



Queensland

Health and Other Legislation Amendment Act 2019

Act No. 13 of 2019

An Act to amend the Births, Deaths and Marriages Registration Act 2003, the Coroners Act 2003, the Cremations Act 2003, the Duties Act 2001, the Health Act 1937, the Public Health Act 2005, the Radiation Safety Act 1999, the Retirement Villages Act 1999 and the Transplantation and Anatomy Act 1979 for particular purposes, and to repeal the Public Health (Medicinal Cannabis) Act 2016

[Assented to 11 April 2019]



Queensland

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health and Other Legislation Amendment Act 2019*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 6;
- (b) part 7; division 3;
- (c) part 8;
- (d) part 11.

Part 2 Amendment of Births, Deaths and Marriages Registration Act 2003

3 Act amended

This part amends the *Births, Deaths and Marriages Registration Act 2003*.

4 Amendment of s 32 (Notifying about disposal of a deceased person's body)

Section 32(1)(a), after 'disposing of a human body'—
insert—

[s 5]

, or a part of the body,

Part 3 Amendment of Coroners Act 2003

5 Act amended

This part amends the *Coroners Act 2003*.

6 Amendment of s 95 (Authorising burial of body etc.)

(1) Section 95(3)(b)—

omit, insert—

(b) part of a human body—

(i) taken during a medical procedure; or

(ii) used at a school of anatomy for the study and practice of anatomy; or

(2) Section 95—

insert—

(4) In this section—

school of anatomy see the *Transplantation and Anatomy Act 1979*, section 4.

Part 4 Amendment of Cremations Act 2003

7 Act amended

This part amends the *Cremations Act 2003*.

8 Amendment of s 4 (Cremations this Act does not apply to)

(1) Section 4(b)—

omit, insert—

(b) parts of a human body—

(i) taken during a medical procedure or autopsy; or

(ii) used at a school of anatomy for the study and practice of anatomy; or

(2) Section 4—

insert—

(2) In this section—

school of anatomy see the *Transplantation and Anatomy Act 1979*, section 4.

Part 5 Amendment of Duties Act 2001

9 Act amended

This part amends the *Duties Act 2001*.

10 Insertion of new s 141A

After section 141—

insert—

141A Exemption—mandatory buyback under Retirement Villages Act 1999

Transfer duty is not imposed on a dutiable transaction under the *Retirement Villages Act 1999*, section 63A.

[s 11]

Part 6 Amendment of Health Act 1937

11 Act amended

This part amends the *Health Act 1937*.

12 Amendment of s 5 (Interpretation)

- (1) Section 5, definition *article*, paragraph (a)(ii), ‘articles; but’—
omit, insert—
articles.
- (2) Section 5, definition *article*, paragraph (b)—
omit.
- (3) Section 5, definition *drug*, paragraph (a)(ii)(C), ‘drug; but’—
omit, insert—
drug.
- (4) Section 5, definition *drug*, paragraph (b)—
omit.
- (5) Section 5, definition *poison*, paragraph (a), ‘such; but’—
omit, insert—
such.
- (6) Section 5, definition *poison*, paragraph (b)—
omit.

Part 7 Amendment of Public Health Act 2005

Division 1 Preliminary

13 Act amended

This part amends the *Public Health Act 2005*.

Division 2 Amendments commencing on assent

14 Insertion of new ch 7A

After chapter 7—

insert—

Chapter 7A Pollution events

Part 1 Preliminary

313A Purpose of chapter

The purpose of this chapter is to enable the chief executive to take action to respond to a pollution event in a way that informs the public of—

- (a) the potential risk to public health; and
- (b) if appropriate, any actions necessary to avoid or reduce the effect of the pollution event on public health.

313B Definitions for chapter

In this chapter—

[s 14]

pollution event see section 313C.

pollution notice, in relation to a pollution event,
see section 313D.

publish includes—

- (a) publish in writing or in any other form of media; and
- (b) cause to be published.

313C Meaning of *pollution event*

A *pollution event* is the release or dispersal of a contaminant or pollutant that may adversely affect public health.

313D Meaning of *pollution notice*

A *pollution notice*, in relation to a pollution event, is a notice given by, or at the direction of, the chief executive that states the following—

- (a) to the extent it can be reasonably identified by the chief executive—the nature of the pollution event;
- (b) the area that is, or may be, affected by the pollution event;
- (c) the nature, type and duration of any action that may be required to avoid or reduce the effect of the pollution event on public health;
- (d) any other matter the chief executive considers appropriate for the pollution event.

