2) The land does not form part of the assets of the foundation for its dissolution.

75 **Property held on trust on dissolution of foundation**

- (1) This section applies if—

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- (a) a foundation is dissolved; and
 - (b) on the dissolution, the foundation is a trustee of a trust under which property, including, for example, land, is held.
- (2) The Governor in Council may, by gazette notice, do any of the following—
- (a) constitute or nominate another person as trustee for the trust;
 - (b) nominate another use to which property should be held or applied;
 - (c) terminate the trust;
 - (d) make an order the Governor in Council considers appropriate.
- (3) An order made under subsection (2) must be given effect.
- (4) However, an order under subsection (2) may not override the provisions of an instrument creating the trust under which a foundation holds property if the instrument provides for the variation of the trust or substitution of a new trust upon the dissolution of the foundation.

76 Distribution of surplus property

- (1) This section applies if—
- (a) either—
 - (i) a foundation is dissolved; or
 - (ii) the endorsement of a foundation as a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth) is revoked; and
 - (b) there is property (*surplus property*) of the foundation remaining after satisfaction of the debts and liabilities of the foundation.
- (2) The surplus property must be given or transferred to an entity—

- (a) that has objects similar to the foundation; and
- (b) is a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth).

77 Effect of dissolution on offices

If a foundation is dissolved under section 73, the members of the board of the foundation go out of office.

Part 8 Miscellaneous

78 Amalgamation of foundations

- (1) Two or more foundations may apply to the Minister to be amalgamated as a single foundation.
- (2) The application must be in the approved form.
- (3) If the Minister is satisfied the amalgamation of the foundations is appropriate in the circumstances, the Minister may recommend to the Governor in Council the making of a regulation to amalgamate the foundations.
- (4) A regulation under subsection (3)—
 - (a) must amalgamate the foundations by—
 - (i) dissolving each foundation and establishing a new foundation (the *new foundation*); or
 - (ii) identifying the foundation that is to continue (the *continuing foundation*), dissolving each other foundation and providing for the other foundations to be a part of the continuing foundation; and
 - (b) may provide for anything else in relation to the amalgamation, including, for example, dealing with assets, liabilities, rights and obligations.
- (5) On the dissolution of a foundation under this section, the members of the board of the foundation go out of office.

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- (6) Part 7 does not apply to an amalgamation under this section.
- (7) A new foundation is taken to have been established under section 12.

79 Register of foundations

- (1) The chief executive must—
 - (a) keep a register of foundations; and
 - (b) publish the register on the department’s website.
- (2) The register must, for each foundation, contain—
 - (a) the name of the foundation; and
 - (b) the day on which the foundation was established; and
 - (c) the name of the foundation’s associated Hospital and Health Service; and
 - (d) if the foundation was established for an existing or proposed public sector hospital, public sector health service facility or public sector health service—the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service; and
 - (e) the current registered objects of the foundation.

80 Delegations

- (1) A foundation may delegate its functions under this Act to a member of the board.
- (2) A board may delegate the board’s functions under this Act to—
 - (a) a member of the board; or
 - (b) a member of the staff of the board’s foundation; or
 - (c) a person working as a volunteer for the foundation.
- (3) In this section—

functions includes powers.

81 Protection of members from civil liability

- (1) A member of a board is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the State.

82 Approval of forms

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

83 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 9 Repeal and transitional provisions

Division 1 Repeal provision

84 Repeal

The Hospitals Foundations Act 1982, No. 45 is repealed.

Division 2 Transitional provisions

85 Definitions for division

In this division—

[s 86]

continued foundation means a body corporate continued as a foundation under section 86.

repealed Act means the repealed *Hospitals Foundations Act 1982*.

86 Continuation of body corporate established under repealed Act as foundation

- (1) A body corporate established under the repealed Act, section 7 and in existence immediately before the commencement continues in existence as a foundation established under section 12 of this Act.
- (2) A regulation may state the name of a foundation mentioned in subsection (1).

87 Continuation of register

- (1) The register kept under the repealed Act, section 9 continues in existence as the register under this Act.
- (2) Subsection (3) applies if the entry on the register for a continued foundation does not contain all of the information required under section 79(2).
- (3) The foundation must, within 3 months after the commencement, give the chief executive the required information.

88 Replacement of objects registered under repealed Act

- (1) A continued foundation must, within 3 months after the commencement, give the chief executive notice of the objects for the foundation that are consistent with the objects mentioned in section 7 to replace the objects registered for the foundation under the repealed Act, section 9.
- (2) The board of a foundation may, within the period mentioned in subsection (1), apply, under section 22, to change an object of the foundation.

89 Continuation of boards and members

- (1) A board of members (however described) (an *existing board*) of a continued foundation that was established under the repealed Act and in existence immediately before the commencement continues as the board of the foundation under this Act.
- (2) An existing board is taken to be established under section 27.
- (3) A thing done by or in relation to an existing board before the commencement is taken to be a thing done by or in relation to the board continued under this section.
- (4) Without limiting subsection (1) or (2)—
 - (a) a person who holds the office of a member of an existing board continues to hold office as a member of the board under this Act until—
 - (i) the end of the person's term of office; or
 - (ii) the person earlier vacates office; and
 - (b) a person serving as a chairperson or deputy chairperson continues to hold office as a chairperson or deputy chairperson of the board under this Act until—
 - (i) the end of the person's term of office; or
 - (ii) the person earlier vacates office.

90 Assets and liabilities

On the commencement—

- (a) the assets and liabilities of a continued foundation continue to be the assets and liabilities of the foundation; and
- (b) any property that, immediately before the commencement, was held in trust by a continued foundation continues to be held by the foundation on the same trust.

[s 91]

91 Property previously given

- (1) Property given, under the repealed Act, to a continued foundation is taken to be property given to the foundation under this Act.
- (2) The property may be dealt with under this Act.

92 Status of particular land

- (1) This section applies if, before the commencement, there is land—
 - (a) granted, under the *Land Act 1994*, in trust to a continued foundation; or
 - (b) reserved, under the *Land Act 1994*, for the purposes of a continued foundation.
- (2) The land continues to be granted in trust to the foundation or reserved for the purposes of the foundation.

Part 10 Amendment of legislation

Division 1 Amendment of this Act

93 Act amended

This division amends the *Hospital Foundations Act 2018*.

