



# Hospital and Health Boards Act 2011

Current as at [Not applicable]

## **Indicative reprint note**

This is an *unofficial* version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Health Transparency Bill 2019. This indicative reprint has been prepared for information only—*it is not an authorised reprint of the Act.*

Some enacted but uncommenced amendments included in the *Health*

*Practitioner Regulation National Law and Other Legislation Amendment Act 2019* No. 3 have also been incorporated in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Health Transparency Bill 2019—4 September 2019.

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Queensland

# Hospital and Health Boards Act 2011

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**Not authorised—indicative only**

**Not authorised—indicative only**

Hospital and Health Boards Act 2011

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## Hospital and Health Boards Act 2011

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

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### **Part 1 Preliminary**

#### **Division 1 Introduction**

**1 Short title**

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

**2 Commencement**

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

**3 Act binds all persons**

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

**4 Principles and objectives of national health system**

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

- (a) the following Medicare principles—

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

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

## **Division 2                      Object of Act**

### **5                      Object**

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

### **Division 3                      Overview of Act**

#### **6                      Purpose of div 3**

This division gives an overview of this Act.

#### **7                      Establishment of Hospital and Health Services**

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

#### **8                      Management of the public sector health system**

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

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

**8A Funding of public sector health system**

- (1) The public sector health system is funded by the State and the Commonwealth.
- (2) The State pool account and State managed fund enhance the accountability and transparency of the funding of the public sector health system.
- (3) The administrator of the National Health Funding Pool publicly reports on funds paid into, and out of, the State pool account and the State managed fund.

**9 Management of health system performance**

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

**10 Statewide employment and industrial relations arrangements**

- (1) This Act provides for Statewide employment and industrial relations arrangements in the public sector health system.
- (2) Health service employees employed by Services and the department are employed on the same terms and conditions.
- (3) The chief executive is authorised under the *Industrial Relations Act 2016* to negotiate certified agreements for health service employees and for other health system industrial relations matters.
- (4) Under this Act, the chief executive may issue health employment directives to support employment and industrial relations arrangements in the public sector health system.

**11 Protections for safety and quality**

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

**12 Confidentiality safeguards**

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

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## **Division 4                      Guiding principles of Act**

### **13            Guiding principles**

- (1) The following principles are intended to guide the achievement of this Act's object—
  - (a) the best interests of users of public sector health services should be the main consideration in all decisions and actions under this Act;
  - (b) there should be a commitment to ensuring quality and safety in the delivery of public sector health services;
  - (c) providers of public sector health services should work with providers of private sector health services to achieve coordinated, integrated health service delivery across both sectors;
  - (d) there should be responsiveness to the needs of users of public sector health services about the delivery of public sector health services;
  - (e) information about the delivery of public sector health services should be provided to the community in an open and transparent way;
  - (f) there should be a commitment to ensuring that places at which public sector health services are delivered are places at which—
    - (i) employees are free from bullying, harassment and discrimination; and
    - (ii) employees are respected and diversity is embraced; and
    - (iii) there is a positive workplace culture based on mutual trust and respect;
  - (g) there should be openness to complaints from users of public sector health services and a focus on dealing with the complaints quickly and transparently;

- (h) there should be engagement with clinicians, consumers, community members and local primary healthcare organisations in planning, developing and delivering public sector health services;
  - (i) opportunities for research and development relevant to the delivery of public sector health services should be promoted;
  - (j) opportunities for training and education relevant to the delivery of public sector health services should be promoted.
- (2) A person must have regard to the guiding principles when performing a function or exercising a power under this Act.

## **Division 5 Interpretation**

### **14 Definitions**

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

### **15 Meaning of *health service***

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

(iii) the protection and promotion of health.

*Example of health service mentioned in paragraph (b)—*  
a cancer screening program

(3) In addition, a health service includes a support service for a service mentioned in subsection (1).

## 16 Meaning of service agreement

(1) A *service agreement*, for a Service, means an agreement between the chief executive and the Service that states—

- (a) the hospital services, other health services, teaching, research and other services to be provided by the Service; and
- (b) the funding to be provided to the Service for the provision of services, including the way in which the funding is to be provided; and

*Example of a way of funding a health service—*  
activity-based funding

- (c) the performance measures for the provision of services by the Service; and
- (d) the performance data and other data to be provided by a Service to the chief executive, including how, and how often, the data is to be provided; and
- (e) any other matter the chief executive considers relevant to the provision of services by the Service.

(2) Without limiting subsection (1), a service agreement may—

- (a) deal with the matters stated in subsection (1) relating to funding provided by the Commonwealth, without the Commonwealth being a party to the agreement; and
- (b) state the circumstances in which a Service (the *first Service*) may agree with another Service to deliver services for the first Service.

## **Part 2                    Hospital and Health Services**

### **Division 1                Establishment, functions and powers of Services**

#### **17            Establishment of Services**

A regulation may—

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

#### **18            Legal status**

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

---

**19 Functions of Services**

- (1) A Service's main function is to deliver the hospital services, other health services, teaching, research and other services stated in the service agreement for the Service.
- (2) A Service also has the following functions—
  - (a) to ensure the operations of the Service are carried out efficiently, effectively and economically;
  - (b) to enter into a service agreement with the chief executive;
  - (c) to comply with the health service directives and health employment directives that apply to the Service;
  - (d) to contribute to, and implement, Statewide service plans that apply to the Service and undertake further service planning that aligns with the Statewide plans;
  - (e) to monitor and improve the quality of health services delivered by the Service, including, for example, by implementing national clinical standards for the Service;
  - (f) to develop local clinical governance arrangements for the Service;
  - (g) to undertake minor capital works, and major capital works approved by the chief executive, in the health service area;
  - (h) to maintain land, buildings and other assets owned by the Service;
  - (ha) for a prescribed Service, to employ staff under this Act;
  - (i) to cooperate with other providers of health services, including other Services, the department and providers of primary healthcare, in planning for, and delivering, health services;
  - (j) to cooperate with local primary healthcare organisations;

- (k) to arrange for the provision of health services to public patients in private health facilities;
- (l) to manage the performance of the Service against the performance measures stated in the service agreement;
- (m) to provide performance data and other data to the chief executive;
- (n) to consult with health professionals working in the Service, health consumers and members of the community about the provision of health services;
- (o) other functions approved by the Minister;
- (p) other functions necessary or incidental to the above functions.

**20 Powers of Services**

- (1) A Service has the powers of an individual and may, for example—
  - (a) enter into contracts and agreements; and
  - (b) subject to subsection (2), acquire, hold, deal with or dispose of property; and
  - (c) engage consultants or contractors; and
  - (d) appoint agents and attorneys; and
  - (e) charge for the services it provides; and
  - (f) do anything else necessary or convenient to be done in performing its functions.
- (2) A Service may not own assets prescribed by regulation.
- (3) A Service may employ health executives and senior health service employees.
- (4) A Service prescribed by regulation may also employ other health service employees under this Act.

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

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

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

**21 Application of other Acts**

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

**Division 2 Hospital and Health Boards for Services**

**Subdivision 1 Role of Hospital and Health Boards**

**22 Role of exercising control over Service**

A Hospital and Health Board controls the Service for which it is established.

## Subdivision 2 Membership

### 23 Membership of boards

- (1) A board consists of 5 or more members appointed by the Governor in Council, by gazette notice, on the recommendation of the Minister.
- (2) The Minister is to recommend persons the Minister considers have the skills, knowledge and experience required for a Service to perform its functions effectively and efficiently, including—
  - (a) persons with expertise in health management, business management, financial management and human resource management; and
  - (b) persons with clinical expertise; and
  - (c) persons with legal expertise; and
  - (d) persons with skills, knowledge and experience in primary healthcare; and
  - (e) persons with knowledge of health consumer and community issues relevant to the operations of the Service; and
  - (f) where relevant, persons from universities, clinical schools or research centres with expertise relevant to the operations of the Service; and
  - (g) persons with other areas of expertise the Minister considers relevant to a Service performing its functions.
- (3) One or more of the members of a board must be clinicians.
- (4) In this section—

*clinician* means a person who—

  - (a) is a health professional registered under the Health Practitioner Regulation National Law, other than as a student; and

- (b) is currently directly or indirectly providing care or treatment to persons; and
- (c) is in a profession that provides care or treatment to persons in public sector health services.

## **24 Minister to advertise for members of boards**

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

*suitably qualified* means having the skills, knowledge and experience mentioned in section 23.

## **24A Temporary members of board**

- (1) This section applies if the Minister reasonably believes it is necessary to urgently appoint a person as a member of a board because—
  - (a) the board does not consist of at least 5 members; or
  - (b) the Minister considers the members of the board do not have the skills, knowledge or experience to perform the board's functions effectively and efficiently; or
  - (c) none of the members of the board are clinicians.
- (2) Despite section 23(1), the Minister may—
  - (a) appoint a person as a member of the board for a period of not more than 6 months; and

- (b) reappoint the person as a member of the board once for a period of not more than 6 months.
- (3) Subsection (2) applies despite the *Acts Interpretation Act 1954*, section 25(1)(c).
- (4) The Minister may appoint a person as a member of the board only if the Minister considers the person has the skills, knowledge and experience mentioned in section 23(2).
- (5) As soon as practicable after making the appointment, the Minister must publish notice of the appointment in the gazette.
- (6) In this section—  
*clinician* see section 23(4).

**25 Chair and deputy chair**

- (1) The Governor in Council may, on the recommendation of the Minister, appoint—
  - (a) a member of a board to be chair of the board; and
  - (b) another member to be deputy chair of the board.
- (2) A member may be appointed as the chair or deputy chair at the same time as the person is appointed as a member and by the same gazette notice.
- (3) Subject to this subdivision, the chair or deputy chair holds office for the term, ending not later than his or her term of appointment as a member, stated in his or her appointment as chair or deputy chair.
- (4) A vacancy arises in the office of chair or deputy chair if the person holding the office—
  - (a) resigns office by signed notice of resignation given to the Minister; or
  - (b) ceases to be a member.
- (5) A person resigning the office of chair or deputy chair may continue to be a member.

- 
- (6) The deputy chair is to act as chair—
- (a) during a vacancy in the office of the chair; and
  - (b) during all periods when the chair is absent from duty or for another reason can not perform the duties of the office.

**26 Conditions of appointment**

- (1) A member of a board holds office for the term, of not more than 4 years, stated in the member's instrument of appointment.

*Note—*

See also section 24A(2) for a member of a board appointed under that section.

- (2) A member is entitled to the fees and allowances fixed by the Governor in Council, and otherwise holds office under the conditions of appointment fixed by—
- (a) for a member appointed under section 23—the Governor in Council; or
  - (b) for a member appointed under section 24A—the Minister.