Part 2 Pollution notices

313E Chief executive may give direction to publish pollution notice

- (1) This section applies if the chief executive is satisfied—
 - (a) a pollution event has occurred; and
 - (b) a person is responsible for the pollution event; and
 - (c) it is necessary to inform the public about the pollution event and actions to avoid or reduce the effect of the pollution event on public health.
- (2) The chief executive may, by notice given to the person, direct the person to publish a pollution notice in relation to the pollution event—
 - (a) by a stated date; and
 - (b) in a stated way; and
 - (c) in a stated area that is, or may be, affected by the pollution event.
- (3) A person to whom a direction is given under subsection (2) must publish a pollution notice in compliance with the direction unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

313F Chief executive may publish pollution notice

- (1) This section applies if the chief executive is satisfied—
 - (a) the person responsible for a pollution event—
 - (i) can not be identified; or
 - (ii) would not be able to comply with a direction given under section 313E; or

[s 14]

- (b) a person has been given a direction under section 313E to publish a pollution notice in relation to a pollution event but the person—
 - (i) has not published a pollution notice by the date stated in the direction; or
 - (ii) has otherwise not complied with the direction; or
 - (c) the pollution event is, or is caused by, a naturally-occurring event.
- (2) The chief executive may, in relation to the pollution event, publish a pollution notice—
 - (a) on the department’s website; and
 - (b) in any other way the chief executive considers appropriate.

313G Steps required before giving direction or publishing pollution notice

- (1) This section applies if the chief executive is considering—
 - (a) giving a direction in relation to a pollution event under section 313E; or
 - (b) publishing a pollution notice in relation to a pollution event under 313F.
- (2) Before giving the direction or publishing the pollution notice, the chief executive must consult with, and consider advice given by, a relevant public service officer about—
 - (a) the contaminant or pollutant that has caused, or may have caused, the pollution event; and
 - (b) any other matter the chief executive considers relevant.
- (3) In this section—

relevant public service officer means a public service officer who the chief executive considers has, or is likely to have, the necessary expertise and experience to advise the chief executive about the pollution event.

Part 3 Compensation

313H Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for the chief executive under this chapter, including a loss arising from compliance with a requirement made of the person under this chapter.
- (2) However, subsection (1) applies only in relation to loss arising from an accidental, negligent or unlawful act or omission.
- (3) The compensation may be claimed and ordered in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order the payment of the compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to—
 - (a) the nature of the pollution event and the risk to public health; and
 - (b) whether the loss arose from the publication of a pollution notice in relation to the pollution event.
- (6) A regulation may prescribe other matters that

[s 15]

may, or must, be taken into account by the court when considering whether it is just to order compensation.

(7) In this section—

loss includes costs and damage.

15 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

pollution event, for chapter 7A, see section 313C.

pollution notice, in relation to a pollution event, for chapter 7A, see section 313D.

publish, for chapter 7A, see section 313B.

Division 3 Amendments commencing by proclamation

16 Replacement of s 60 (Person must comply with standard)

Section 60—

omit, insert—

60 Person must comply with standard

A person manufacturing, selling, supplying or using paint must comply with a provision of a standard prescribed by regulation.

Maximum penalty—100 penalty units.

17 Amendment of s 76 (Definitions for div 3)

Section 76, definition *entity of the State*—

omit.

[s 22]

under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

notifiable dust lung disease, in relation to a person, means a respiratory disease prescribed by regulation that is caused by occupational exposure to a type of dust prescribed by regulation.

occupational exposure means exposure of a person to dust occurring, wholly or partly, in the course of the person's work.

prescribed medical practitioner means a medical practitioner who is member of a class of persons prescribed by regulation.

register means the Notifiable Dust Lung Disease Register established and kept under section 279AB.

regulator see the *Work Health and Safety Act 2011*, schedule 5.

relevant chief executive means any of the following persons—

- (a) the chief executive of the department in which the *Coal Mining Safety and Health Act 1999* is administered;
- (b) the chief executive of the department in which the *Workers' Compensation and Rehabilitation Act 2003* is administered;
- (c) another chief executive prescribed by regulation.

relevant employee means a public service employee in a department for which a relevant chief executive has been appointed as the chief executive.

Division 2 Notifiable Dust Lung Disease Register

279AB Register

- (1) The chief executive must establish and keep a register of the notifications about notifiable dust lung diseases given to the chief executive under this part.
- (2) The register must include, for each person, including each deceased person, for whom a notification about a notifiable dust lung disease has been given, the information stated in the notification.
- (3) The chief executive may keep the register in a form the chief executive considers appropriate, including an electronic form.
- (4) The register is to be known as the Notifiable Dust Lung Disease Register.