94 Amendment of long title

Long title, from ‘Queensland,’—
omit, insert—

Queensland

Division 2 Amendment of Drugs Misuse Act 1986

Subdivision 1 Preliminary

95 Act amended

This division amends the *Drugs Misuse Act 1986*.

Subdivision 2 Amendments commencing on assent

96 Amendment of s 4 (Definitions)

(1) Section 4, definitions *affected by bankruptcy action, convicted and serious offence*—
omit.

(2) Section 4—
insert—

compliance notice, for part 5B, see section 46.

relevant authority, for part 5B, see section 46.

97 Amendment of s 4D (Non-application of ss 5, 6, 8 and 9 to particular manufactured products)

(1) Section 4D(2), definition *manufactured product*, paragraph (b), 'or consumed'—
omit.

(2) Section 4D(2)—
insert—

administered, in relation to a manufactured product, means administered, by any means, for any purpose that includes the alteration of a

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person's behaviour, mood or perception.

Examples of means by which a manufactured product may be administered—

injection by syringe or inhalation of a vapour

98 Amendment of s 44 (Object of pt 5B)

(1) Section 44(b)(ii), 'or consumption'—

omit.

(2) Section 44—

insert—

(2) In this section—

administration, of industrial cannabis seed or seed product, means administration, by any means, for any purpose that includes the alteration of a person's behaviour, mood or perception.

Examples of means by which industrial cannabis seed or seed products may be administered—

injection by syringe or inhalation of a vapour

99 Amendment of s 46 (Definitions for pt 5B)

(1) Section 46, definitions *affected by bankruptcy action, convicted and serious offence—*

omit.

(2) Section 46—

insert—

compliance notice see section 110A(2).

relevant authority means—

(a) a licence; or

(b) an authority under section 48.

100 Amendment of s 53 (Applying for a licence)

(1) Section 53(1), ‘suitable’—

omit, insert—

fit and proper

(2) Section 53(3), from ‘to—’—

omit, insert—

to whether the person is a fit and proper person to hold the licence.

101 Amendment of s 54 (Application for licence)

Section 54(1)(e), ‘suitable’—

omit, insert—

fit and proper

102 Replacement of ss 57–60

Sections 57 to 60—

omit, insert—

57 Fit and proper person to hold licence

(1) In deciding whether a person is a fit and proper person to hold a licence, the chief executive must have regard to the following—

(a) whether the person held a licence or permit that was suspended or cancelled under—

(i) this part; or

(ii) the *Narcotic Drugs Act 1967* (Cwlth);
or

(iii) a law of another State that corresponds, or substantially corresponds, to this part;

[s 102]

- (b) if the person is an individual—the criminal history of the person;
- (c) if the person is a corporation—whether each executive officer of the corporation is a fit and proper person to hold a licence;
- (d) in relation to an applicant for, or holder of, a category 1 or category 2 researcher licence—
 - (i) whether the person has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis; or
 - (ii) if the person is a corporation—whether a person employed by the corporation to carry out plant breeding under the licence has the necessary educational or other qualifications and experience to engage in plant breeding or other research involving the use of industrial cannabis or class A or class B research cannabis; or
 - (iii) whether a close associate of the person held a licence or permit that was suspended or cancelled under—
 - (A) this part; or
 - (B) the *Narcotic Drugs Act 1967* (Cwlth); or
 - (C) a law of another State that corresponds, or substantially corresponds, to this part; or
 - (iv) if the person is an individual—the criminal history of any close associate of the person.

- (2) Without limiting subsection (1), in deciding whether a person is a fit and proper person to hold a licence, the chief executive may have regard to any other matter the chief executive considers relevant.

103 Amendment of s 61 (Investigation about the suitability of applicant or licensee)

- (1) Section 61(1), ‘suitable’—

omit, insert—

fit and proper

- (2) Section 61(4)—

omit, insert—

- (4) On receiving particulars of the application, the commissioner—

(a) must make inquiries about the criminal history of a person mentioned in subsection (1)(a) to (c); and

(b) may make any other inquiries about a person mentioned in subsection (1)(a) to (c) the commissioner considers appropriate.

104 Amendment of s 63 (Chief executive may issue or refuse to issue licence)

- (1) Section 63(2)(a), (b) and (c), ‘suitable’—

omit, insert—

fit and proper

- (2) Section 63(2)(d) and (e)—

omit, insert—

the application is properly made.

- (3) Section 63(3), ‘(2)(e)’—

[s 105]

omit, insert—

(2)(d)

105 Amendment of s 66 (Chief executive may renew or refuse to renew licence)

(1) Section 66(2)(a), (b) and (c), ‘suitable’—

omit, insert—

fit and proper

(2) Section 66(2)(e)—

omit.

106 Amendment of s 70 (Amendment of licence conditions)

(1) Section 70, heading, before ‘conditions’—

insert—

or licence

(2) Section 70(1), before ‘the conditions’—

insert—

a licence or

(3) Section 70(3), ‘of the condition’—

omit.

(4) Section 70(6), ‘amend the conditions of a licence’—

omit, insert—

make an amendment

107 Amendment of s 73 (Grounds for suspension action or cancellation)

Section 73(1)(a) and (b)—

omit, insert—

-
- (a) is not, or is no longer, a fit and proper person to hold the licence; or
 - (b) contravenes a provision of this Act or a condition of the licence; or
 - (c) does not pay a fee imposed on the licensee under this part.

108 Omission of s 79 (Immediate cancellation)

Section 79—

omit.

109 Amendment of s 82 (What happens to cannabis plants if licence cancelled)

Section 82(1)(a), ‘or 79’—

omit.

110 Amendment of s 83 (What happens to cannabis seed if licence cancelled or renewal refused)

Section 83(1)(b), ‘or 79’—

omit.

111 Insertion of new s 92A

Part 5B, division 11—

insert—

92A Functions of inspectors

- (1) An inspector has the following functions—
 - (a) to investigate, monitor and enforce compliance with this part;
 - (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this part;

[s 112]

- (c) to facilitate the exercise of powers under this part.
- (2) Subject to this part, an inspector may exercise the powers under this part for the purpose of these functions.