**27 Vacation of office of board member**

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

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

**27A Suspension from office of Hospital and Health Board members**

- (1) This section applies if—

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

## **28 Removal from office of board members**

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

- (a) the member is or becomes an insolvent under administration under the Corporations Act, section 9; or
- (b) the member is disqualified from managing corporations under the Corporations Act, part 2D.6; or
- (c) the member has been, or is, convicted of an indictable offence; or
- (d) the member has been, or is, convicted of an offence against this Act; or
- (e) the Minister recommends the removal because the Minister is satisfied the member—

- (i) has been guilty of misconduct; or
- (ii) is incapable of performing the member's duties; or
- (iii) has neglected the member's duties or performed the member's duties incompetently; or
- (iv) has been absent without permission of the board from 3 consecutive meetings of which due notice was given.

**29 Defects in appointment of members**

A decision of a board is not invalidated by—

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

**Subdivision 3 Delegation by Hospital and Health Boards**

**30 Delegation by boards**

- (1) The board for a Hospital and Health Service may delegate any of the Service's functions under this Act or the *Financial Accountability Act 2009*—
  - (a) to a committee of the board if all of the members of the committee are board members; or
  - (b) to the executive committee established by the board; or
  - (c) to the health service chief executive.
- (2) The health service chief executive, with the written approval of the board, may subdelegate a function mentioned in subsection (1) to an appropriately qualified—
  - (a) employee of the Hospital and Health Service; or

- (b) health service employee employed in the department and working for the Service.
- (3) In this section—
  - appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.
  - Example of standing*—
    - the person's classification level or how senior the person is in the Hospital and Health Service

#### **Subdivision 4 Conduct of business**

##### **31 Members to act in public interest**

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

##### **32 Conduct of business by boards**

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

#### **Division 2A Executive committees**

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

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

##### **32B Function of executive committee**

- (1) The function of the executive committee is to support the board in its role of controlling the Service for which it is established by—

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

### **32C Membership of executive committee**

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

*clinician* means a person who—

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

**32D Conduct of business by executive committee**

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

**Division 3 Health service chief executives**

**33 Appointment of health service chief executives**

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

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- (4) In managing the Service, the health service chief executive is subject to direction by the Service's board.

**34 Delegation by health service chief executive**

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

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

*Example of standing—*

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

**Division 4 Service agreements, engagement strategies and protocols**

**35 Chief executive and Service must enter into service agreements**

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

**36 Term of service agreement**

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

**37 Negotiations for service agreement**

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

**38 Minister may decide on terms of service agreement**

- (1) This section applies if the chief executive and the Service can not agree on some or all of the terms of a service agreement—
  - (a) for the first agreement after the commencement of this section—by a date prescribed by regulation; or
  - (b) for a service agreement that is to replace an existing service agreement on its expiry—at least 1 month before the expiry of the existing agreement.
- (2) The chief executive and the Service are to immediately advise the Minister—
  - (a) that they can not agree; and
  - (b) of the terms of the agreement on which they can not agree.
- (3) The Minister must decide the terms and advise the chief executive and the Service of the terms.
- (4) The chief executive and the Service must include the terms decided by the Minister in the agreement.

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**39 Procedure to amend service agreement**

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

**39A Chief executive to make service agreements available**

- (1) This section applies to a service agreement between the chief executive and a Service, including an amendment of the agreement.
- (2) The chief executive must, within 28 days of entering into the service agreement or amendment—
  - (a) give the administrator of the National Health Funding Pool a copy of the service agreement or amendment; and
  - (b) publish the service agreement or amendment in a way that allows the agreement to be accessed by members of the public, including, for example, on the internet.

**40 Engagement strategies**

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

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

**41 Review of strategies**

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

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

#### **42 Protocol with primary healthcare organisations**

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

#### **43 Review of protocol**

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

## **Division 4A            Hospital and Health Ancillary Boards**

### **43A    Minister may establish ancillary board**

- (1) The Minister may establish a Hospital and Health Ancillary Board (an *ancillary board*) to give advice to a Hospital and Health Board in relation to—
  - (a) a public sector hospital; or
  - (b) a public sector health facility; or
  - (c) a public sector health service; or
  - (d) a part of the State.
- (2) Before establishing an ancillary board the Minister may consult with—
  - (a) the relevant Hospital and Health Board; and
  - (b) the community who receive health services from, or in, the public sector hospital, public sector health facility, public sector health service or part of the State for which the ancillary board may be established.
- (3) The Minister must assign a name to the ancillary board.
- (4) A regulation may prescribe matters relating to the establishment and operation of an ancillary board.
- (5) Without limiting subsection (4), a regulation may provide for the following—
  - (a) the way in which an ancillary board is to exercise its function of providing advice to a board;
  - (b) the way consultation is to occur between—
    - (i) an ancillary board and the board to which it is to provide advice; or
    - (ii) an ancillary board and the Service controlled by the board;

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

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

### **44            Minister may give directions to Service**

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

**44A Minister may appoint advisers to boards**

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

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

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

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

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**44C Functions of advisers**

The functions of an adviser are—

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

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

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

**44E Obligations of board in relation to adviser**

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

## **Part 3                      Functions of chief executive and chief health officer**

### **Division 1                      Chief executive**

#### **44F      Chief executive subject to direction of the Minister**

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

#### **45      Functions of chief executive**

The chief executive has the following functions—

- (a) to provide strategic leadership and direction for the delivery of public sector health services in the State;
- (b) to promote the effective and efficient use of available resources in the delivery of public sector health services in the State;
- (c) to develop Statewide health service plans, workforce plans and capital works plans;
- (d) to manage major capital works for proposed public sector health service facilities;
- (e) to employ staff in the department, including to work for Services other than prescribed Services;
- (f) to manage Statewide industrial relations, including the negotiation of certified agreements, and making applications to make or vary awards;

- (g) to establish the conditions of employment for health service employees, including issuing health employment directives;
- (h) to deliver specialised health services;
- (i) to arrange for the provision of health services to public patients in private health facilities;
- (j) to develop and issue health service directives to apply to the Services;
- (k) to enter into service agreements with the Services;
- (l) to provide support services to Services;
- (m) to monitor and promote improvements in the quality of health services delivered by Services;
- (n) to monitor the performance of Services, and take remedial action when performance does not meet the expected standard;
- (o) to receive and validate performance data and other data provided by Services;
- (p) to provide performance data and other data to the Commonwealth, or an entity established under an Act of the Commonwealth;
- (q) other functions given to the chief executive under this Act or another Act.

**46 Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's functions under this Act to a health service chief executive or an appropriately qualified employee of the department.
- (2) However, the chief executive must not delegate the function—
  - (a) to enter into a service agreement with a Service; or
  - (b) to authorise the disclosure of confidential information in the public interest under section 160; or

- (c) to issue a health service directive or health employment directive; or
  - (d) to make a standard under section 138E.
- (3) Subsection (4) applies if the chief executive is considering whether, and the extent to which, to delegate to a health service chief executive a matter that affects employees.
- (4) The chief executive must have regard to the Service's capacity and capability to effectively administer the human resource management and industrial relations processes for employees.
- (5) A health service chief executive, with the written approval of the chief executive, may subdelegate a function delegated to the health service chief executive under subsection (1) to an appropriately qualified—
  - (a) health executive employed by the Service; or
  - (b) health service employee employed in the department and working for the Service.
- (6) However, a health service chief executive may not subdelegate the function to authorise access to an information system under section 161A delegated to the health service chief executive under subsection (1).
- (7) A health executive in the department, with the written approval of the chief executive, may subdelegate a function delegated to the health executive under subsection (1) to an appropriately qualified departmental employee.

## **Division 2                      Chief executive may issue health service directives**

### **47            Health service directives**

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

- 
- (a) promoting service coordination and integration in the delivery of health services—
    - (i) between Services; and
    - (ii) between Services, the department and other service providers;
  - (b) optimising the effective and efficient use of available resources in the delivery of health services;
  - (c) setting standards and policies for the safe and high quality delivery of health services;
  - (d) ensuring consistent approaches to the delivery of health services, employment matters (other than conditions of employment for health service employees) and the delivery of support services;
  - (e) supporting the application of public sector policies, State and Commonwealth Acts, and agreements entered into by the State.
- (2) Without limiting subsection (1), health service directives may be about the following—
- (a) standards and policies for the healthcare rights of users of public sector health services;
  - (b) standards and policies for improving the quality of health services;
  - (c) the use by Services of support services provided by the department, other departments or other Services;
  - (d) the purchasing of goods and services under contracts and agreements entered into by the department, other departments or other Services;
  - (e) the provision of information to the chief executive and other entities;
  - (f) responding to public health emergencies;

- (g) the setting of fees and charges, including for the provision of services to private patients, for residential care, and for the supply of pharmaceuticals;
  - (h) other matters prescribed under a regulation.
- (3) Health service directives may apply to all Services, some Services, or a stated type of public sector health service facility or public sector health service.
- (4) In this section—  
*delivery*, of health services, includes—
  - (a) matters that support the delivery of health services, including—
    - (i) the establishment and operation of clinical networks; and
    - (ii) the provision of training to health professionals or students in public sector health service facilities; and
    - (iii) the engagement of independent contractor visiting medical officers or other contracted health professionals; and
    - (iv) private practice arrangements for health professionals; and
    - (v) the management of information, including the way in which information is captured, collated, shared and reported; and
    - (vi) research, innovation and the application of intellectual property; and
  - (b) undertaking capital works for proposed public sector health service facilities; and
  - (c) the provision of health services to public patients in private health facilities.

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**48 Consultation on health service directives**

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

**49 Publication of health service directives**

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

**50 Health service directives binding**

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

**51 Review of health service directives**

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

**Division 2A Chief executive may issue health employment directives**

**51A Health employment directives**

- (1) The chief executive may issue health employment directives about the conditions of employment for health service employees.

- (2) Without limiting subsection (1), a health employment directive may be about the following—
  - (a) remuneration for health executives and senior health service employees;
  - (b) the classification levels at which health executives and senior health service employees are to be employed;
  - (c) the terms of contracts for health executives and senior health service employees;
  - (d) the professional development and training of health service employees in accordance with the conditions of their employment.
- (3) A health employment directive may apply to any or all of the following—
  - (a) the department, a Service or all Services;
  - (b) health service employees, or a stated type of health service employee.