279AC Purposes of register

The purposes of establishing and keeping the register are to—

- (a) monitor and analyse the incidence of notifiable dust lung diseases; and
- (b) enable information about notifiable dust lung diseases to be exchanged with an entity of the State.

279AD Approved operator may keep register

The chief executive may approve a person (an *approved operator*) to keep the register for the chief executive.

Division 3 Notifications and giving of information about notifiable dust lung diseases

279AE Obligation under this division

An obligation to notify or give information under this division for a person includes an obligation to notify or give information for a deceased person.

279AF Obligation to notify chief executive

- (1) This section applies if a prescribed medical practitioner diagnoses a person as having a notifiable dust lung disease.
- (2) The prescribed medical practitioner must, within the period prescribed by regulation, give the chief executive a notification about the notifiable dust lung disease unless the practitioner has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) The notification must be in the approved form.
- (4) However, subsection (2) does not apply if the prescribed medical practitioner has given information about the notifiable dust lung disease to—
 - (a) the chief executive of the department in which the *Coal Mining Safety and Health Act 1999* is administered; or
 - (b) a public service employee of the department mentioned in paragraph (a); or
 - (c) another medical practitioner, who is authorised under an Act prescribed by

regulation, to provide a health assessment about the person.

279AG Further information may be required

- (1) This section applies if the chief executive considers further information is required in relation to a notification about a notifiable dust lung disease to ensure the accuracy or completeness of the register.
- (2) The chief executive may, by notice, require either of the following persons to give the chief executive stated information—
 - (a) the prescribed medical practitioner who gave the notification;
 - (b) another health practitioner who the chief executive believes has information about the notifiable dust lung disease.
- (3) A notice given under subsection (2) must—
 - (a) state the reasonable period within which the person must give the information; and
 - (b) warn the person that failure to comply with the notice without reasonable excuse is an offence under this Act.
- (4) A person given a notice under subsection (2) must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

279AH Relevant chief executives to notify

- (1) This section applies if a relevant chief executive, or relevant employee, has been given information about a notifiable dust lung disease.
- (2) If requested by the chief executive, the relevant

[s 22]

chief executive must give the information to the chief executive.

279AI Authorisation of giving of information

- (1) A person who gives information in compliance with this division who would otherwise be required to maintain confidentiality about the information under an Act, oath, rule of law or practice—
 - (a) does not contravene the Act, oath, rule of law or practice by giving the information; and
 - (b) is not liable to disciplinary action for giving the information.
- (2) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.

Division 4 Report about register and related matters

279AJ Chief executive must report to Minister

- (1) As soon as practicable after the end of each financial year, but not later than 30 September, the chief executive must give the Minister a report stating—
 - (a) the number of notifications given to the chief executive under this part during the financial year; and

- (b) the types of notifiable dust lung diseases recorded in the register during the financial year; and
 - (c) the actions the department has taken to implement the purposes of the register; and
 - (d) any other information about a notifiable dust lung disease the chief executive considers appropriate.
- (2) However, the chief executive must not include personal information in the report.
- (3) The Minister must, as soon as practicable after receiving the report, table the report in the Legislative Assembly.
- (4) In this section—
- personal information* means information or an opinion, including information or an opinion forming part of the register, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Division 5 Confidentiality and disclosure of information

279AK Definitions for division

In this division—

confidential information means information, other than information that is publicly available, about a person's personal affairs or health that has become known to a relevant person in the course of performing a function under, or relating to the administration of, this part.

[s 22]

information includes a document.

relevant person means a person who is, or was, any of the following persons—

- (a) the chief executive;
- (b) a public service employee in the department;
- (c) a relevant chief executive;
- (d) a relevant employee;
- (e) the regulator;
- (f) a prescribed medical practitioner required to give the chief executive a notification under section 279AF(2);
- (g) a person required to give information under section 279AG(4);
- (h) an approved operator.

279AL Duty of confidentiality

- (1) A relevant person must not disclose, directly or indirectly, confidential information of another person unless the disclosure is permitted under this division.

Maximum penalty—50 penalty units

- (2) The *Hospital and Health Boards Act 2011*, section 142 or 142A does not apply to a relevant person in relation to confidential information.
- (3) In this section—

relevant person includes a person who receives information under section 279AO.

279AM Disclosure—general

A relevant person may disclose confidential

information—

- (a) to the extent necessary for the person to perform a function, or comply with an obligation, under this Act; or
- (b) if the disclosure is authorised under an Act; or
- (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.