112 Insertion of new pt 5B, div 12A

Part 5B—

insert—

Division 12A Compliance notices

110A Giving a compliance notice

- (1) This section applies if the chief executive or an inspector reasonably believes—
 - (a) a person (the *contravener*) has contravened a condition of a relevant authority in circumstances that make it likely the contravention will continue or be repeated; and
 - (b) a matter relating to the contravention is reasonably capable of being rectified; and
 - (c) it is appropriate to give the contravener an opportunity to rectify the matter.
- (2) The chief executive or inspector may give the contravener a notice (a *compliance notice*) requiring the contravener to rectify the matter.

Note—

Failure to comply with a compliance notice is an offence under section 110C.

110B Content of compliance notice

- (1) The compliance notice must state the following—

- (a) that the chief executive or inspector reasonably believes the contravener has contravened a condition of a relevant authority in circumstances that make it likely the contravention will continue or be repeated;
 - (b) the condition the chief executive or inspector believes has been contravened;
 - (c) briefly, how it is believed the condition has been contravened;
 - (d) the matter relating to the contravention that the chief executive or inspector believes is reasonably capable of being rectified;
 - (e) the reasonable steps the contravener must take to rectify the matter;
 - (f) that the contravener must take the steps within a stated period that is reasonable;
 - (g) that it is an offence to fail to comply with the compliance notice unless the contravener has a reasonable excuse.
- (2) The compliance notice must be accompanied by, or include, an information notice for the decision of the chief executive or inspector to give the compliance notice.

110C Offence for failure to comply with compliance notice

A person given a compliance notice must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

113 Insertion of new ss 110D–110F

Part 5B, division 13—

insert—

110D Offence for failure to comply with conditions

The holder of a relevant authority must comply with the conditions of the authority, unless the holder has a reasonable excuse.

Maximum penalty—100 penalty units.

110E Record requirements

- (1) A regulation, a condition of a relevant authority, or the chief executive by notice given to the holder of a relevant authority, may require (a ***record requirement***) the holder of a relevant authority to do any of the following—
 - (a) record stated information (the ***required information***) relating to activities conducted by the holder under the relevant authority;
 - (b) keep the required information in a stated way or at a stated place or for a stated period;
 - (c) give the chief executive or another stated person the required information in a stated way or at stated intervals or times.
- (2) The holder of a relevant authority must comply with the requirement unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) A holder of a relevant authority who is required to create a record under a record requirement must ensure the record does not contain information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

110F Notification requirements

- (1) A regulation, a condition of a relevant authority, or the chief executive by notice given to the holder of a relevant authority, may require (a *notification requirement*) the holder to notify the chief executive or another stated person, in a stated way or at stated intervals or times, of stated information relating to activities conducted by the holder under the relevant authority.
- (2) The holder of a relevant authority must comply with the requirement unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) For subsection (2), it is a reasonable excuse for an individual not to comply with a notification requirement if the stated information might tend to incriminate the person.
- (4) However, subsection (3) does not apply if a record, containing the stated information, is required to be held or kept by the person under this Act.
- (5) A holder of a relevant authority who is required to notify the chief executive or another person under a notification requirement must not give the chief executive or the other person information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

114 Insertion of new pt 7, div 11

Part 7—

insert—

Division 11 Provision for Hospital Foundations Act 2018

147 Existing application for licence

- (1) This section applies if an application for a licence under part 5B was made, but not decided, before the commencement.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the application.

115 Omission of schedule (Serious offence provisions under the Criminal Code)

Schedule—

omit.

Subdivision 3 Amendments commencing by proclamation

116 Amendment of s 4 (Definitions)

- (1) Section 4, definitions *category 1 researcher*, *category 1 researcher licence*, *category 2 researcher*, *category 2 researcher licence* and *certified cannabis seed*—

omit.

- (2) Section 4—

insert—

planting seed, for part 5B, see section 46.

researcher, for part 5B, see section 46.

researcher licence, for part 5B, see section 46.

seed handler, for part 5B, see section 46.

seed handler licence, for part 5B, see section 46.

117 Amendment of s 46 (Definitions for pt 5B)

- (1) Section 46, definitions *category 1 researcher*, *category 1 researcher licence*, *category 2 researcher*, *category 2 researcher licence* and *certified cannabis seed*—

omit.

- (2) Section 46—

insert—

planting seed means cannabis seed that is, in accordance with a regulation, taken to have been harvested from a cannabis plant with a THC concentration, in the plant's leaves and flowering heads, of not more than 0.5%.

researcher means a person who holds a researcher licence that is in force.

researcher licence means a researcher licence issued under section 49.

seed handler means a person who holds a seed handler licence that is in force.

seed handler licence means a seed handler licence issued under section 49.

- (3) Section 46, definition *industrial cannabis seed*, paragraph (b), 'certified cannabis'—

omit, insert—

planting

- (4) Section 46, definition *processed cannabis*, paragraph (b)(ii), from 'person'—

omit, insert—

seed handler.

[s 118]

118 Amendment of s 49 (Categories of licences)

Section 49(a) to (c)—

omit, insert—

- (a) grower licences;
- (b) researcher licences;
- (c) seed handler licences.

119 Replacement of ss 50 and 51

Sections 50 and 51—

omit, insert—

50 What researcher licences authorise

- (1) A researcher licence authorises the licensee, in accordance with the licence—
 - (a) to possess for research purposes—
 - (i) industrial cannabis plants and seed; and
 - (ii) class A and class B research cannabis plants and seed; and
 - (b) to produce, for use in plant breeding programs for developing new commercial strains of industrial cannabis—
 - (i) industrial cannabis plants and seed; and
 - (ii) class A and class B research cannabis plants and seed; and
 - (c) to supply class A and class B research cannabis plants and seed to—
 - (i) a grower for use, under the licensee's supervision, as part of a field trial the licensee is conducting on land owned or leased by the grower; and
 - (ii) a researcher authorised to possess the cannabis plants and seed; and

- (iii) a person authorised under a regulation under section 48 to possess the cannabis plants and seed; and
- (d) to supply industrial cannabis plants or seed to—
 - (i) a grower; or
 - (ii) a researcher; or
 - (iii) a seed handler; or
 - (iv) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed; and
- (e) to supply class A or class B research cannabis seed or industrial cannabis seed to—
 - (i) a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth); or
 - (ii) a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess; and
- (f) if the licensee holds a licence under the *Customs Act 1901* (Cwlth) authorising the licensee to export cannabis—to supply class A or class B research cannabis seed or industrial cannabis seed to a person in another country who is authorised under the law of that country to possess the seed; and
- (g) to supply processed cannabis to a person authorised under a regulation under section 48 to possess processed cannabis.