**51AA Consultation on health employment directives**

- (1) This section applies if the chief executive proposes to issue, amend or repeal a health employment directive that applies to—
  - (a) 1 or more Services; or
  - (b) health service employees who are represented by an employee organisation.
- (2) The chief executive must consult with the Services or employee organisation about the issuing of the proposed health employment directive or the proposed amendment or repeal of the health service directive.
- (3) Despite section 46(2)(c), the chief executive may delegate under section 46(1) the function under subsection (2).
- (4) In this section—

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*employee organisation* see the *Industrial Relations Act 2016*, schedule 5.

**51B Relationship with legislation**

If a health employment directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails over the health employment directive.

**51C Relationship between health employment directives and other instruments**

- (1) If a health employment directive is inconsistent with an industrial instrument, the industrial instrument prevails to the extent of the inconsistency.
- (1A) Subsection (1) does not apply if the terms and conditions of employment provided for in the health employment directive are more favourable to the employee than the terms and conditions of employment provided for in the industrial instrument.
- (2) If a health employment directive is inconsistent with a ruling made under the *Public Service Act 2008*, section 53, the health employment directive prevails over the ruling.
- (3) If a health employment directive is inconsistent with a contract entered into with a senior health service employee, the contract prevails over the health employment directive to the extent of the inconsistency.
- (4) However, for subsection (3), to the extent a health employment directive provides for an increase in remuneration or other benefits for an employee, the directive is taken not to be inconsistent with a contract entered into with a senior health service employee.
- (5) Subsections (3) and (4) apply despite section 51E.
- (6) In this section—  
*health employment directive* includes—

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Part 3 Functions of chief executive and chief health officer

[s 51D]

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- (a) a decision made in the exercise of a discretion under the directive; and
- (b) a health service directive to which section 321 applies.

**51D Publication of health employment directives**

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

**51E Health employment directives binding**

- (1) A health employment directive that applies to an employee of the department is binding on the employee and the department.
- (2) A health employment directive that applies to an employee of a Service is binding on the employee and the Service.

*Note—*

A health employment directive may apply to both employees of a department and a Service. See section 51A(3).

**51F Review of health employment directives**

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

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**Division 3                      Chief health officer**

**52                      Chief health officer**

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

**53                      Functions of chief health officer**

The functions of the chief health officer are—

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

**Part 3A                      Funding of public sector health system**

**Division 1                      Purpose of part**

**53A                      Purpose**

The main purpose of this part is to enhance the accountability and transparency of the funding of public sector hospitals, other public sector health services, and teaching, training and research related to the provision of health services.

## **Division 2                    State pool account**

### **53B    Establishment of State pool account**

The chief executive is to establish an account with the Reserve Bank of Australia to be called the State pool account.

### **53C    Payment into State pool account**

- (1) The following must be paid into the State pool account—
  - (a) all activity-based funding allocated from State funds for the provision of hospital services under the National Health Reform Agreement;
  - (b) all funding received from the Commonwealth for the provision of hospital and other health services under the National Health Reform Agreement.
- (2) The following may be paid into the State pool account—
  - (a) exceptional payments for the provision of health services decided by the chief executive;
  - (b) interest earned on the account.
- (3) The amounts paid into the State pool account may include adjustments—
  - (a) to reflect the difference between estimated and actual services provided; and
  - (b) for other funding reconciliations under the National Health Reform Agreement.
- (4) In this section—

*health services* also includes teaching, training and research related to the provision of health services.

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**53D Payments from State pool account**

- (1) The payment of funds from the State pool account, including the timing of the payments, is to be made only by the administrator at the direction of the Minister.
- (2) The administrator is required to authorise personally each payment made from the State pool account.
- (3) Payments from the State pool account are to be made only to—
  - (a) Hospital and Health Services and other providers of hospital and other health services; or
  - (b) the State managed fund; or
  - (c) an account in the department other than the State pool account or the State managed fund.
- (4) A direction made by the Minister to the administrator for the payment of funds from the State pool account is to be consistent with—
  - (a) the purpose for which the funding was paid into the account; and
  - (b) the National Health Reform Agreement; and
  - (c) advice provided by the administrator about the basis on which the administrator has calculated payments into the account by the Commonwealth; and
  - (d) any relevant service agreement between the chief executive and a Service.
- (5) This section does not prevent the Minister from directing the administrator to pay funds—
  - (a) to reflect the difference between estimated and actual services provided; or
  - (b) for other funding reconciliations under the National Health Reform Agreement; or
  - (c) to correct any error in payments out of the State pool account; or

- (d) to pay fees associated with maintaining the State pool account, including financial institution fees and audit fees; or
- (e) for interest earned on the State pool account, for any purpose decided by the Treasurer; or
- (f) to the department for the provision of support services to Services.

**53E Payment from State pool account if no administrator or administrator not available to make the payment**

The chief executive may pay funds from the State pool account at the direction of the Minister as if the chief executive were the administrator—

- (a) if there is no administrator or acting administrator appointed under this Act; or
- (b) the administrator is not available to make the payment.

**Division 3 State managed fund**

**53F Establishment of State managed fund**

The chief executive is to establish an account with a financial institution to be called the State managed fund.

**53G Payment into State managed fund**

- (1) The following must be paid into the State managed fund—
  - (a) block funding allocated by the State, or paid from the State pool account, for the provision of hospital and other health services under the National Health Reform Agreement;
  - (b) funding for teaching, training and research related to the provision of health services allocated by the State, or

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paid from the State pool account, under the National Health Reform Agreement.

- (2) Exceptional payments for the provision of health services decided by the chief executive may be paid into the State managed fund.
- (3) The amounts paid into the State managed fund may include adjustments—
  - (a) to reflect the difference between estimated and actual services provided; and
  - (b) for other funding reconciliations under the National Health Reform Agreement.
- (4) In this section—

*block funding* means funding for public patient services that are not appropriately funded through activity-based funding but does not include top-up funding provided by the Commonwealth under the National Health Reform Agreement.

### **53H Payments from State managed fund**

- (1) Payments of funds from the State managed fund, including the timing of the payments, are to be decided by the chief executive.
- (2) Payments from the State managed fund are to be made only to—
  - (a) Hospital and Health Services and other providers of hospital and other health services; and
  - (b) universities and other providers of teaching, training and research related to the provision of health services.
- (3) Payment of funds from the State managed fund is to be consistent with—
  - (a) the purpose for which the funding was paid into the fund; and

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Part 3A Funding of public sector health system

[s 53I]

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- (b) the National Health Reform Agreement; and
  - (c) any relevant service agreement between the chief executive and a Service.
- (4) This section does not prevent the chief executive from paying amounts from the State managed fund—
- (a) to reflect the difference between estimated and actual services provided; or
  - (b) for other funding reconciliations under the National Health Reform Agreement; or
  - (c) to correct any error in payments out of the fund; or
  - (d) to pay fees associated with maintaining the fund, including financial institution fees and audit fees; or
  - (e) to another account in the department for the provision of support services to Services.

**Division 4                      Provisions applying to  
administrator for all States,  
Territories and the Commonwealth**

**Subdivision 1              Preliminary**

**53I              Definitions for div 4**

- (1) In this division—

*administrator* means the administrator of the National Health Funding Pool appointed under section 53K and under the corresponding provision of the laws of the Commonwealth and the other States.

*COAG* means the Council of Australian Governments.

*function* includes a power, authority or duty.

*Hospital and Health Service*—

- (a) for Queensland, means a Hospital and Health Service established under section 17; or
- (b) for another State, means an organisation that is a local hospital network (however described) for the purposes of the National Health Reform Agreement.

***National Health Funding Pool*** means the combined State pool accounts for each State.

***National Health Reform Agreement*** means the National Health Reform Agreement between the Commonwealth and the States that was agreed to by COAG on 2 August 2011, as amended from time to time.

***responsible Minister*** for a jurisdiction means the relevant Minister with portfolio responsibility for the administration of the provision of this division in which the expression occurs (or of the corresponding provision of the laws of the Commonwealth and the other States).

*Note—*

See also section 53ZB.

***Standing Council on Health*** means (subject to subsection (2)) the Ministerial Council by that name or, if there is no such Ministerial Council, the standing Ministerial Council established or recognised by COAG whose members include all Ministers in Australia having portfolio responsibility for health.

***State*** includes the Australian Capital Territory and the Northern Territory.

***State managed fund*** of a State means a bank account or fund established or designated by the State for the purposes of health funding under the National Health Reform Agreement that is required to be undertaken in the State through a State managed fund.

***State pool account*** of a State means the bank account established by the State under section 53B or under the corresponding provisions of the law of another State.

- (2) The Standing Council on Health, when acting under this division, is to be constituted only by a single Minister for the Commonwealth and a single Minister for each of the States, and any reference in this division to a member of that Council is to be construed as a reference to those Ministerial members only.
- (3) If there are 2 or more Ministers for the Commonwealth or for a State who are members of the Standing Council on Health, the relevant Minister for the purposes of this division is the Minister having primary portfolio responsibility for health in his or her jurisdiction.
- (4) A reference in this division to the agreement of, or a request by, a member of the Standing Council on Health is a reference to an agreement or request in writing.
- (5) This division is to be interpreted in accordance with Schedule 7 to the *Health Practitioner Regulation National Law* set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009*.
- (6) The *Acts Interpretation Act 1954* does not apply to or in respect of this division.

## **Subdivision 2 Administrator of the National Health Funding Pool**

### **53J The office of administrator**

- (1) The office of administrator of the National Health Funding Pool is established by this division.
- (2) It is the intention of Parliament that the same individual holds the office established under subsection (1) and under the corresponding provision of the laws of the Commonwealth and the other States.
- (3) The administrator appointed under this division may exercise and perform the functions of the administrator in relation to—

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- (a) one jurisdiction; or
  - (b) 2 or more or all jurisdictions collectively.
- (4) A reference in a provision of this division (other than in section 53P(1)) to a function of the administrator under this division includes a reference to a function of the administrator under the corresponding provision of the laws of the Commonwealth and the other States.

**53K Appointment of administrator**

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is to appoint an individual to the office of the administrator of the National Health Funding Pool under this division.
- (2) Before the appointment is made, the Chair of the Standing Council on Health is to give each member of the Council an opportunity to nominate an individual for appointment.
- (3) An appointment is not to be made unless all the members of the Standing Council on Health have agreed on the individual who will be appointed as administrator, the date that the appointment will take effect, the period of appointment and the conditions of appointment.
- (4) The appointment is to be made by instrument in writing.
- (5) The administrator is to be appointed (subject to subsection (3)) for the period, not exceeding 5 years, and on the conditions specified in his or her instrument of appointment, but is eligible for re-appointment.
- (6) The administrator is entitled to the remuneration determined in accordance with the law of the Commonwealth.