279AN Disclosure for data collection and public health monitoring

- (1) The chief executive, or another relevant person authorised by the chief executive, may disclose confidential information to a person who is contracted by the department to analyse, monitor or evaluate public health.
- (2) A disclosure under subsection (1) may only be made if—
 - (a) the person is authorised in writing by the chief executive to receive the confidential information; and
 - (b) the disclosure and receipt of the confidential information is only for analysing, monitoring or evaluating public health.

279AO Disclosure to entity of the State or corresponding entity

- (1) The chief executive may disclose confidential information to an entity of the State or a

[s 22]

- corresponding entity if the disclosure is required or permitted under an agreement—
- (a) between the chief executive, or the State, and the entity; and
 - (b) that is prescribed by regulation.
- (2) An entity of the State or a corresponding entity that receives confidential information under an agreement mentioned in subsection (1)—
- (a) must not disclose the information unless the disclosure is—
 - (i) required or permitted under the agreement; or
 - (ii) permitted, in writing, by the chief executive; and
 - (b) must ensure the confidential information is used only for the purpose for which it was disclosed under the agreement.
- (3) In this section—
- corresponding entity* means—
- (a) a department of the Commonwealth or another State; or
 - (b) an entity established, under an Act of the Commonwealth or another State, for a public purpose.

279AP Disclosure of information for investigation under *Coroners Act 2003*

- (1) This section applies if a coroner is investigating the death of a person.
- (2) The chief executive may give the coroner, or a police officer helping the coroner to investigate the death, information from the register that is relevant to the person's death.

-
- (3) The coroner or police officer to whom the information is given, and anyone else to whom the information is subsequently given, must not use or disclose the information other than—
- (a) for the purpose of the investigation; or
 - (b) as otherwise required or permitted under this or another Act.

23 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *entity of the state*—
omit.
- (2) Schedule 2—
insert—

approved operator, for chapter 6, part 3A, see section 279AD.

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

entity of the State means—

- (a) a department; or
- (b) an entity established under an Act for a public purpose.

notifiable dust lung disease, in relation to a person, for chapter 6, part 3A, see section 279AA.

occupational exposure, for chapter 6, part 3A, see section 279AA.

prescribed medical practitioner, for chapter 6, part 3A, see section 279AA.

regulator, for chapter 6, part 3A, see section 279AA.

relevant chief executive, for chapter 6, part 3A, see section 279AA.

relevant employee, for chapter 6, part 3A, see

[s 23]

section 279AA.

- (3) Schedule 2, definition *confidential information*—
insert—
- (i) for chapter 6, part 3A, division 5, see section 279AK.
- (4) Schedule 2, definition *health information held by a health agency*, paragraph (a)—
insert—
- (ia) information about a person’s health or the provision of a health service to a person held or obtained by an approved operator under chapter 6, part 3A for the purpose of keeping the Notifiable Dust Lung Disease Register; or
- (5) Schedule 2, definition *health information held by a health agency*, paragraph (a)(ia) and (iii)—
renumber as paragraph (a)(iii) and (iv).
- (6) Schedule 2, definition *health practitioner*—
insert—
- (c) for chapter 6, part 3A, see section 279AA.
- (7) Schedule 2, definition *information*—
insert—
- (i) for chapter 6, part 3A, division 5, see section 279AK.
- (8) Schedule 2, definition *register*—
insert—
- (ca) for chapter 6, part 3A, see section 279AA;
or
- (9) Schedule 2, definition *register*, paragraphs (ca) and (d)—
renumber as paragraphs (d) and (e).
- (10) Schedule 2, definition *relevant person*—

insert—

- (i) for chapter 6, part 3A, division 5, see section 279AK.

Part 8 Amendment of Radiation Safety Act 1999

24 Act amended

This part amends the *Radiation Safety Act 1999*.

25 Amendment of s 49 (Who may apply for Act instruments)

Section 49(2)—

insert—

Note—

See also section 103K in relation to persons who are taken to hold a use licence or a transport licence.

26 Amendment of s 74 (Terms)

- (1) Section 74(1)—

insert—

- (aa) for a licence held by a prescribed licensee—
until the licence is suspended or cancelled;
or

- (2) Section 74(1)(aa) and (b)—

renumber as section 74(1)(b) and (c).