[s 120]

(2) In this section—

State includes an external territory.

120 Amendment and renumbering of s 52 (What grower licences authorise)

(1) Section 52(b) and note, from ‘from certified’—

omit, insert—

from planting seed; and

Note—

Planting seed is seed that is, in accordance with a regulation, taken to have been harvested from a cannabis plant with a THC concentration, in the plant’s leaves and flowering heads, of not more than 0.5%. However, industrial cannabis plants may have a THC concentration in their leaves and flowering heads of not more than 1%. The difference recognises that the leaves and flowering heads of plants grown using planting seed may have more than 0.5% THC because of environmental conditions beyond a grower’s control.

(2) Section 52(c)(i) and (d) to (f), ‘category 1 or category 2’—

omit.

(3) Section 52—

renumber as section 51.

121 Insertion of new s 52

Part 5B, division 2—

insert—

52 What seed handler licences authorise

A seed handler licence authorises the licensee, in accordance with the licence—

- (a) to supply denatured seed to a person who is authorised to possess processed cannabis; and

- (b) to supply industrial cannabis seed to any of the following—
 - (i) a grower;
 - (ii) a researcher;
 - (iii) a seed handler;
 - (iv) a person authorised under a regulation under section 48 to possess industrial cannabis plants or seed;
 - (v) a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads the person in the other State may possess;
 - (vi) if the seed handler holds a licence under the *Customs Act 1901* (Cwlth) authorising the seed handler to export cannabis—a person in a foreign country who is authorised under the law of the country to possess the seed; and
- (c) to possess industrial cannabis seed—
 - (i) for the purpose of denaturing the seed and supplying the denatured seed to a person mentioned in paragraph (a); or
 - (ii) for the purpose of—
 - (A) cleaning, drying and grading the seed; and
 - (B) supplying the seed to a person mentioned in paragraph (b); or
 - (iii) for the purpose of otherwise storing the seed before supplying the seed to a person mentioned in paragraph (b).

[s 122]

122 Amendment of s 54 (Application for licence)

(1) Section 54(2)—

insert—

- (d) for an application for a researcher licence—
a research plan containing information
prescribed by regulation.

(2) Section 54—

insert—

- (3) A research plan mentioned in subsection (2)(d)
forms part of the application.

123 Insertion of new s 56A

Part 5B, division 3—

insert—

56A Amendment of application

- (1) The chief executive may, by written notice given to the applicant for a licence, allow the applicant to, within a stated reasonable time, amend an application being considered by the chief executive (the *existing application*) by giving the chief executive a new application that incorporates the amendments (the *amended application*).
- (2) If the applicant does not give the chief executive the amended application within the stated reasonable time, the chief executive may, in accordance with section 63, issue or refuse to issue the licence based on the existing application.

124 Amendment of s 57 (Fit and proper person to hold licence)

Section 57(1)(d), ‘category 1 or category 2’—

omit.

125 Amendment of s 63 (Chief executive may issue or refuse to issue licence)

(1) Section 63(2)—

insert—

(ca) for a researcher licence—the research plan for the application for the licence will, if implemented, manage all risks of non-compliance with the Act that are associated with the research and associated activities proposed to be carried out under the licence; and

(2) Section 63(2)(ca) and (d)—

renumber as section 63(2)(d) and (e).

(3) Section 63(3), ‘(2)(d)’—

omit, insert—

(2)(e)

(4) Section 63—

insert—

(3A) If the chief executive decides to issue a researcher licence, the research plan for the application for the licence forms part of the licence.

(5) In this section—

research plan, for an application for a researcher licence, means the research plan forming part of the application under section 54 as amended in accordance with this part.

(5) Section 63(3A) to (5)—

renumber as section 63(4) to (6).

126 Amendment of s 82 (What happens to cannabis plants if licence cancelled)

(1) Section 82(3)(b)(ii), from ‘person’—

[s 127]

omit, insert—

seed handler to denature the seed; or

(2) Section 82(5)(c)—

omit, insert—

(c) if—

- (i) the cancelled licence was a researcher licence; and
- (ii) under the cancelled licence, class A or class B research cannabis is growing on land owned or leased by a grower as part of a field trial conducted under the supervision of a researcher;

the cannabis plants are taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

(3) Section 82(6), ' , 51(1)(b) and 52(b) and (e)'—

omit, insert—

and 51(b) and (e)

127 Amendment of s 83 (What happens to cannabis seed if licence cancelled or renewal refused)

(1) Section 83(2)(a)(ii), from 'person'—

omit, insert—

seed handler to denature the seed; or

(2) Section 83(2)(a)(iii), 'category 1 or category 2'—

omit.

(3) Section 83(2)(b) to (d)—

omit, insert—

(b) for class A or class B research cannabis seed—supply the seed to a researcher, or a

person authorised under a regulation under section 48, who may possess the cannabis seed; or

(c) destroy the seed.

(4) Section 83(3)(c)—

omit, insert—

(c) if—

(i) the cancelled licence was a researcher licence; and

(ii) under the cancelled licence, class A or class B research cannabis seed is in the possession of a grower for use for growing class A or class B research cannabis plants on land owned or leased by the grower as part of a field trial conducted under the supervision of a researcher;

the cannabis seed is taken to be in the chief executive's possession and not in the possession of the grower or the former licensee.

128 Insertion of new s 110G

Part 5B, division 13—

insert—

110G Monitoring fees

- (1) A regulation may prescribe 1 or more fees (each a ***monitoring fee***) for the monitoring of activities performed under a relevant authority.
- (2) The chief executive may decide whether or not to impose a particular monitoring fee on a particular holder of a relevant authority.
- (3) A fee prescribed under subsection (1) in relation

[s 129]

to a monitoring activity must not be more than the reasonable costs of the monitoring activity.

129 Amendment of pt 7, div 11, hdg (Provision for Hospital Foundations Act 2018)

Part 7, division 11, heading, ‘Provision’—
omit, insert—

Provisions

130 Insertion of new ss 148 and 149

Part 7, division 11—
insert—

148 Existing application for category 1 or category 2 researcher licence

- (1) This section applies if an application for a category 1 or a category 2 researcher licence was made, but not decided, before the commencement.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the application.
- (3) Despite subsection (2), if the chief executive decides to grant the licence—
 - (a) the licence granted is a researcher licence; and
 - (b) if the application was for a category 2 researcher licence—the licence is subject to a condition prohibiting the licensee from dealing with class A research cannabis plants and seed under the licence.