**53L Suspension of administrator**

- (1) The Chair of the Standing Council on Health is required to suspend the administrator from office if requested to do so by—

- (a) at least 3 members of the Council who are Ministers of a State; or
  - (b) the member of the Council who is a Minister of the Commonwealth.
- (2) A member of the Standing Council on Health is not to request the suspension of the administrator unless the member is satisfied that the administrator—
- (a) is, because of any physical or mental incapacity or otherwise, unable to perform his or her functions satisfactorily; or
  - (b) has failed to comply with his or her obligations or duties as administrator; or
  - (c) has been accused or convicted of an offence that carries a penalty of imprisonment; or
  - (d) has or may become bankrupt.
- (3) A suspension is to be effected by an instrument in writing and is to be notified by the Chair of the Standing Council on Health to all members of the Council.
- (4) A suspension is terminated after a period of suspension of 60 days unless before the end of that period the administrator is removed or resigns from office or a majority of the members of the Standing Council on Health—
- (a) terminate the suspension; or
  - (b) extend the suspension for a specified further period.
- (5) Despite subsection (1), the Chair of the Standing Council on Health is not to suspend the administrator from office within the period of 90 days after an earlier period of suspension was terminated unless a majority of the members of the Council request the Chair to do so.

**53M Removal or resignation of administrator**

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is required to remove the

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administrator from office if a majority of the members of the Council agree to the administrator's removal from office.

- (2) The administrator is to be removed from office by an instrument in writing that takes effect on the date agreed to by the majority of the members of the Standing Council on Health.
- (3) The administrator may resign as administrator by notice in writing to the Chair of the Standing Council on Health.
- (4) The resignation of the administrator takes effect on the date notified by the Chair of the Standing Council on Health to all members of the Council.

**53N Acting administrator**

- (1) The Chair of the Standing Council on Health may, from time to time, appoint an individual to act as the administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty.
- (2) Any such appointment may only be made from a panel of persons, and in accordance with the procedure, agreed to by all the members of the Standing Council on Health.

**53O Provision of staff and facilities for administrator**

- (1) Staff and facilities to assist the administrator in exercising or performing his or her functions under this division are to be provided by the National Health Funding Body constituted under the *National Health Reform Act 2011* of the Commonwealth.
- (2) The administrator is not entitled to delegate a function conferred on the administrator under this division to that body, to any such member of staff or to any other person or body.

**53P Functions of administrator**

- (1) The administrator is—

- (a) to calculate and advise the Treasurer of the Commonwealth of the amounts required to be paid by the Commonwealth into each State pool account of the National Health Funding Pool under the National Health Reform Agreement (including advice on any reconciliation of those amounts based on subsequent actual service delivery); and
- (b) to monitor State payments into each State pool account for the purposes of subdivision 3; and
- (c) to make payments from each State pool account in accordance with the directions of the State concerned; and
- (d) to report publicly on the payments made into and from each State pool account and other matters on which the administrator is required to report under this division; and
- (e) to exercise or perform any other functions conferred on the administrator under this division.

*Note—*

The *National Health Reform Act 2011* (Cwlth) provides that the functions of the administrator include monitoring Commonwealth payments into each State pool account for the purposes of financial management and reporting.

- (2) The administrator and the body and staff assisting the administrator are not subject to the control or direction of any Minister of the Commonwealth in relation to the exercise or performance of the administrator's functions under this division.
- (3) However, the administrator is required to comply with any directions given by COAG in relation to the manner in which the administrator exercises or performs his or her functions under this division (including in relation to the preparation or provision of annual or monthly reports, financial statements or information under subdivision 3).
- (4) Directions given by COAG under subsection (3)—

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- (a) are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG; and
  - (b) are to be notified in writing to the administrator; and
  - (c) are to be made publicly available by the administrator.
- (5) To avoid doubt, this division is not intended—
- (a) to give the Commonwealth ownership or control of money in a State pool account; or
  - (b) to affect the obligation of the administrator under the law of a State to make payments from the State pool account of the State in accordance with the directions of the State.
- (6) To avoid doubt, the administrator may have regard to information obtained in the exercise or performance of functions under the law of another jurisdiction in the exercise or performance of the administrator's functions under subdivision 3.

### **Subdivision 3      Financial management and reporting**

#### **53Q      Financial management obligations of administrator**

The administrator must—

- (a) develop and apply appropriate financial management policies and procedures with respect to the State pool accounts (including policies and procedures to ensure payments from those accounts are made in accordance with the directions of the responsible Ministers); and
- (b) keep proper records in relation to the administration of the State pool accounts, including records of all payments made into and from those accounts and the basis on which the payments were made; and

- (c) prepare the financial statements required by this subdivision in relation to the State pool accounts and arrange for the audit of those financial statements in accordance with this subdivision.

**53R Monthly reports by administrator**

- (1) The administrator must provide monthly reports to the Commonwealth and each State containing the following information for the relevant month—
  - (a) the amounts paid into each State pool account and State managed fund by the relevant State and the basis on which the payments were made;
  - (b) the amounts paid into each State pool account by the Commonwealth and the basis on which the payments were made;
  - (c) the amounts paid from each State pool account to Hospital and Health Services, a State managed fund or other organisations or funds and the basis on which the payments were made;
  - (d) the amounts paid from each State managed fund to Hospital and Health Services or other organisations or funds and the basis on which the payments were made;
  - (e) the number of public hospital services funded for each Hospital and Health Service (including a running financial year total) in accordance with the system of activity-based funding;
  - (f) the number of other public hospital services and functions funded from each State pool account or State managed fund (including a running financial year total).
- (2) A monthly report required to be provided to a jurisdiction under this section is to be provided to the responsible Minister for that jurisdiction or to a body or officer notified to the administrator by that Minister.

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- (3) The administrator is to make reports provided under this section publicly available.

**53S Annual report by administrator**

- (1) The administrator must, within 4 months after the end of each financial year, provide to the responsible Ministers an annual report on the exercise or performance of his or her functions under this division during the financial year.
- (2) The annual report must include the following information for the relevant financial year—
- (a) the amounts paid into each State pool account and State managed fund by the relevant State and the basis on which the payments were made;
  - (b) the amounts paid into each State pool account by the Commonwealth and the basis on which the payments were made;
  - (c) the amounts paid from each State pool account to Hospital and Health Services, a State managed fund or other organisations or funds and the basis on which the payments were made;
  - (d) the amounts paid from each State managed fund to Hospital and Health Services or other organisations or funds and the basis on which the payments were made;
  - (e) the number of public hospital services funded for each Hospital and Health Service in accordance with the system of activity-based funding;
  - (f) the number of other public hospital services and functions funded from each State pool account or State managed fund.
- (3) The annual report is to be accompanied by—
- (a) an audited financial statement for each State pool account; and

- (b) a financial statement that combines the audited financial statements for each State pool account.
- (4) A responsible Minister must, as soon as practicable after receiving an annual report under this section, cause a copy of the report to be tabled in the Parliament of the responsible Minister's jurisdiction.

**53T Administrator to prepare financial statements for State pool accounts**

The administrator must, after each financial year, prepare—

- (a) a financial statement for each State pool account that details financial transactions during that financial year; and
- (b) a combined financial statement that consists of the financial statements for each State pool account for the financial year.

**53U Audit of financial statements**

- (1) The auditor-general must, for each financial year—
  - (a) audit the financial statements under this subdivision for the State pool account established under section 53B; and
  - (b) prepare an auditor's report about the financial statements.
- (2) As soon as practicable after the auditor-general has audited the financial statements and prepared an auditor's report, the auditor-general must—
  - (a) give the certified statements and the auditor's report to the chief executive; and
  - (b) give a copy of the certified statements and the auditor's report to the administrator, the Minister and the Treasurer.

- (3) The *Auditor-General Act 2009* applies to an audit under this section as if it were conducted under that Act.
- (4) Without limiting subsection (3)—
  - (a) the auditor-general has the same powers the auditor-general has in relation to an audit of the consolidated fund or an entity under the *Auditor-General Act 2009*; and
  - (b) the *Auditor-General Act 2009*, section 53 applies to a record made, or information divulged or communicated, in relation to an audit under this section as if it were a record made, or information divulged or communicated, under that Act.

**53V Performance audits**

- (1) This section applies to all or any particular activities of the administrator that relate to Queensland.
- (2) The auditor-general may conduct a performance audit, under the *Auditor-General Act 2009*, section 37A, of all or any of the particular activities of the administrator as if the administrator were a public sector entity under that Act.
- (3) Before the auditor-general of this jurisdiction conducts a performance audit, the auditor-general must notify the Auditors-General of all other jurisdictions of his or her intention to conduct the proposed audit.
- (4) Auditors-General who are conducting performance audits at the same time are to make arrangements to coordinate the conduct of those audits in relation to any requirements imposed on the administrator.

**53W States to provide administrator with information about State managed funds**

The responsible Minister for a State is to provide information to the administrator about any of the following matters relating to the State managed fund of the State that the

administrator requires for the preparation of reports and financial statements under this subdivision—

- (a) the amounts paid by the State into the State managed fund and the basis on which the payments were made;
- (b) the amounts paid by the State from the State managed fund to Hospital and Health Services or other organisations or funds and the basis on which the payments were made;
- (c) public hospital services and functions that are funded from the State managed fund.

**53X Provision of information generally**

- (1) The administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that responsible Minister that relates to that jurisdiction.
- (2) The information is to be provided by the time requested by that responsible Minister.
- (3) The administrator is required to provide to the responsible Ministers of all jurisdictions a copy of advice provided by the administrator to the Treasurer of the Commonwealth about the basis on which the administrator has calculated the payments to be made into State pool accounts by the Commonwealth.
- (4) The administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for that jurisdiction.
- (5) Any information relating to a jurisdiction that is provided by the administrator to another jurisdiction may only be publicly released by that other jurisdiction in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates.

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## Subdivision 4      Miscellaneous

### 53Y      Application of Acts to administrator

- (1) The administrator is a unit of public administration under the *Crime and Corruption Act 2001*.
- (2) The following Acts do not apply to the administrator in performing a function under this Act—
  - (a) the *Information Privacy Act 2009*;
  - (b) the *Ombudsman Act 2001*;
  - (c) the *Right to Information Act 2009*;
  - (d) the *Public Records Act 2002*.
- (3) To remove doubt, it is declared that the administrator is not a statutory body for—
  - (a) the *Statutory Bodies Financial Arrangements Act 1982*;  
or
  - (b) the *Financial Accountability Act 2009*

### 53Z      Application of Commonwealth Acts

- (1) The following Acts apply (subject to subsection (2)) as laws of this jurisdiction to or in respect of the administrator and any function exercised or performed by the administrator—
  - (a) the *Archives Act 1983* of the Commonwealth;
  - (b) the *Australian Information Commissioner Act 2010* of the Commonwealth;
  - (c) the *Freedom of Information Act 1982* of the Commonwealth;
  - (d) the *Ombudsman Act 1976* of the Commonwealth;
  - (e) the *Privacy Act 1988* of the Commonwealth.
- (2) Each of those Acts so applies subject to the modifications made by Regulations made under the *National Health Reform*

Hospital and Health Boards Act 2011

Part 3A Funding of public sector health system

[s 53ZA]

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*Act 2011* of the Commonwealth with the agreement of all the members of the Standing Council on Health.