27 Amendment of s 78 (Application of div 3)

Section 78(a)—

omit, insert—

[s 28]

- (a) a licence, other than a licence held by a prescribed licensee;

28 Amendment of s 87 (Return of cancelled Act instrument to chief executive)

Section 87(2), after ‘The holder’—

insert—

- , other than a holder who is a prescribed licensee,

29 Amendment of s 94 (Application of div 6)

Section 94(a)—

omit, insert—

- (a) a licence, other than a licence held by a prescribed licensee;

30 Amendment of s 99 (Surrender of Act instruments)

Section 99(3), after ‘The holder’—

insert—

- , other than a holder who is a prescribed licensee,

31 Insertion of new pt 7, div 11

Part 7—

insert—

Division 11 Particular persons taken to hold use and transport licences

103K Regulation may prescribe persons who are taken to hold use or transport licence

- (1) A regulation may prescribe a person (a *prescribed licensee*) or a class of persons (also each a *prescribed licensee*) who is taken to hold—
 - (a) a use licence; or
 - (b) a transport licence.
- (2) A regulation made under subsection (1)(a) must state—
 - (a) the qualifications, professional registration or training that must be held by the prescribed licensee; and
 - (b) particulars of the radiation source the prescribed licensee is allowed to use under the use licence; and
 - (c) the radiation practice the prescribed licensee is allowed to carry out under the use licence using the source.
- (3) A regulation made under subsection (1)(b) may state the following matters—
 - (a) particulars of the radioactive substance the prescribed licensee is allowed to transport under the transport licence;
 - (b) how the substance must be transported under the transport licence;
 - (c) the amount of the substance the prescribed licensee is allowed to transport under the transport licence.
- (4) A regulation made under this section may prescribe conditions the chief executive considers necessary or desirable to—
 - (a) protect persons, or the environment, from the harmful effects of radiation; or

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- (b) ensure the security of a radiation source.

103L Considerations before making a regulation

Before a regulation is made under section 103K(1), the Minister must—

- (a) consult with and consider any recommendations made by the council; and
- (b) be satisfied the regulation will be consistent with the radiation safety, protection and security principles.

32 Amendment of s 207 (Register to be kept)

- (1) Section 207(1)(a), after ‘licensees’—

insert—

, other than prescribed licensees

- (2) Section 207(1)—

insert—

- (f) prescribed licensees whose licences have been suspended or cancelled.

33 Insertion of new pt 14, div 6

Part 14—

insert—

Division 6 Transitional provision for Health and Other Legislation Amendment Act 2019

237 Expiry of particular existing licences

- (1) This section applies to a use licence (the *existing*

licence) or a transport licence (also the *existing licence*)—

- (a) in effect immediately before the commencement; and
 - (b) held by a person who is, on the commencement, a prescribed licensee.
- (2) The existing licence is taken to have expired on the commencement.

34 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

prescribed licensee see section 103K(1).

Part 9 Amendment of Retirement Villages Act 1999

35 Act amended

This part amends the *Retirement Villages Act 1999*.

36 Amendment of s 10 (What is a *residence contract*)

Section 10(4)(d)(ii), ‘resident’s interest’—

omit, insert—

resident’s freehold property

37 Insertion of new s 11A

After section 11—

insert—

11A What is *freehold property* of a resident or former resident

(1) A freehold interest in an accommodation unit is a resident's *freehold property* if—

(a) the freehold interest is—

(i) held by the resident; or

(ii) held by another person but not held directly or indirectly by the scheme operator; and

Examples for subparagraph (ii)—

- a freehold interest in an accommodation unit held by—
 - the trustee of a trust in which the resident holds an interest; or
 - a corporation in which the resident holds shares; or
 - the resident's child or another family member

(b) the resident has a right to reside in the accommodation unit.

(2) A freehold interest in an accommodation unit is a former resident's *freehold property* if—

(a) the freehold interest is—

(i) held by the former resident; or

(ii) held by another person but not held directly or indirectly by the scheme operator; and

(b) the former resident had a right to reside in the accommodation unit that has been terminated under this Act.

38 Insertion of new ss 63A–63I

After section 63—

insert—

63A Scheme operator must enter into and complete contract to purchase freehold property

- (1) This section applies if the former resident's residence contract is based on a freehold interest in an accommodation unit.
- (2) The scheme operator must enter into a contract under this section to purchase the former resident's freehold property, and complete the purchase under this section, unless—
 - (a) the freehold property is sold to a person other than the scheme operator before the day the scheme operator is required to complete the purchase; or
 - (b) the scheme operator has a reasonable excuse.

Maximum penalty—540 penalty units.

Note—

See also section 63H(2) for when a requirement to enter into a contract under this section does not apply.