149 Transition of existing category 1 or category 2 researcher licence

- (1) This section applies if, immediately before the commencement, a person held a category 1 or category 2 researcher licence.
- (2) The licence continues in force after the commencement as a researcher licence—
 - (a) subject to any conditions that applied to the licence immediately before the commencement; and
 - (b) if the licence was a category 2 researcher licence—subject to a condition prohibiting the licensee from dealing with class A research cannabis plants and seed under the licence; and
 - (c) until the licence expires or is renewed, cancelled or surrendered.

**Division 3 Amendment of Drugs Misuse
Regulation 1987**

Subdivision 1 Preliminary

131 Regulation amended

This division amends the *Drugs Misuse Regulation 1987*.

**Subdivision 2 Amendments commencing on
assent**

132 Insertion of new pt 4, divs 7A and 7B

Part 4—

insert—

Division 7A Record requirements

26A Record requirements—Act, s 110E

This division prescribes, for section 110E of the Act, record requirements for the holder of a relevant authority.

26B Recording information—researchers and growers

- (1) A licensee, who is a category 1 or category 2 researcher or a grower, must make a written record of each of the following—
 - (a) the strains or varieties of all cannabis seed in the licensee's possession;
 - (b) the strains or varieties of all cannabis plants the licensee is growing;
 - (c) the source and quantity of all cannabis plants and seed supplied to the licensee;
 - (d) when and by whom cannabis plants or seed were delivered to the licensee;
 - (e) if cannabis plants or seed is delivered to the licensee by a carrier—the name of the individual who actually delivered the plants or seed;
 - (f) if the licensee supplies cannabis plants or seed to a carrier for delivery to a person—
 - (i) the name of the individual to whom the plants or seed were given for delivery; and
 - (ii) the name of the person to whom it is intended the plants or seed be supplied by the licensee;

-
- (g) when cannabis seed is planted by the licensee;
 - (h) if the licensee supplies cannabis plants or seed to another person (the *recipient*) who is authorised to possess the cannabis plants or seed—
 - (i) the name of the recipient; and
 - (ii) what the recipient intends to use the cannabis plants or seed for; and
 - (iii) for cannabis plants or seed that is not processed cannabis—particulars of how the cannabis plants or seed was grown, or otherwise obtained, by the licensee; and
 - (iv) the date on which the cannabis plants or seed was supplied to the recipient; and
 - (v) the quantity of cannabis plants or seed supplied to the recipient;
 - (i) if the licensee disposes of or destroys cannabis plants or seed—
 - (i) the date the cannabis plants or seed is disposed of or destroyed; and
 - (ii) the method the licensee used to dispose of or destroy the cannabis plants or seed.
- (2) The licensee must make the record of the information as soon as practicable, but no later than 7 days, after the information becomes available to the licensee.

26C Recording information—seed suppliers

- (1) A seed supplier must make a written record of each of the following—

[s 132]

- (a) the source and quantity of all industrial cannabis seed supplied to the seed supplier;
 - (b) when and by whom industrial cannabis seed was delivered to the seed supplier;
 - (c) if industrial cannabis seed is delivered to the seed supplier by a carrier—the name of the individual who actually delivered the seed;
 - (d) if the seed supplier supplies industrial cannabis seed to a carrier for delivery to a person—
 - (i) the name of the person to whom the seed was given for delivery; and
 - (ii) the name of the person to whom it is intended the seed be supplied by the seed supplier;
 - (e) the name of each person to whom the seed supplier supplies industrial cannabis seed.
- (2) The seed supplier must make the record of the information as soon as practicable, but no later than 7 days, after the information becomes available to the seed supplier.

26D Recording information—denaturers

- (1) A denaturer must make a written record of—
- (a) the source and quantity of all industrial cannabis seed supplied to the denaturer; and
 - (b) when and by whom industrial cannabis seed was delivered to the denaturer; and
 - (c) how, when and by whom industrial cannabis seed was denatured.
- (2) The denaturer must make the record of the information as soon as practicable, but no later than 7 days, after the information becomes available to the denaturer.

- (3) In this section—
denaturer see section 22(1).

26E Keeping record of information

- (1) A holder of a relevant authority must keep the record of the information until the end of the first of the following periods—
- (a) if the authority ends—3 years after the authority ends;
 - (b) if the holder stops being the holder of the authority—2 years after the holder stops being the holder of the authority.
- (2) The holder must keep the record in a form that is readily accessible, usable and able to be interpreted.

Division 7B Notification requirements

26F Notification requirements—researchers and growers

- (1) This section prescribes, for section 110F of the Act, notification requirements for a licensee who is a category 1 or category 2 researcher or a grower.
- (2) The licensee must give an inspector written notice—
- (a) of the planting of cannabis seed by the licensee; and
 - (b) if cannabis plants planted by the licensee will not be harvested—of the following—
 - (i) the plants will not be harvested;

[s 133]

- (ii) how the licensee will dispose of or destroy the plants; and
 - (c) in relation to a crop of industrial cannabis or class B research cannabis plants planted by the licensee—that the crop is ready to be tested for THC concentration.
- (3) The licensee must give a notice under this section to an inspector—
 - (a) for a notice mentioned in subsection (2)(a)—within 14 days of the planting of the seed; or
 - (b) for a notice mentioned in subsection (2)(b)—within 3 months of the planting of the cannabis plants; or
 - (c) for a notice mentioned in subsection (2)(c)—at least 4 weeks before the licensee intends to harvest the crop.

133 Amendment of sch 7 (Conditions for particular persons authorised under part 4)

Schedule 7, sections 1(b) and 4(b)—

omit.

134 Amendment of sch 8 (Licence conditions)

Schedule 8, item 5—

omit.