**53ZA Extra territorial operation of Act**

It is the intention of Parliament that the operation of this division is to include, as far as possible, operation in relation to the following—

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this division, be governed or otherwise affected by the law of another jurisdiction.

**53ZB Transitional and validation provisions**

- (1) If, on the commencement of this division, corresponding provisions to this division have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of this division is the Minister of that jurisdiction with portfolio responsibility for health.
- (2) Any thing done by a Minister of the Commonwealth or of a State before the commencement of this division that would have been validly done if this division, and the corresponding provisions of other jurisdictions, had been in force at the time is taken to have been validly done.

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## Part 4 Performance reporting and auditing

### Division 1 Performance reporting

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

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

*relevant data* means—

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

## Division 2 Health service audits

### 55 Function of health service auditors

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

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

*health service audit* means an audit—

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

*Example—*

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

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

### 56 Appointment of health service auditors

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

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

**57 Appointment conditions and limit on powers**

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

**58 When office ends**

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

**59 Resignation**

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

**60 Powers of health service auditors**

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

***confidential information*** means any information that—

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

**61 Giving health service auditor false or misleading information**

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

Maximum penalty—100 penalty units.

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

**62 Obstructing health service auditor**

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

Maximum penalty—100 penalty units.

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

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

- (3) In this section—

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

**63 Duty of confidentiality of health service auditors**

- (1) This section applies to a person who—  
(a) is or has been a health service auditor; and  
(b) in that capacity was given information.

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

**64 Reports by health service auditors**

- (1) A health service auditor must prepare and provide a report to the appointer for each health service audit.
- (2) The report may include recommendations about—
  - (a) ways in which the accuracy of performance data and other data provided by a Service or a specialised health service may be improved; or
  - (b) ways in which the performance of a Service or a specialised health service may be improved; or
  - (c) whether stated public sector health services should—

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- (i) continue to be provided by a Service or a specialised health service; or
  - (ii) be transferred to a Service or other entity; or
  - (iii) be discontinued.
- (3) Subsection (4) applies to a report provided to the chief executive after a health service audit in a Service.
  - (4) After considering the report, the chief executive may issue a direction to a Service.
  - (5) The Service must comply with the direction.
  - (6) Subsection (7) applies to a report provided—
    - (a) to the chief executive after a health service audit in the department; or
    - (b) to a health service chief executive after a health service audit in the Service.
  - (7) After considering the report, the chief executive or health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

**65 Chief executive may request report from health service chief executive**

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

## **Part 5                    Health service employees**

### **Division 1                General**

#### **66        Conditions of employment**

- (1) The conditions of employment for a health service employee, other than for a health executive or a senior health service employee, are governed by—
  - (a) this Act; and
  - (b) the *Industrial Relations Act 2016*; and
  - (c) the applied Public Service law; and
  - (d) an industrial instrument that applies to the employee; and
  - (e) health employment directives; and
  - (f) if the employee is appointed on a contract for a fixed term—the employee’s contract.
- (2) A health executive’s conditions of employment are governed by—
  - (a) this Act; and
  - (b) the *Industrial Relations Act 2016*; and
  - (c) the applied Public Service law; and
  - (d) health employment directives; and
  - (e) the health executive’s contract.
- (3) A senior health service employee’s conditions of employment are governed by—
  - (a) this Act; and
  - (b) the *Industrial Relations Act 2016*; and
  - (c) the applied Public Service law; and

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- (d) health employment directives; and
  - (e) an industrial instrument that applies to the employee; and
  - (f) the employee's contract.
- (4) The chief executive may decide that a particular health service employee's conditions of employment are to be more favourable than those contained in a health employment directive or an industrial instrument that applies to the employee.

**67 Appointment of health service employees**

- (1) The chief executive may appoint a person as a health service employee in the department, including as an employee of the department working for a Service that is not a prescribed Service.
- (2) A Service may appoint a person as a health executive or a senior health service employee in the Service.
- (3) A prescribed Service may appoint a person as any health service employee in the Service.
- (4) Appointment as a health service employee may be—
  - (a) on tenure; or
  - (b) on contract for a fixed term, including as a health executive or a senior health service employee; or
  - (c) on a temporary basis; or
  - (d) on a casual basis; or
  - (e) for an employee who is a senior health service employee—on contract for an indefinite term.
- (5) An appointment under this section may be for full-time or part-time employment.

**68 Contracted health service employees other than health executives or senior health service employees**

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

**69 Health service employees not public service employees**

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

**69A Modification of Industrial Relations Act 2016 for health service employees**

The *Industrial Relations Act 2016*, schedule 4 states the way that Act is modified for Hospital and Health Services prescribed under the *Hospital and Health Boards Act 2011*, section 20(4) and their employees.

**Division 2 Health executive service and senior health service employees**

**Subdivision 1 Health executive service**

**70 Health executive service continued**

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

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**71 Purpose of health executive service**

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

**72 Principles of health executive service employment**

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

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

**73 Composition of health executive service**

The health executive service consists of the following—

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

**74 Basis of employment for health executives**

- (1) Each person appointed as a health executive must enter into a written contract of employment with the following—
  - (a) for a health executive employed by a Service (other than the health service chief executive)—the health service chief executive;
  - (b) for a health executive in the department—the chief executive;
  - (c) for a health service chief executive—the chair of the board for the Service.

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

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## Subdivision 2 Senior health service employees

### 74A Meaning of *senior health service employee*

- (1) A *senior health service employee* is a health service employee employed in a position prescribed by regulation as a senior health service employee position.
- (2) Without limiting the matters to which the Minister may have regard in deciding whether to recommend the making of a regulation under subsection (1), the Minister may have regard to the role, responsibilities and functions performed by persons employed in the position.

### 74B Basis of employment for senior health service employees

- (1) This section applies to a senior health service employee.
- (2) The employee's contract of employment must be entered into with—
  - (a) for an employee of the department—the chief executive; or
  - (b) for an employee of a Service—the health service chief executive.
- (3) The employee's contract of employment must be in writing and state each of the following—
  - (a) whether the contract is for a fixed term or an indefinite term;
  - (b) if the contract is for a fixed term—the length of the term;
  - (c) the employee's functions;
  - (d) that the employee must meet any performance criteria stated in the contract;
  - (e) the employee's classification level, and the remuneration to which the employee is entitled;

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- (f) the period of notice of resignation or termination that is required to be given before the notice takes effect.

### **Subdivision 3 Excluded matters**

#### **75 Exclusion of certain matters from review under other Acts**

- (1) An excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 2016*.
- (2) Without limiting subsection (1), industrial instruments do not apply to a health executive.
- (3) A decision about an excluded matter can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991*.
- (4) In this section—  
*excluded matter* means—
  - (a) a decision to appoint, or not to appoint, a person as a health executive; or
  - (b) the contract of employment of, or the application of this part or a provision of this part to, a health executive.

### **Division 3 Other provisions relating to health service employees**

#### **77 Redeployment or secondment to lower classification level**

- (1) A health service employee may be redeployed or seconded at a lower classification level only if the person consents to the redeployment or secondment.

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- (2) However, subsection (1) does not prevent redeployment or secondment to a lower classification level as a result of disciplinary action against the employee.

**78 Transfer of health service employees**

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

**79 Entitlement on ending of particular employment contracts**

- (1) This section applies if—
- (a) a health service employee is employed on contract other than as a health executive or a senior health service employee; and
  - (b) the contract—

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

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

##### **80                      Departmental health service employees to be employed by Services**

- (1) This section applies to a person employed in the department who is working for a Service immediately before the prescribed day for that Service.
- (2) From the prescribed day, the person is taken to be employed by the Service on the same terms, conditions and entitlements as those applying to the person's employment in the department immediately before the prescribed day.
- (3) Also, the following apply for the person—

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

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

- (1) Subsection (2) applies if—
  - (a) a person is employed in the department and is working for a Service before the person becomes an employee of the Service under section 80; and
  - (b) before the person becomes an employee of the Service the person is appointed to perform a function or to do anything under this Act; and

- (c) the function or thing has not been completed immediately before the prescribed day.
- (2) The person's appointment mentioned in subsection (1)(b) is not affected and the function or thing may be completed after the prescribed day.

*Example—*

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

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

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

*Examples for subsection (3)—*

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

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

**80C Matters and proceedings not affected by persons becoming senior health service employees in Service**

- (1) This section applies if—
  - (a) a person appointed as a senior health service employee in a Service was, immediately before the appointment, employed in the department; and
  - (b) before the person was appointed in the Service, a proceeding was taken by or against the person or anything else was done in relation to the person as an employee of the department; and
  - (c) the proceeding or other thing had not been completed immediately before the person was appointed in the Service.
- (2) The proceeding may be continued and completed after the day the person becomes an employee in the Service by or against the Service instead of the department.
- (3) For anything other than a proceeding, the thing may be continued unaffected by the person becoming an employee of the Service.

*Examples for subsection (3)—*

A recruitment and selection process involving a person employed in the department, started before the day the person becomes an employee in the Service, may continue after the day.

The approval of the annual leave for a person employed in the department before the day the person becomes an employee in the Service is effective after that day.

Not authorised—indicative only

## **Part 6                      Safety and quality**

### **Division 1                Quality assurance committees**

#### **81        Purpose of division**

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

#### **82        Establishment of quality assurance committees**

- (1) Any of the following may establish a quality assurance committee—
  - (a) for a matter relating to its functions—
    - (i) a Service; or
    - (ii) a professional association, society, college or other entity whose functions relate to the provision of health services or to the providers of health services;
  - (b) the chief executive for a matter relating to a Service or the department;
  - (c) the licensee of a private health facility for a matter relating to health services provided in its facility.
- (2) Two or more of the bodies mentioned in subsection (1) may jointly establish a single committee.
- (3) However, an entity must not establish a committee unless satisfied—
  - (a) if the committee is established by an entity other than an individual—that the committee is established under a resolution or in accordance with the rules or official procedures of the entity; and

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- (b) that the committee's functions include the assessment and evaluation of the quality of health services, the reporting and making of recommendations concerning those services and monitoring the implementation of its recommendations; and
  - (c) that the committee comprises individuals with training and experience appropriate to the services to be assessed and evaluated by the committee; and
  - (d) that the exercise of the committee's functions would benefit from the immunities and protections afforded by this division.
- (4) An entity mentioned in subsection (1)(a) and (c) must notify the chief executive in the approved form of the establishment of the committee under this section.
  - (5) For a committee established by the chief executive, the chief executive must keep a record of its establishment in the approved form.
  - (6) The chief executive must establish and maintain a register of committees established under this section.
  - (7) The chief executive must make the register available for inspection by members of the public on the department's website.