- (3) The scheme operator must enter into the contract and complete the purchase within the time required under section 63B.
- (4) The contract must comply with section 63C.
- (5) The purchase price for the freehold property under the contract must be its value as agreed or decided under section 63D.
- (6) Without limiting subsection (2)(b), the scheme operator is taken to have a reasonable excuse for not entering into a contract to purchase the former resident's freehold property, or completing the purchase, under this section (*a required action*) during any of the following periods—

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- (a) a period during which the scheme operator can not take the required action, despite taking all reasonable steps, because of an act or omission of the former resident;

Example—

The scheme operator cannot complete the purchase because the former resident has not made necessary arrangements for the release of a mortgage over the freehold property.

- (b) if the former resident enters into a private contract—the period from the day the former resident enters into the contract to the day that is 60 days after the scheme operator receives written notice from the former resident, or another party to the contract, that the contract has ended;
- (c) if the scheme operator or former resident makes an application to the tribunal under part 10 about a dispute relating to a contract under this section—the period from the day the application is made to the earliest day, after the application is finally dealt with, by which it would be reasonable for the scheme operator to take the required action.
- (7) A dispute relating to a contract under this section is a retirement village dispute.

Examples of matters that may be the subject of a dispute relating to a contract under this section—

- the terms to be included in the contract
 - the purchase price under section 63D
 - the settlement date for the contract
 - the payment of an amount of legal expenses incurred by the scheme operator
- (8) If a court convicts the scheme operator of an offence against subsection (2), the court may make an order requiring the scheme operator to take stated steps to enter into a contract under this

section to purchase the former resident's freehold property or complete the purchase under this section.

Note—

See also section 191 for orders the tribunal may make to resolve a retirement village dispute under this section.

- (9) If the court makes an order under subsection (8) stating a time by which scheme operator must enter into a contract or complete a purchase, subsection (3) applies as if a reference to the time required under section 63B were a reference to the time stated in the order.
- (10) This section applies subject to section 63H.
- (11) In this section—

private contract means a contract for the sale of the former resident's freehold property to someone other than the scheme operator.

63B Timing of purchase

- (1) This section states the requirements for section 63A(3).
- (2) The scheme operator must enter into the contract in sufficient time for the purchase to be completed under subsection (3).
- (3) The scheme operator must complete the purchase under the contract by the latest of the following days—
 - (a) the day that is 18 months after the termination date;
 - (b) if the former resident has died—the day that is 14 days after the operator is shown the probate of the former resident's will or letters of administration of the former resident's estate;

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- (c) the day fixed by the tribunal by an order under section 171A.

63C Contract requirements

- (1) This section states the requirements for the contract for section 63A(4).
- (2) A regulation may prescribe a term that must be included in the contract (a *required term*) or that must not be included in the contract (a *prohibited term*).
- (3) The contract must—
 - (a) be in the approved form; and
 - (b) include each required term; and
 - (c) not include a prohibited term; and
 - (d) comply with any other requirements prescribed by regulation; and
 - (e) otherwise be in the terms, consistent with this Act, that are—
 - (i) agreed by the scheme operator and former resident; or
 - (ii) decided by the tribunal in a resolution of a retirement village dispute.

63D Purchase price of freehold property

- (1) This section states how the purchase price for the former resident's freehold property is decided for section 63A(5).
- (2) Each of the valuation and resale provisions applies, with any necessary changes, as if—
 - (a) a reference in the provision to the resale value, valuation or sale of the former resident's right to reside in the

accommodation unit were a reference to the resale value, valuation or sale of the freehold property; and

- (b) a reference in the provision to paying an exit entitlement to the former resident under section 63 were a reference to entering into a contract under section 63A.
- (3) Before entering into a contract under section 63A, if the scheme operator and the former resident have not agreed on the resale value of the freehold property within the previous 3 months, the operator must obtain a valuation of the freehold property from a valuer.
- (4) A valuation obtained under subsection (3) is taken to be the agreed resale value of the freehold property.
- (5) Unless the scheme operator and the former resident otherwise agree, the purchase price of the freehold property under the contract must be the amount of the most recent agreed resale value of the freehold property under section 60, section 67 or subsection (4).
- (6) In this section—
valuation and resale provisions means sections 60, 64, 65, 67 and 68 to 70AD.

63E Contract may require reimbursement of scheme operator's legal costs

- (1) This section applies in relation to an amount of legal expenses reasonably incurred by a scheme operator in entering into a contract under section 63A to purchase a former resident's freehold property and completing the purchase.
- (2) The contract may include a term requiring the former resident to pay all or a stated part of the

[s 38]

amount to the scheme operator on or after completion of the purchase (a *reimbursement requirement*).