Subdivision 3 Amendments commencing by proclamation

135 Amendment of s 10 (Operation of pt 4 and schs 7 and 8)

(1) Section 10(1), ‘7’—

omit, insert—

6

(2) Section 10(2), ‘, 6 and 7’—

omit, insert—

and 6

136 Replacement of s 11 (Certifying cannabis seed)

Section 11—

omit, insert—

11 Planting seed—Act, s 46, def *planting seed*

- (1) This section states, for section 46 of the Act, definition *planting seed*, when cannabis seed is taken to have been harvested from a cannabis plant (a **0.5% THC plant**) with a THC concentration, in the plant’s leaves and flowering heads, of not more than 0.5%.
- (2) Cannabis seed originating in the State is taken to have been harvested from a 0.5% THC plant if—
 - (a) both of the following apply—
 - (i) an authorised person, at the request of the licensee or on the authorised person’s own initiative, arranges for the THC concentration of a representative sample for the seed to be analysed;
 - (ii) the results of the analysis state the THC concentration of the representative sample is not more than 0.5%; and
 - (b) the seed is labelled with the required particulars.

Note—

See section 27C for additional labelling requirements.

- (3) Also, cannabis seed originating in the State is taken to have been harvested from a 0.5% THC plant if—
- (a) both of the following apply—
- (i) an authorised person, at the request of the licensee or on the authorised person's own initiative, authorises another person in writing to arrange for the THC concentration of a representative sample for the seed to be analysed in a NATA accredited laboratory;
- (ii) the results of the analysis state the THC concentration of the representative sample is not more than 0.5%; and
- (b) the seed is labelled with the required particulars.

Note—

See section 27C for additional labelling requirements.

- (4) Cannabis seed originating in another State, or another country, is taken to have been harvested from a 0.5% THC plant if the recipient licensee—
- (a) takes reasonable steps to confirm that—
- (i) a representative sample for the seed has undergone an analysis that is substantially equivalent to an analysis mentioned in subsection (3)(a)(i); and
- (ii) the results of the analysis state the THC concentration of the representative sample is not more than 0.5%; and
- (b) labels the cannabis seed with the required particulars.

Note—

See section 27C for additional labelling requirements.

(5) In this section—

authorised person means—

- (a) an inspector; or
- (b) another person authorised by the chief executive for the purpose of this section.

representative sample, for cannabis seed, means a representative sample of cannabis leaves and flowering heads taken from the crop from which the seed was harvested.

137 Amendment of s 12 (Application of div 3)

Section 12(a), ‘category 1 or category 2’—
omit.

138 Amendment of s 15 (Supply)

(1) Section 15(a) and (b)—

omit, insert—

- (a) to supply class A or class B research cannabis plants and seed to another DPI researcher or a researcher authorised to possess the cannabis plants and seed; and

(2) Section 15(d)(ii), ‘category 1 or category 2’—

omit.

(3) Section 15(d)(iv)—

omit, insert—

- (iv) a seed handler;

(4) Section 15(c) to (g)—

renumber as section 15(b) to (f).

139 Omission of pt 4, div 6 (Seed suppliers)

Part 4, division 6—

omit.

140 Omission of s 22 (Denaturer)

Section 22—

omit.

141 Amendment of s 24 (Analyst)

Section 24(2), definition *authorised person*, paragraph (a),
'category 1 or category 2'—

omit.

142 Amendment of s 26 (Employees of authorised persons)

(1) Section 26(2), definition *authorised person*, paragraphs (e)
and (f)—

omit.

(2) Section 26(2), definition *authorised person*, paragraphs (g)
and (h)—

renumber as paragraphs (e) and (f).

**143 Amendment of s 26B (Recording information—
researchers and growers)**

(1) Section 26B(1), 'category 1 or category 2'—

omit.

(2) Section 26B(1)—

insert—

-
- (ca) if the licensee is the first licensee to take possession of planting seed after the seed enters the State—a report number, or other identifying information, for the report containing the results mentioned in section 11(4)(a)(ii);
- (3) Section 26B(1)(ca) to (i)—
renumber as section 26B(1)(d) to (j).

144 Amendment of s 26C (Recording information—seed suppliers)

- (1) Section 26C, heading, ‘suppliers’—
omit, insert—
handlers
- (2) Section 26C, ‘supplier’—
omit, insert—
handler
- (3) Section 26C(1)—
insert—
(ca) if the seed handler is the first licensee to take possession of planting seed after the seed enters the State—a report number, or other identifying information, for the report containing the results mentioned in section 11(4)(a)(ii);
(cb) if the industrial cannabis is denatured by the seed handler—how, when and by whom the industrial cannabis seed was denatured;
- (4) Section 26C(1)(ca) to (e)—
renumber as section 26C(1)(d) to (g).

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145 Omission of s 26D (Recording information—denaturers)

Section 26D—

omit.

146 Amendment of s 26F (Notification requirements—researchers and growers)

Section 26F(1), ‘category 1 or category 2’—

omit.

147 Renumbering of pt 4, divs 7 to 7B

Part 4, divisions 7 to 7B—

renumber as part 4, divisions 6 to 7A.

148 Omission of s 27 (Recognition as seed supplier)

Section 27—

omit.

149 Renumbering of ss 23–26F

Sections 23 to 26F—

renumber as sections 20 to 27A.

150 Insertion of new ss 27B and 27C

Part 4, division 8—

insert—

**27B Prescribed information for research plans—
Act, s 54**

- (1) This section prescribes, for section 54(2)(d) of the Act, information that must be included in a research plan relating to an application for a researcher licence.

- (2) The research plan must—
- (a) describe the research and associated activities proposed to be carried out under the licence; and
 - (b) describe the location of all places where the research and associated activities will be carried out; and
 - (c) identify any risk of non-compliance with the Act that is associated with the research and associated activities; and
 - (d) describe measures proposed to be implemented to manage all risks mentioned in paragraph (c), including, for example—
 - (i) how the following will be secured—
 - (A) cannabis crops, cannabis seed and equipment associated with the research and associated activities;
 - (B) information and records associated with the research and associated activities; and
 - (ii) what security screening protocols will be put in place for the employees, or other persons, dealing with cannabis crops, cannabis seed and equipment associated with the research and associated activities; and
 - (iii) how the researcher will restrict access, of employees or other persons, to cannabis crops, cannabis seed and equipment associated with the research and associated activities; and
 - (iv) how cannabis crops, cannabis seed and equipment associated with the research and associated activities will be safely

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and securely stored, handled or transported; and

- (e) contain any additional information stated in a guideline published by the chief executive under subsection (3).
- (3) For subsection (2)(e), the chief executive may publish, on the department's website, a guideline stating additional information that the chief executive reasonably considers is relevant for the management of risks associated with research and associated activities carried out under a researcher licence.