**83 Restrictions on committees**

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

**84 Disclosure of information**

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

Maximum penalty—100 penalty units.

- (2) Also, a person who is or was a relevant person for a committee must not disclose to someone else information acquired by the person as a relevant person for the committee, other than—
- (a) for the purpose of helping the committee to perform its functions; or
  - (b) to comply with a requirement of an inspector made of the person under this Act, if the requirement relates to an offence under this division.

Maximum penalty—100 penalty units.

**85 Giving of reports and documents to patient safety entity**

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

Maximum penalty—100 penalty units.

- (3) In this section—

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

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

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

**86 Information about excluded notifiable conduct**

- (1) This section applies for the purpose of the Health Practitioner Regulation National Law (Queensland), ~~section 141(4)(d)~~, sections 141(4)(d) and 141C(2)(d).
- (2) Subsection (3) applies if—
  - (a) a person is or was a member of a committee; and
  - (b) the person is a registered health practitioner; and

- (c) the person forms a reasonable belief that another registered health practitioner has behaved in a way that constitutes excluded notifiable conduct; and
  - (d) the information that forms the basis of the reasonable belief was acquired while the person was exercising functions as a member of the committee.
- (3) The person must not disclose the information that forms the basis of the reasonable belief.

*Editor's note—*

[Section 86 incorporates an uncommenced amendment—see 2019 Act No. 3 s 30.](#)

**87 Protection for documents and information**

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

- (4) In this section—
- order* includes a direction or other process.
- proceeding* includes—
- (a) a civil proceeding; or
  - (b) a criminal proceeding; or
  - (c) a proceeding under the Health Practitioner Regulation National Law.

## **88 Protection from liability**

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

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

**89 Giving of information protected**

- (1) This section applies to a person who honestly and on reasonable grounds gives information to a committee, or a relevant person for a committee, for the committee's functions.
- (2) The person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath, or rule of law or practice, the person—
    - (i) does not contravene the Act, oath, or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

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

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

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

**91 Further responsibilities of committees**

A regulation may make provision for—

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

**92 Effect of provisions of division**

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

## Division 2                      Root cause analysis

### Subdivision 1                  Preliminary

#### 93                      Purpose of div 2

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

#### 94                      Definitions for div 2

In this division—

***blameworthy act*** means any of the following—

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

***commissioning authority*** see section 98.

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

***health service facility*** means—

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

***prescribed health service facility*** means a facility—

- (a) at which a health service is provided; and
- (b) that is prescribed by regulation as a prescribed health service facility.

***RCA***, of a reportable event, see section 95.

***RCA report*** see section 100(1).

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

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

**reportable event**—

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

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

## 95 Meaning of root cause analysis

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

## 96 When is a health service provided

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

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

**97 Guiding principles for conduct of RCA of reportable event**

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

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

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## Subdivision 2 RCA teams

### 98 Appointment of RCA team

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

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

### 99 Requirements for appointment

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

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

### Subdivision 3 Reporting

#### 100 RCA team's report

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

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**101 Reporting to commissioning authority**

The RCA team must, as soon as practicable after preparing the RCA report, give the report to the commissioning authority that appointed the RCA team members.

**Subdivision 4 Stopping conduct of RCA of reportable event**

**102 Stopping conduct of RCA of reportable event—RCA team**

- (1) This section applies if, while conducting an RCA of a reportable event, the RCA team conducting the RCA reasonably believes—
  - (a) the event involves a blameworthy act; or
  - (b) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person.
- (2) This section also applies if a member of the RCA team conducting the RCA of a reportable event, who is a registered health practitioner—
  - (a) reasonably believes the event involves behaviour of a registered health practitioner that constitutes public risk notifiable conduct; and
  - (b) notifies the health ombudsman about the conduct.
- (3) The RCA team must—
  - (a) stop conducting the RCA; and
  - (b) give written notice to the commissioning authority that appointed the RCA team members that the RCA team has stopped conducting the RCA.
- (4) For subsection (3)(b), the notice must—
  - (a) be in the approved form; and

- (b) state the reasons the RCA team stopped conducting the RCA.

**103 Stopping conduct of RCA of reportable event—  
commissioning authority**

- (1) This section applies if—
  - (a) persons have been appointed to be members of an RCA team to conduct an RCA of a reportable event; and
  - (b) the commissioning authority that appointed the RCA team members—
    - (i) receives information, other than in a notice under section 102(3)(b), that leads the commissioning authority to reasonably believe—
      - (A) the event involves a blameworthy act; or
      - (B) the capacity of a person who was directly involved in providing the relevant health service to safely and effectively provide the service was impaired by alcohol consumed, or a drug taken, by the person; or
    - (ii) becomes aware that a relevant entity has started an investigation or assessment of, or enquiry into, the event; or
    - (iii) later comes to the view that the event the basis of the appointment is not a reportable event.
- (2) If subsection (1)(b)(i) or (iii) applies, the commissioning authority must, by written notice given to the RCA team, direct it to stop conducting the RCA.
- (3) If subsection (1)(b)(ii) applies, the commissioning authority may, by written notice given to the RCA team, direct it to stop conducting the RCA.
- (4) For subsection (2) or (3), the notice given to the RCA team must be in the approved form.

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- (5) Before acting under subsection (3), the commissioning authority may consult with any relevant entity.
- (6) In this section—
- relevant entity*** means—
- (a) the health ombudsman; or
  - (b) a coroner; or
  - (c) a board established under the Health Practitioner Regulation National Law; or
  - (d) the commissioner of the police service; or
  - (e) another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event.

## **Subdivision 5 Disclosure or release of information**

### **104 Definition for sdiv 5**

In this subdivision—

***information*** includes a document.

### **105 Disclosure of information—RCA team member or relevant person**

- (1) A person who is or was a member of an RCA team must not disclose to someone else information acquired by the person as a member of the RCA team, other than for the purpose (an ***authorised purpose***) of—
- (a) the RCA team conducting an RCA of a reportable event; or
  - (b) the RCA team preparing an RCA report or safety and quality report; or

- (c) the RCA team giving the commissioning authority that appointed the RCA team members—
  - (i) an RCA report under section 101; or
  - (ii) a notice under section 102; or
  - (iii) a safety and quality report under section 106; or
- (d) the RCA team complying with a requirement of an inspector made of the RCA team under this Act, if the requirement relates to an offence under this division; or
- (e) if the person is a registered health practitioner—
  - notifying the health ombudsman about information in relation to a reasonable belief of the person that another registered health practitioner has behaved in a way that constitutes public risk notifiable conduct.

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

- (3) In this section—

*information* includes—

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

**106 Disclosure of information—commissioning authority or relevant person**

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

(b) as permitted under subsection (2).

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

- (6) Subsection (5) does not apply to—

Not authorised—indicative only

- (a) the disclosure of information by a relevant person for a commissioning authority for the purpose of helping the commissioning authority exercise its powers under this division; or
  - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person under this Act, if the requirement relates to an offence under this division.
- (7) A person who is or was a commissioning authority must not disclose to someone else information contained in a notice given to the person under section 102(3)(b), or give someone else a copy of the notice.
- Maximum penalty—100 penalty units.
- (8) Subsection (7) does not apply to the disclosure of information by a person if the disclosure is—
- (a) required under section 113(7); or
  - (b) necessary or incidental to the person taking, or deciding to take, disciplinary, investigative or other action in relation to the reportable event the subject of the information.
- (9) This section does not authorise the attachment of a copy of an RCA report to a safety and quality report.
- (10) In this section—
- safety and quality report* means a report about the safety and quality of the health service to which an RCA report relates that is based on information contained in the RCA report.

**107 Information about excluded notifiable conduct**

- (1) This section applies for the purpose of the Health Practitioner Regulation National Law (Queensland), ~~section 141(4)(d)~~ sections 141(4)(d) and 141C(2)(d).
- (2) An RCA team is an approved body under this Act.
- (3) Subsection (4) applies if—

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- (a) a person is or was a member of an RCA team; and
  - (b) the person is a registered health practitioner; and
  - (c) the person forms a reasonable belief that another registered health practitioner has behaved in a way that constitutes excluded notifiable conduct; and
  - (d) the information that forms the basis of the reasonable belief was acquired while the person was exercising functions as a member of the RCA team.
- (4) The person must not disclose the information that forms the basis of the reasonable belief.

*Editor's note—*

[Section 107 incorporates an uncommenced amendment—see 2019 Act No. 3 s 31.](#)

**108 Release of information to health ombudsman**

- (1) A commissioning authority must, as soon as practicable after receiving an RCA report under section 101, give the health ombudsman—
- (a) a copy of the report; and
  - (b) details of the name and address of the entity responsible for providing the relevant health service.
- (2) The commissioning authority need not comply with subsection (1) if there is an agreement in force under section 110 relating to the report and details.

**109 Release of information to chief health officer**

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

- (a) a copy of the report;
- (b) details of the name and address of the private health facility.

**110 Release of information by chief health officer to health ombudsman**

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

**111 Release of information to chief psychiatrist**

- (1) This section applies if a commissioning authority receives an RCA report under section 101 and the relevant health service for the reportable event is an authorised mental health service.
- (2) The commissioning authority must, as soon as practicable after receiving the report, give the following to the chief psychiatrist—
  - (a) a copy of the report;
  - (b) details of the name and address of the authorised mental health service.
- (3) In this section—  
*authorised mental health service* see the *Mental Health Act 2016*, schedule 3.

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**112 Giving of copy of RCA report—patient safety entity**

- (1) This section applies if the commissioning authority is—
  - (a) a health service chief executive; or
  - (b) the chief executive.
- (2) The commissioning authority must give a copy of each RCA report received by the commissioning authority under section 101 to a prescribed patient safety entity for an authorised purpose for the entity.
- (3) At the time of giving a copy of an RCA report to an entity under subsection (2), the commissioning authority must also give the entity—
  - (a) details of the reportable event; and
  - (b) details of the name and address of the entity responsible for providing the relevant health service.
- (4) A person who performs functions for the entity—
  - (a) must not give a copy of the report to anyone else; and
  - (b) must not disclose any information contained in the copy of the report, or information mentioned in subsection (3), to anyone else other than for the authorised purpose for which the copy of the report was given; and
  - (c) must not use the copy of the report, and the information mentioned in subsection (3), other than for the authorised purpose for which the copy of the report was given.