- (3) If the tribunal is dealing with a retirement village dispute about the inclusion of a reimbursement requirement in a contract under section 63A, the tribunal must order that the contract include a reimbursement requirement, in the terms the tribunal considers just, unless the tribunal considers it would be unjust to do so.

63F No sales commission payable on mandatory buyback

Despite anything in a residence contract, no sales commission is payable on the sale of the resident's freehold property to the scheme operator under section 63A.

63G Exit fee

If a scheme operator is required to complete a purchase of a former resident's freehold property under section 63A, the former resident is not liable to pay an exit fee to the scheme operator until the completion of the purchase.

63H Relative residing in unit under s 70B

- (1) This section applies if a resident's right to reside in an accommodation unit is terminated and a relative of the former resident continues residing in the accommodation unit under section 70B.
- (2) If the scheme operator enters into a residence contract for the accommodation unit with the relative, section 63A does not apply to the scheme operator in relation to the former resident's freehold property.

- (3) Otherwise, a reference to the termination date in section 63B(3)(a), or in a valuation and resale provision applied by section 63D, is taken to be a reference to the last day that the relative resides in the unit under section 70B.

63I Non-application of particular legislation to contract

The following provisions do not apply in relation to a contract under section 63A—

- (a) the *Body Corporate and Community Management Act 1997*, chapter 5, parts 1 and 3;
- (b) the *Property Occupations Act 2014*, part 7, divisions 5 to 7.

39 Amendment of s 90C (Responsibility of former resident for capital improvement)

Section 90C, ‘section 104(2)(b)’—

omit, insert—

section 104(3)(b)

40 Amendment of s 104 (Working out and paying general services charges and maintenance reserve fund contributions for former residents)

- (1) Section 104, before subsection (1)—

insert—

(1AA) This section applies if a resident’s right to reside under a residence contract in an accommodation unit is terminated under this Act.

- (2) Section 104(1), ‘A former resident of a retirement village’—

omit, insert—

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The former resident

- (3) Section 104(1), (2)(a) and (2)(b)(ii), ‘the resident’—
omit, insert—

the former resident

- (4) Section 104(1) and (3), ‘the resident’s’—
omit, insert—

the former resident’s

- (5) Section 104(5), ‘Subsections (1)(b) and (2)(a)’—
omit, insert—

Subsections (2)(b) and (3)(a)

- (6) Section 104—
insert—

- (6) A reference in this section to the sale of a former resident’s right to reside includes a reference to the sale of a former resident’s freehold property.

- (7) Section 104(1AA) to (6)—
renumber as section 104(1) to (7).

41 Amendment of s 105 (General services charges and maintenance reserve fund contributions for unsold right to reside in accommodation units)

Section 105(1)(b)(i), ‘section 104(3)’—
omit, insert—

section 104(4)

42 Amendment of s 167 (Application for reference of dispute)

- (1) Section 167(2), after ‘building work dispute’—
insert—

or mandatory buyback dispute

(2) Section 167(3)—

insert—

mandatory buyback dispute means a retirement village dispute mentioned in section 63A(7).

43 Replacement of s 171A (Operator may apply for extension of time to pay exit entitlement)

Section 171A—

omit, insert—

171A Operator may apply for extension of time for payment of exit entitlement or mandatory buyback

- (1) A scheme operator may apply to the tribunal for an order extending the time by which the operator must—
 - (a) pay the exit entitlement of a former resident under section 63(1)(c); or
 - (b) complete the purchase of a former resident's freehold property under a contract under section 63A.
- (2) The tribunal may make an order fixing a later day by which the operator must do the thing mentioned in subsection (1)(a) or (b) if satisfied—
 - (a) for a payment mentioned in subsection (1)(a)—the operator is unlikely to be able to sell the right to reside in the former resident's accommodation unit before the day payment is required under section 63(1)(c); and
 - (b) if the order is not made, the operator is likely to suffer undue financial hardship; and

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- (c) the order would not be unfair to the former resident, having regard to any submissions made by the former resident about hardship he or she is likely to suffer if the order is made.

