



Queensland

# Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019

## Subordinate Legislation 2019 No. 263

made under the

*Hospital and Health Boards Act 2011*

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**1 Short title**

This regulation may be cited as the *Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019*.

**2 Commencement**

This regulation, other than section 7, commences on 15 June 2020.

**3 Regulation amended**

This regulation amends the *Hospital and Health Boards Regulation 2012*.

**4 Omission of s 3AA (Employment power—Act, s 20(4))**

Section 3AA—  
*omit.*

**5 Insertion of new pt 9, div 3**

Part 9—  
*insert—*

**Division 3**

**Transitional provisions for  
Hospital and Health  
Boards (Changes to  
Prescribed Services)  
Amendment Regulation  
2019**

**43 Definitions for division**

In this division—

*relevant employee* see section 45(1).

*relevant Service* means a Service that was prescribed under section 20(4) of the Act immediately before the commencement.

#### **44 Purpose of division**

This division makes provision about matters that are necessary or convenient to facilitate the transition of a relevant Service from a prescribed Service to a Service that is no longer prescribed under section 20(4) of the Act.

*Note—*

See also section 282(7) and (8) of the Act.

#### **45 Particular health service employees to be employed by chief executive**

- (1) This section applies to a health service employee, other than a health executive or senior health service employee, who was employed by the relevant Service immediately before the commencement (a *relevant employee*).
- (2) From the commencement, the relevant employee is taken to be employed by the chief executive, in the department, on the same terms, conditions and entitlements as those applying to the employee's employment by the relevant Service immediately before the commencement.
- (3) Without limiting subsection (2), the following matters apply in relation to the change to the relevant employee's employment mentioned in that subsection—
  - (a) the employee retains, and is entitled to, all rights, benefits and entitlements that have accrued to the employee because of the employee's employment as a health service employee by the relevant Service;

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- (b) the employee's accruing rights, including to superannuation or recreation, sick, long service or other leave, are not affected;
  - (c) the employee's continuity of service is not interrupted, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;
  - (d) the change to the employee's employment does not constitute a termination of employment or a retrenchment or redundancy;
  - (e) the employee is not entitled to a payment or other benefit because the employee is no longer employed by the relevant Service.
- (4) Subject to this section, the chief executive may issue a direction to the relevant employee to facilitate the transition of the employee's employment from the relevant Service to the chief executive.

*Note—*

See also the *Public Service Act 2008*, section 187(1)(d).

- (5) If the relevant employee was, immediately before the commencement, employed by the relevant Service under a contract, the employee is taken to be employed by the chief executive, in the department, under the contract.

#### **46 Appointment to perform functions or do other things not affected by becoming employees in the department**

- (1) This section applies if, before the commencement—
- (a) a relevant employee was appointed to perform a function or to do anything under the Act; and

[s 5]

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- (b) the function or thing has not been completed.
- (2) The appointment is not affected by the change to the relevant employee's employment under section 45(2).
- (3) The relevant employee may complete the function or thing on or after the commencement.

*Example—*

A relevant employee's appointment as a clinical reviewer, or as a member of an RCA team, is not affected by the relevant employee becoming an employee of the chief executive in the department under section 45(2) and the relevant employee may complete the matter for which the relevant employee was appointed.

#### **47 Proceedings and other things not affected by persons becoming employees in the department**

- (1) This section applies if, before the commencement—
  - (a) a proceeding—
    - (i) was taken by or against a relevant employee as an employee of the relevant Service; and
    - (ii) was not completed; or
  - (b) a thing, other than a proceeding, was done in relation to a relevant employee as an employee of the relevant Service.
- (2) If subsection (1)(a) applies, from the commencement—
  - (a) the chief executive is taken to be a party for the proceeding instead of the relevant Service; and

*Note—*

See also section 46 of the Act for the power of the chief executive to delegate the chief executive's functions under the Act.

- (b) the proceeding may be continued and completed by or against the chief executive instead of the relevant Service.
- (3) If subsection (1)(b) applies, the thing done in relation to the relevant employee is not affected by the change to the relevant employee's employment under section 45(2).

*Examples for subsection (3)—*

- 1 A recruitment and selection process involving a relevant employee started before the commencement may continue from the commencement.
- 2 The approval of the annual leave for a relevant employee before the commencement is effective from the commencement.

#### **48 Application of *Public Service Act 2008*, s 149 to particular relevant employees**

- (1) This section applies if—
  - (a) a relevant employee was continuously employed as a temporary employee by the relevant Service for a period; and
  - (b) the period had not ended immediately before the commencement.
- (2) Without limiting section 45(2) or (3), the relevant employee is, for the *Public Service Act 2008*, section 149, taken to have been continuously employed as a temporary employee by the chief executive, in the department, for the period mentioned in subsection (1).
- (3) In this section—

*continuously employed as a temporary employee*  
see the *Public Service Act 2008*, section 149(5).

**49 Application of *Public Service Act 2008*, s 149A to particular relevant employees**

- (1) This section applies if—
  - (a) a relevant employee was employed by the relevant Service as a casual employee on a regular and systematic basis for a period; and
  - (b) the period had not ended immediately before the commencement.
- (2) Without limiting section 45(2) or (3), the relevant employee is, for the *Public Service Act 2008*, section 149A, taken to have been employed as a casual employee on a regular and systematic basis by the chief executive, in the department, for the period mentioned in subsection (1).

**50 Application of *Industrial Relations Act 2016*, s 320 to relevant employees**

- (1) This section applies if the dismissal of a relevant employee by the chief executive after the commencement relates to the employee's conduct, capacity or performance as an employee of the relevant Service before the commencement.
- (2) For the *Industrial Relations Act 2016*, section 320, it is declared that the dismissal was not harsh, unjust or unreasonable only because the dismissal related to the employee's conduct, capacity or performance as an employee of the relevant Service.

**51 Other matters relating to *Industrial Relations Act 2016***

To remove any doubt, it is declared that from the commencement—

- (a) the chief executive is the employer of a relevant employee, instead of the relevant

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Service, for the *Industrial Relations Act 2016*, any of chapters 3 to 6; and

- (b) the *Industrial Relations Act 2016*, schedule 4 no longer applies in relation to the relevant Service.

**6 Omission of sch 1AA (Services with employment power)**

Schedule 1AA—

*omit.*

**7 Amendment of sch 1A (Senior health service employee positions—Act, s 74A)**

Schedule 1A, part 1, items 1 and 2—

*omit, insert—*

The following classification levels under the ‘Medical Officers (Queensland Health) Award - State 2015’ are prescribed—

- L13 but only if the position has a pay point of C1-1 under the award
- L14 to L29
- MOPP 1-1
- MOPP 1-2
- MOPP 1-3
- MSPP 1-1
- MSPP 1-2
- MSPP 1-3
- MSPP 1-4
- MSPP 2-1
- MSPP 2-2.

Endnotes

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ENDNOTES

- 1 Made by the Governor in Council on 12 December 2019.
- 2 Notified on the Queensland legislation website on 13 December 2019.
- 3 The administering agency is Queensland Health.

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