Maximum penalty—100 penalty units.

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

- (6) In this section—

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

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

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

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

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

Maximum penalty—50 penalty units.

- (4) Subsection (5) applies if—

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

Maximum penalty—50 penalty units.

- (6) Subsection (7) applies if—
- (a) an RCA has been started by an RCA team in relation to the reportable event; and
  - (b) the RCA team has, under section 102(3) or 103(2) or (3), stopped conducting the RCA; and
  - (c) the commissioning authority has, under subsection (3), received a query from the coroner or a police officer helping the coroner to investigate the death.
- (7) The commissioning authority must—
- (a) if the RCA team stopped conducting the RCA before the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after receiving the query; or

- (b) if the RCA team stops conducting the RCA after the commissioning authority received the query under subsection (3)—give the coroner or police officer a stop notice as soon as practicable after the RCA team stops conducting the RCA.
- (8) In this section—
  - stop notice* means a written notice stating—
    - (a) if the RCA team stopped conducting the RCA under section 102(3)—
      - (i) that fact; and
      - (ii) the reasons for stopping; or
    - (b) if the RCA team stopped conducting the RCA because of a direction given by the commissioning authority under section 103(2) or (3)—
      - (i) that fact; and
      - (ii) the reasons for giving the direction.

**114 Giving of information to Minister or chief executive**

- (1) The Minister or chief executive may, in relation to an RCA of a reportable event, ask a commissioning authority—
  - (a) whether an RCA report has been received by the authority under section 101; and
  - (b) if an RCA report has been received by the authority under section 101—for a copy of the report.
- (2) The authority must comply with the request as soon as practicable.  
Maximum penalty—50 penalty units.

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

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

**Subdivision 6 Protections**

**116 Protection from liability**

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

- (a) if the chief executive appointed the RCA team members—the State; or
- (b) if a health service chief executive appointed the RCA team members—the Service; or
- (c) if the individual who has the day-to-day management of a private health facility or the individual who has overall management responsibility for the facility appointed the RCA team members—the licensee of the private health facility; or
- (d) if the individual who has the day-to-day management of a prescribed health service facility or the individual who has overall management responsibility for the facility appointed the RCA team members—the person prescribed by regulation for the facility for this section.

**117 Giving of information protected**

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

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

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

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

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

**119 Protection for documents and information**

- (1) This section applies to—
  - (a) an RCA report or other document created by or for an RCA team; or

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

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- (a) a civil proceeding; or
  - (b) a criminal proceeding; or
  - (c) a proceeding under the Health Practitioner Regulation National Law.

**120 Reprisal and grounds for reprisals**

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

**121 Offence for taking reprisal**

- (1) A person who takes a reprisal commits an offence.  
Maximum penalty—200 penalty units or 2 years imprisonment.
- (2) The offence is a misdemeanour.

**122 Damages entitlement for reprisal**

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

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- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

## **Subdivision 7      Miscellaneous**

### **123      Application of provisions of this division**

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

## **Division 3              Clinical reviews**

### **124      Functions of clinical reviewers**

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

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

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**125 Appointment of clinical reviewers**

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

**126 Appointment conditions and limit on powers**

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

**127 When office ends**

- (1) The office of a person as a clinical reviewer ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the reviewer's resignation under section 128 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as a reviewer ends.

- (3) In this section—

*condition of office* means a condition under which the reviewer holds office.

## 128 Resignation

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

## 129 Powers of clinical reviewers

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

- (b) could identify the person.

**130 Giving clinical reviewer false or misleading information**

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

Maximum penalty—100 penalty units.

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

**131 Obstructing clinical reviewer**

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

Maximum penalty—100 penalty units.

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

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

- (3) In this section—

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

**132 Duty of confidentiality of clinical reviewers**

- (1) This section applies to a person who—

- (a) is or has been a clinical reviewer; and

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

**133 Disclosure to person under Coroners Act 2003**

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

**134 Stopping clinical review**

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

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

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

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

- (8) After considering the report, the chief executive or health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

**136 Reports by clinical reviewers to provide advice to investigator**

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

**137 Chief executive may request report from health service chief executive**

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

**138 Protection for reports**

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

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

## **Division 4                    Minimum nurse-to-patient ratios, midwife-to-patient ratios and workload standards**

### **138A    Definitions for division**

In this division—

*midwife* means a person registered under the Health Practitioner Regulation National Law to practise in the midwifery profession, other than as a student.

*nurse* means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing profession, other than as a student; and
- (b) in the registered nurses division or enrolled nurses division of that profession.

*nursing and midwifery regulation* means a regulation under section 138B.

*nursing and midwifery workload management information* includes information about compliance with a nursing and midwifery regulation.

**138B Prescription of minimum nurse-to-patient and midwife-to-patient ratios**

- (1) A regulation may prescribe a requirement about the minimum number of nurses or midwives who must be engaged in delivering a health service according to the number of patients receiving the service.
- (2) The regulation—
  - (a) may apply in relation to the delivery of stated health services—
    - (i) by stated Services; and
    - (ii) at stated facilities or parts of facilities; and
    - (iii) at stated times; and
    - (iv) in stated circumstances; and

*Example—*

A regulation may require that, in each surgical ward in a stated public sector hospital, between 7a.m. and 3p.m. each day, there be at least 1 nurse for every 4 patients.

- (b) may include a requirement about the skills or qualifications of the nurses or midwives.
- (3) For this section, a nurse or midwife is taken to be engaged in delivering a health service only if directly involved in providing care to 1 or more of the patients receiving the service.

**138C Temporary exemptions**

- (1) The Minister may, by written notice given to a Service and published on the department's website, grant a temporary exemption from compliance with a nursing and midwifery regulation.

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- (2) A temporary exemption may—
    - (a) exempt a Service from compliance with all or part of a nursing and midwifery regulation; or
    - (b) vary the application of a nursing and midwifery regulation to a Service so it imposes a lesser requirement.
  - (3) A temporary exemption may be granted on conditions.
  - (4) A temporary exemption has effect for the period, of not more than 3 months, stated in the Minister's notice.
  - (5) The Minister may, under subsection (1), extend a temporary exemption for a further period of not more than 3 months.
  - (6) However, the Minister may not extend a temporary exemption, or grant a further temporary exemption to a Service, if as a result the Service would be the subject of a temporary exemption for a continuous period of more than 6 months.

**138D Matters for Minister to consider**

- (1) This section applies if the Minister proposes to—
  - (a) recommend to the Governor in Council the making of a nursing and midwifery regulation applying to a Service; or
  - (b) grant or extend a temporary exemption for a Service under section 138C.
- (2) The Minister must consider the Service's capability to comply with the regulation and the likely effects of compliance.
- (3) The matters that the Minister may consider include—
  - (a) the likely financial costs of compliance; and
  - (b) any matter (including the nature, size and location of the Service) that may affect the Service's ability to recruit and retain staff; and

- (c) the infrastructure that the Service has, or can acquire, to support staff; and
- (d) the potential effects, on health services delivered by the Service, of actions the Service may reasonably need to take to comply with the regulation.

**138E Standards about nursing and midwifery workload management**

- (1) The chief executive may make a standard about nursing and midwifery workload management by Services, including how a Service—
  - (a) calculates its nursing or midwifery human resource requirements; or
  - (b) develops and implements strategies to manage nursing or midwifery resource supply and demand; or
  - (c) evaluates the performance of its nursing or midwifery staff.
- (2) The standard applies only in relation to the delivery of health services by a Service to the extent the health services are the subject of a nursing and midwifery regulation.
- (3) The standard may include requirements about reporting nursing and midwifery workload management information to the chief executive.
- (4) Subsection (3) does not limit the ways a Service may be required to report nursing and midwifery workload management information to the chief executive.

*Example—*

A Service may be required to report particular information under its service agreement with the chief executive.

- (5) The Minister must notify the making of the standard.
- (6) The Minister's notice is subordinate legislation.

- (7) The standard takes effect on the day the Minister's notice commences or, if a later day of commencement is stated in the Minister's notice, on the later day.
- (8) The chief executive must publish the standard on the department's website.
- (9) The standard is binding on a Service to the extent it applies under subsection (2).
- (10) However, if it is not possible to comply with both the standard and a regulation in relation to a particular matter because of an inconsistency between them, the regulation prevails to the extent of the inconsistency.

**138F Publication of information about nursing and midwifery workload management**

- (1) The chief executive may require a Service to give the chief executive, by a stated reasonable time, stated nursing and midwifery workload management information relating to the Service.
- (2) The Service must comply with the requirement.
- (3) The chief executive may publish the information in a way that allows it to be accessed by members of the public, including, for example, on the department's website.
- (4) This section applies to a Service whether or not it is the subject of a requirement under section 138B or standard under section 138E.

**Division 5                      State aged care facilities**

**138G   Definitions for division**

In this division—

*enrolled nurse* means a person registered under the Health Practitioner Regulation National Law—

(a) to practise in the nursing profession, other than as a student; and

(b) in the enrolled nurses division of that profession.

*nurse* means a registered nurse or an enrolled nurse.

*registered nurse* means a person registered under the Health Practitioner Regulation National Law—

(a) to practise in the nursing profession, other than as a student; and

(b) in the registered nurses division of that profession.

*resident*, at a State aged care facility, means a person who is provided residential care at the facility.

*residential care* has the meaning given by the *Aged Care Act 1997* (Cwlth), section 41-3.

*State aged care facility* see the *Public Health Act 2005*, section 61A.

*State aged care facility regulation* means a regulation under section 138H or 138I.

*State aged care facility workload management information* includes information about compliance with a State aged care facility regulation.

*support worker* means a person, other than a nurse, who provides residential care, under the supervision of a registered nurse, at a State aged care facility.

*Examples—*

- a person employed in the role known as an assistant in nursing
- a person employed in the role known as a personal care assistant
- a person employed in the role known as an undergraduate student in nursing

**138H Prescription of minimum nurse and registered nurse percentages**

- (1) A regulation may prescribe a requirement about the minimum percentage of nurses or registered nurses providing residential care at a State aged care facility prescribed by regulation during each 24-hour period to the total number of nurses and support workers providing residential care at the facility during the period.
- (2) The regulation—
  - (a) may apply in relation to the delivery of residential care—
    - (i) by stated Services; and
    - (ii) at stated facilities or parts of facilities; and
    - (iii) at stated times; and
    - (iv) in stated circumstances; and
  - (b) may include a requirement about the skills or qualifications of the nurses or support workers.
- (3) For this section, a nurse or support worker is taken to be providing residential care at a State aged care facility only if the nurse or support worker is directly involved in providing residential care at the facility.
- (4) In this section—

*24-hour period* means the period starting at midnight on a day and ending immediately before midnight on the following day.