27C Labelling method

- (1) This section applies if a provision of this part, or a condition of a licence, requires—
 - (a) cannabis seed to be labelled so as to indicate particular information; or
 - (b) particular information to otherwise be included on a container, however described, of cannabis seed.
- (2) The requirement is complied with only if the information is—
 - (a) either—
 - (i) written or stamped on—
 - (A) the outside of the container in a position where the information can be clearly seen on the container; or
 - (B) a label that is fixed to the outside of the container in a position where the label can be clearly seen on the container; or

- (ii) if, because the seed is being supplied in bulk, subparagraph (i) cannot reasonably be complied with—
included in a written notice given to a person to whom the seed is supplied before or when the seed is delivered to the person; and
- (b) written in English; and
- (c) written in characters that are at least 1.5mm high; and
- (d) written in characters that are either—
 - (i) dark print on a light background; or
 - (ii) light print on dark background.
- (3) A notice under subsection (2)(a)(ii) may be fixed to, or form part of, a delivery docket or invoice given to the person to whom the seed is supplied.

151 Amendment of sch 7 (Conditions for particular persons authorised under part 4)

- (1) Schedule 7, sections 1 and 4—
omit.
- (2) Schedule 7, section 5(2), from ‘laboratory’—
omit, insert—
NATA accredited laboratory.
- (3) Schedule 7, section 5(5), definition *NATA*—
omit.
- (4) Schedule 7, sections 2 to 5—
renumber as schedule 7, sections 1 to 3.

152 Replacement of sch 8 (Licence conditions)

Schedule 8—

omit, insert—

Schedule 8 Licence conditions

section 29(1)

Part 1 General conditions

- 1 A licensee must keep cannabis seed in the licensee's possession in a securely locked place, other than when the licensee uses the seed for a purpose that is authorised under the licensee's licence.
- 2 As soon as reasonably practicable after a licensee receives a package containing cannabis plants or seed that appears to have been tampered with, the licensee must inform an inspector or a police officer that the package appears to have been tampered with.
- 3 A licensee who proposes to supply industrial cannabis seed for sale by wholesale or retail must ensure—
 - (a) if the seed is cannabis seed harvested from an industrial cannabis plant—the seed is labelled so as to describe the seed as cannabis seed harvested from an industrial cannabis plant; or
 - (b) if the seed is to be supplied as planting seed—the seed is labelled with the required particulars.

Note—

See section 27C for additional labelling requirements.

Part 2 **Particular conditions for researcher licences**

- 4 A researcher, whose licence is subject to a condition prohibiting the researcher from dealing with class A research cannabis plants and seed, must allow an inspector to destroy, or supervise the destruction of, cannabis plants in the possession of the researcher that have been found, by an analyst conducting a laboratory analysis of a random sample of the leaves and flowering heads of the plants, to have a concentration of THC in their leaves and flowering heads of 3% or more.
- 5 A researcher, whose licence is subject to a condition prohibiting the researcher from dealing with class A research cannabis plants and seed, must ensure, as far as practicable, that cannabis seed supplied to the researcher by a person in another State or a foreign country is certified as seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads of less than 3%.
- 6 A researcher must carry out activities under the researcher's licence in accordance with the approved research plan for the licence.

Part 3 **Particular conditions for grower licences**

- 7 A grower must allow an inspector to destroy, or supervise the destruction of, cannabis plants in the possession of the grower that

have been found, by an analyst conducting a laboratory analysis of a random sample of the leaves and flowering heads of the plants, to have a THC concentration in their leaves and flowering heads of more than 1%.

Part 4 Particular conditions for seed handler licences

- 8 A seed handler must—
- (a) ensure all industrial cannabis seed in the possession of the seed handler is labelled to state—
 - (i) if the seed is cannabis seed harvested from an industrial cannabis plant—that fact; or
 - (ii) if the seed is intended to be used or supplied as planting seed—the required particulars; and

Note—

See section 27C for additional labelling requirements.

- (b) pack all industrial cannabis seed to be delivered to someone else by a carrier in a way that ensures, as far as reasonably practicable, seed can not escape from the packaging or be accidentally released or tampered with.

153 Amendment of sch 9 (Dictionary)

- (1) Schedule 9, definition *seed supplier*—
omit.

(2) Schedule 9—

insert—

approved research plan, for a researcher licence, means a research plan that forms part of the licence under section 63(4) of the Act as amended in accordance with the Act.

NATA means the National Association of Testing Authorities, Australia ABN 59 004 379 748.

NATA accredited laboratory means a laboratory whose functions and operations are accredited by NATA for competence to undertake drug analysis.

recipient licensee, in relation to cannabis seed originating in another State or another country, means the licensee who first takes possession of the seed after it enters the State.

required particulars means—

- (a) a report number, or other identifying information, for the report containing the results mentioned in section 11(2)(a)(ii), (3)(a)(ii) or (4)(a)(ii); and
- (b) the words ‘planting seed’; and
- (c) the words ‘This seed was harvested from a cannabis plant with a THC concentration in the plant’s leaves and flowering heads, of not more than 0.5%’; and
- (d) for cannabis seed originating in the State—
the name and licence number of the grower who produced the seed; and
- (e) for cannabis seed originating in another State or another country—the name of—
 - (i) the State or other country; and
 - (ii) the recipient licensee.

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Division 4 Amendment of Fair Work (Commonwealth Powers) and Other Provisions Act 2009

154 Act amended

This division amends the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

155 Amendment of sch 1 (Other entities that are not public sector employers)

Schedule 1, item 2—

omit, insert—

2 foundations established under the *Hospital Foundations Act 2018*

Division 5 Amendment of Hospital and Health Boards Act 2011

156 Act amended

This division amends the *Hospital and Health Boards Act 2011*.

157 Amendment of s 34 (Delegation by health service chief executive)

Section 34(1), after ‘under this Act’—

insert—

or another Act

Division 6 **Amendment of Justice and Other Information Disclosure Act 2008**

158 Act amended

This division amends the *Justice and Other Information Disclosure Act 2008*.

159 Amendment of schedule (Dictionary)

(1) Schedule, definition *chief executive*, of a treatment order agency—

insert—

(f) a health service chief executive under the *Hospital and Health Boards Act 2011*.

(2) Schedule, definition *treatment order agency*—

insert—

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

Division 7 **Amendment of Mental Health Act 2016**

160 Act amended

This division amends the *Mental Health Act 2016*.