44 Amendment of s 195 (Tribunal order under section 171A)

Section 195, ‘section 171A’—

omit, insert—

section 171A(1)(a)

45 Amendment of s 227AA (Requirements about approved forms for residence contracts and other documents)

Section 227AA(1), after ‘residence contract’—

insert—

, contract under section 63A

46 Insertion of new pt 15, div 4

Part 15—

insert—

**Division 4 Transitional provisions for
Health and Other
Legislation Amendment
Act 2019**

237Q Timing of mandatory buyback

- (1) This section applies if—
 - (a) a former resident’s right to reside under a residence contract in an accommodation unit was terminated under this Act before the commencement of this section; and

- (b) the former resident's residence contract is based on a freehold interest in an accommodation unit; and
 - (c) since the termination of the right to reside, the former resident's freehold property has not been sold.
- (2) Section 63A applies to the scheme operator in relation to the freehold property.
 - (3) For that purpose, section 63B applies as if section 63B(3)(a) referred to the latest of the following days—
 - (a) 10 May 2019;
 - (b) the day that is 6 weeks after the commencement;
 - (c) the day that is 18 months after the termination date.
 - (4) Also for that purpose, section 63A applies subject to section 63H as if section 63H were in force when the right to reside was terminated.

237R Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the pre-amended Act to the amended Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a

[s 47]

transitional regulation.

- (4) This section and any transitional regulation expire 1 year after the commencement of this section.
- (5) In this section—

amended Act means this Act as amended by the *Health and Other Legislation Amendment Act 2019*.

pre-amended Act means this Act as in force immediately before its amendment by the *Health and Other Legislation Amendment Act 2019*.

47 Amendment of schedule (Dictionary)

Schedule—

insert—

freehold property, of a resident or former resident, see section 11A.

Part 10 Amendment of Transplantation and Anatomy Act 1979

48 Act amended

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

49 Amendment of long title

Long title, after ‘transplantation’—

insert—

and other medical and scientific purposes

50 Amendment of s 4 (Interpretation)

Section 4(1), definition *dental practitioner*—

omit.

51 Replacement of s 12A (Blood transfusions not subject to this division)

Section 12A—

omit, insert—

12A Blood transfusions and donations for approved research not subject to this division

Nothing in this division prevents—

- (a) the removal under division 4 of blood from a child's body; or
- (b) the removal under division 6 of tissue from a child's body.

52 Amendment of s 21A (Definitions for div 6)

(1) Section 21A—

insert—

approved research means research approved by a human research ethics committee in accordance with the Australian Code and the National Statement.

Australian Code means the Australian Code for the Responsible Conduct of Research, issued by the NHMRC in 2018, as in force from time to time.

(2) Section 21A, definition *National Statement*, from 'Research' to '1999'—

omit, insert—

Human Research, issued by the NHMRC in 2007

[s 53]

53 Replacement of s 21B (Authorised donations)

Section 21B—

omit, insert—

21B Authorised donation by adult

The removal of tissue from an adult's body is authorised if—

- (a) it is done for the purpose of approved research; and
- (b) consent is given as required under the National Statement.

21C Authorised donation by child

(1) The removal of tissue from a child's body is authorised if—

- (a) it is done for the purpose of approved research; and
- (b) consent is given as required under the National Statement; and
- (c) 1 or more of the following applies—
 - (i) the approved research is for the benefit of the child;
 - (ii) the removal of the tissue occurs during a procedure that is for the benefit of the child and a medical practitioner is satisfied the removal of the tissue for approved research is not likely to prejudice the health of the child;
 - (iii) a medical practitioner is satisfied the removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.

(2) For subsection (1)(c)(ii) and (iii), the medical practitioner must make a record of the

practitioner's satisfaction.

- (3) For subsection (1)(c)(iii), the medical practitioner's satisfaction, and the record of that satisfaction, may relate to—
- (a) a particular child or children; or
 - (b) a group of children that is or may be participating in stated approved research.

54 Amendment of s 30 (Conditions of performance of post-mortem)

Section 30(2)(a)(ii)—

omit, insert—

- (ii) another place in the hospital approved by the medical superintendent of the hospital as being suitable for the making of the examination; or
- (iii) the mortuary of another hospital that is suitable for the making of the examination; and

55 Amendment of s 42AA (Trading of tissue for particular purposes)

(1) Section 42AA(1)(c)(ii)—

omit, insert—

- (ii) a registered good under the *Therapeutic Goods Act 1989* (Cwlth); or
- (iii) any exempt material derived wholly or in part from tissue; and

(2) Section 42AA(2)—

insert—

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exempt material means any of the following—

- (a) laboratory reagents;
- (b) quality assurance material;
- (c) reference and control material.

56 Amendment of s 49 (Disclosure of information)

Section 49(2)(c), ‘the medical practitioner or dental practitioner’—

omit, insert—

to the person

Part 11 Repeal

57 Repeal

The Public Health (Medicinal Cannabis) Act 2016, No. 53 is repealed.

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