161 Insertion of new ss 497A and 497B

Chapter 12, part 6, division 3—

insert—

497A Prosecuting authority to give chief psychiatrist notice of ending of order

The prosecuting authority for the relevant offence must, within 7 days after the forensic order or treatment support order for the person ends under section 497(2), give the chief psychiatrist written notice that the order has ended under that section on a stated day.

497B Disclosure of particular information on ending of order

- (1) The chief psychiatrist must, within 7 days after receiving notice under section 497A of the ending of the forensic order or treatment support order for the person, give the chief executive (justice) written notice under subsection (2).
- (2) The notice must state each period for which the category of the forensic order or treatment support order, or of any previous related order, was inpatient.

Note—

See section 797A for the effect of a period for which the category of a forensic order or treatment support order is inpatient.

- (3) The chief executive (justice) must, within 7 days after receiving the notice, give a copy of the notice to—
 - (a) the director of public prosecutions; and
 - (b) if the person is a child—the chief executive (youth justice); and
 - (c) if the person has at any time been in, or immediately after the relevant appearance is in, the custody of the chief executive (corrective services) in relation to the relevant offence—the chief executive (corrective services).

Note—

See the *Corrective Services Act 2006*, section 7 for when a person is taken to be in the custody of the chief executive (corrective services).

(4) In this section—

previous related order, in relation to a forensic order or treatment support order (each a ***relevant order***), means—

- (a) a forensic order that ended or was revoked on the making of the relevant order; or
- (b) a forensic order that ended or was revoked on the making of the forensic order mentioned in paragraph (a).

Notes—

- 1 See section 461 for the making of a forensic order (mental health) or forensic order (disability) for a person subject to a forensic order (Criminal Code).
- 2 See section 457 for the making of a forensic order (disability) on the revocation of a forensic order (mental health).
- 3 See section 450 for the making of a treatment support order on the revocation of a forensic order (mental health).

relevant appearance, for a person who was subject to a forensic order or treatment support order that ended under section 497(2), means the appearance of the person at the mention of the proceeding for the relevant offence that resulted in the ending of the order.

162 Insertion of new s 797A

After section 797—

insert—

797A Particular periods counted as imprisonment or detention

- (1) This section applies to a period for which a person—
 - (a) is a classified patient in relation to an offence; or
 - (b) is subject to a forensic order or treatment support order in relation to an offence, if the category of the order is inpatient; or
 - (c) is detained in an authorised mental health service, in relation to an offence, under—
 - (i) a court examination order; or
 - (ii) an order made under section 124(1)(b), 183(c)(ii), 193(2) or 551(4)(b).
- (2) The period is—
 - (a) for the *Penalties and Sentences Act 1992*—taken to be imprisonment already served by the person under the sentence for the offence, unless the sentencing court orders otherwise; or

Note—

See the *Penalties and Sentences Act 1992*, section 159A in relation to time held in presentence custody.

 - (b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted as part of the person’s period of imprisonment or period of detention for the offence.
- (3) However, subsection (2) does not apply to a period for which the person is granted bail for the offence.

163 Replacement of ch 20, hdg (Transitional provisions)

Chapter 20, heading—

omit, insert—

Chapter 20 Transitional provisions for Act No. 5 of 2016

164 Insertion of new ch 21

After chapter 20—

insert—

Chapter 21 Transitional provision for Hospital Foundations Act 2018

864 Application of s 797A to particular periods

- (1) Section 797A applies, and is taken always to have applied, as if the reference in section 797A(1) to a period included a reference to a period during the designated period.
- (2) If section 797A(2)(a) or (b), as applied under subsection (1), applies in relation to a person for a period during the designated period, the period is—
 - (a) for the *Penalties and Sentences Act 1992*—taken to be, and to have always been, imprisonment already served by the person under the sentence for the offence; or
 - (b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted, and is taken to have always been counted, as part

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of the person's period of imprisonment or period of detention for the offence.

Note—

See also the repealed *Mental Health Act 2000*, section 543 in relation to particular periods taken to be imprisonment already served by a person or counted as part of a person's period of imprisonment or detention for an offence.

(3) In this section—

designated period means the period starting on 5 March 2017 and ending immediately before the commencement.

Division 8 Amendment of Penalties and Sentences Act 1992

165 Act amended

This division amends the *Penalties and Sentences Act 1992*.

166 Amendment of s 151B (Definitions for part)

(1) Section 151B, definition *review team*, paragraph (b)—

omit, insert—

(b) a representative of each treatment order agency, other than a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; and

(c) a representative of 1 Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

(2) Section 151B, definition *treatment order agency*, paragraph (c)—

omit, insert—

-
- (c) a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17;

167 Amendment of s 151T (Review team obligations and requirement for court to consult)

Section 151T(2) and (3)—

omit, insert—

- (2) In administering a treatment order, the review team may—
 - (a) give a direction that is reasonably necessary to achieve the purposes of the treatment order; and
 - (b) consult with and be assisted by the chief executive (health).
- (3) In making an order or taking an action under this division in relation to a treatment order, the court—
 - (a) must consult with the review team for the order about whether the order or action is appropriate; and
 - (b) may consult with and be assisted by the chief executive (health).

- (4) In this section—

chief executive (health) means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

Schedule 1 Dictionary

section 6

administrator, for a foundation, means a person appointed under section 50 to administer the foundation.

approved form means a form approved under section 82.

associated Hospital and Health Service, for a foundation, means the Hospital and Health Service in association with which the foundation performs its functions.

board means a board of a foundation established under section 27.

criminal history, for a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

derivative transactions, for part 5, see section 52.

foundation means a foundation established under section 12.

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

Hospital and Health Board see the *Hospital and Health Boards Act 2011*, schedule 2.

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

managing executive officer, of a foundation, means a person who is the most senior officer (however called) of the foundation who manages the day-to-day operation of the foundation.

member, of a board, see section 30(1).

notice means written notice.

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

public sector health service facility see the *Hospital and Health Boards Act 2011*, schedule 2.

public sector hospital see the *Hospital and Health Boards Act 2011*, schedule 2.

register means the register of foundations kept by the chief executive under section 79.

registered object, of a foundation, means an object included in the current objects of the foundation contained in the register.

special financial arrangement, for part 5, see section 52.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

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