**138I Prescription of minimum average daily resident care hours**

- (1) A regulation may prescribe a requirement about the minimum average daily resident care hours at a State aged care facility prescribed by regulation.

Not authorised—indicative only

- (2) The regulation may apply in relation to the delivery of residential care—
  - (a) by stated Services; and
  - (b) at stated facilities or parts of facilities; and
  - (c) at stated times; and
  - (d) in stated circumstances.
- (3) The average daily resident care hours at a State aged care facility is worked out by dividing the total number of hours of residential care that nurses and support workers provide at the facility on a day by the number of residents at the facility on the day.
- (4) For this section, a nurse or support worker is taken to provide residential care at a State aged care facility only if the nurse or support worker is directly involved in providing residential care at the facility.

**138J Temporary exemptions**

- (1) The Minister may, by written notice given to a Service and published on the department's website, grant a temporary exemption from compliance with a State aged care facility regulation.
- (2) A temporary exemption may—
  - (a) exempt a Service from compliance with all or part of a State aged care facility regulation; or
  - (b) vary the application of a State aged care facility regulation to a Service so it imposes a lesser requirement.
- (3) A temporary exemption may be granted on conditions.
- (4) A temporary exemption has effect for the period, of not more than 3 months, stated in the Minister's notice.
- (5) The Minister may, under subsection (1), extend a temporary exemption for a further period of not more than 3 months.

- (6) However, the Minister may not extend a temporary exemption, or grant a further temporary exemption to a Service, if as a result the Service would be the subject of a temporary exemption for a continuous period of more than 6 months.

**138K Matters for Minister to consider**

- (1) This section applies if the Minister proposes to—
- (a) recommend to the Governor in Council the making of a State aged care facility regulation applying to a Service; or
  - (b) grant or extend a temporary exemption for a Service under section 138J.
- (2) The Minister must consider the Service’s capability to comply with the regulation and the likely effects of compliance.
- (3) The matters that the Minister may consider include—
- (a) the likely financial costs of compliance; and
  - (b) any matter (including the nature, size and location of the Service) that may affect the Service’s ability to recruit and retain staff; and
  - (c) the infrastructure that the Service has, or can acquire, to support staff; and
  - (d) the potential effects, on residential care delivered by the Service, of actions the Service may reasonably need to take to comply with the regulation.

**138L Standards about State aged care facility workload management**

- (1) The chief executive may make a standard about State aged care facility workload management by Services, including how a Service—

Not authorised—indicative only

- (a) calculates its requirements for nurses and support workers; or
  - (b) develops and implements strategies to manage supply and demand for nurses and support workers; or
  - (c) evaluates the performance of its nurses and support workers at its State aged care facility.
- (2) The standard applies only in relation to the delivery of residential care by a Service to the extent the residential care is the subject of a State aged care facility regulation.
- (3) The standard may include requirements about reporting State aged care facility workload management information to the chief executive.
- (4) Subsection (3) does not limit the ways a Service may be required to report State aged care facility workload management information to the chief executive.
- Example—*
  - A Service may be required to report particular information under its service agreement with the chief executive.
- (5) The Minister must notify the making of the standard.
- (6) The Minister’s notice is subordinate legislation.
- (7) The standard takes effect on the day the Minister’s notice commences or, if a later day of commencement is stated in the Minister’s notice, on the later day.
- (8) The chief executive must publish the standard on the department’s website.
- (9) The standard is binding on a Service to the extent it applies under subsection (2).
- (10) However, if it is not possible to comply with both the standard and a regulation in relation to a particular matter because of an inconsistency between them, the regulation prevails to the extent of the inconsistency.

**138M Publication of information about State aged care facility workload management**

- (1) The chief executive may require a Service to give the chief executive, by a stated reasonable time, stated State aged care facility workload management information relating to the Service.
- (2) The Service must comply with the requirement.
- (3) The chief executive may publish the information in a way that allows it to be accessed by members of the public, including, for example, on the department's website.

**Part 7 Confidentiality**

**Division 1 Interpretation and application**

**139 Definitions for pt 7**

In this part—

*confidential information* means—

- (a) information, acquired by a person in the person's capacity as a designated person, from which a person who is receiving or has received a public sector health service could be identified; or
- (b) information accessed by a prescribed health practitioner under section 161C(2).

*designated person* see section 139A.

*external service provider* means an entity providing a health service under an agreement between the chief executive or a Service and the entity.

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

**information system** means a system for making, keeping and preserving records, whether paper-based, electronic or both, including records that contain confidential information.

**parent** see section 140.

**prescribed health practitioner** means—

- (a) a relevant health practitioner, other than a person mentioned in section 139A(1), who is prescribed by regulation; or
- (b) a person who was a relevant health practitioner mentioned in paragraph (a).

**prescribed information system** means an information system prescribed by regulation.

**relevant health practitioner** means an individual who is registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

### **139A Meaning of *designated person***

- (1) **Designated person** means a person who is—
  - (a) a public service employee employed in the department; or
  - (b) a health service employee; or
  - (c) the chief health officer; or
  - (d) the director of mental health; or
  - (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service, whether at a public sector health service facility or another place; or
  - (f) a member of a board of a Service; or
  - (g) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for a Service or the department; or

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- (h) a person being educated or trained at a public sector health service facility as part of the requirements for—
    - (i) registration, enrolment or other authorisation (however described) to practise as a health professional; or
    - (ii) completion of a course of study qualifying a person for registration, enrolment or authorisation mentioned in subparagraph (i); or
  - (i) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (h); or
  - (j) a contractor who accesses confidential information under a contract to provide information and communication technology or information management services to a Service or the department; or
  - (k) a volunteer carrying out duties at a public sector health service facility on behalf of a Service or the department; or
  - (l) an inspector; or
  - (m) another person prescribed under a regulation for this paragraph to be a designated person.
- (2) Any person who was a person mentioned in subsection (1) is also a *designated person*.

#### 140 Meaning of parent

- (1) A *parent* of a child is the child's mother, father or someone else having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

**141 Part does not apply to Act officials**

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

*Act official* means any of the following—

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

**Division 2 Confidentiality**

**Subdivision 1 Prohibited disclosure of confidential information**

**142 Confidential information must not be disclosed by designated persons**

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

Maximum penalty—100 penalty units.
- (2) For subsection (1), another person includes another designated person or a prescribed health practitioner.

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

**142A Confidential information must not be disclosed by prescribed health practitioners**

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

Maximum penalty—600 penalty units.

- (2) For subsection (1), another person includes another prescribed health practitioner or a designated person.
- (3) Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.

**Subdivision 2 Permitted disclosure of confidential information**

**143 Disclosure required or permitted by law**

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

- (c) information provided under this Act by the chief executive to the Commonwealth or an entity established under an Act of the Commonwealth;
  - (d) information provided to the administrator under part 3A, division 4;
  - (e) information provided to a prescribed health practitioner by a designated person by giving the prescribed health practitioner access to a prescribed information system for the purposes of section 161C.
- (3) A prescribed health practitioner may disclose confidential information if the disclosure is required or permitted by an Act or law.

**144 Disclosure with consent**

A designated person or prescribed health practitioner may disclose confidential information if—

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

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- (ii) the child's parent or guardian consents to the disclosure; or
  - (d) the person to whom the confidential information relates is a child and the disclosure of the confidential information is by a health professional who reasonably believes the disclosure of the information is in the child's best interests.

**145 Disclosure of confidential information for care or treatment of person**

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

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

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

*Example of communicated in general terms—*

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

- (b) is communicated by a health professional, under the recognised standards of the relevant health profession, to a person who, in the health professional's reasonable opinion, has a sufficient personal or professional interest in the health and welfare of the person to whom the information relates.

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

- a spouse, parent or child of the person

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

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

A designated person or prescribed health practitioner may disclose confidential information if—

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

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

- (1) A designated person may disclose confidential information if—
- (a) the disclosure is to a person for the protection, safety or wellbeing of a child; and
  - (b) the confidential information relates to someone other than the child mentioned in paragraph (a).
- (2) A prescribed health practitioner may disclose confidential information if—
- (a) the relevant chief executive believes, on reasonable grounds, the disclosure is necessary for the protection, safety or wellbeing of a child; and
  - (b) the confidential information relates to someone other than the child mentioned in paragraph (a); and
  - (c) the relevant chief executive has, in writing, authorised the disclosure.

**149 Disclosure for funding arrangements and public health monitoring**

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

**150 Disclosure for purposes relating to health services**

A designated person may disclose confidential information if—

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

**150A Disclosure for purposes related to approved research**

- (1) This section applies if the relevant chief executive gives a person (a *researcher*) written approval to carry out research.
- (2) A designated person may disclose confidential information about a person (a *participant*) for the purpose of conducting the research if—
  - (a) the disclosure is to the researcher; and
  - (b) the participant is an adult who has impaired capacity for consenting to participation in the research; and
  - (c) the tribunal under the *Guardianship and Administration Act 2000* or another person authorised under a law to make decisions for the participant consents to the participant's participation in the research.

*Example of a person authorised under a law—*

A statutory health attorney for an adult's health matter under the *Powers of Attorney Act 1998*.

- (3) In this section—

*impaired capacity* has the same meaning as impaired capacity under the *Guardianship and Administration Act 2000*.

*research* see the *Public Health Act 2005*, section 280, definition *research*.

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

- (1) A designated person may disclose confidential information if—
- (a) the disclosure is to the Commonwealth or another State, or an entity of the Commonwealth or another State and the disclosure—
    - (i) is required or allowed under an agreement—
      - (A) between the State or a Service and the Commonwealth, State or entity; and
      - (B) prescribed under a regulation for this paragraph; and
    - (ii) is considered by the relevant chief executive to be in the public interest and the chief executive states this in writing; or
  - (b) the disclosure is to an entity of the State and the disclosure—
    - (i) is required or allowed under an agreement—
      - (A) between the chief executive or a Service and the entity; and
      - (B) prescribed under a regulation for this paragraph; and
    - (ii) is considered by the relevant chief executive to be in the public interest and the chief executive states this in writing.
- (2) The Commonwealth, a State or entity that receives confidential information under an agreement under subsection (1)—
- (a) must not give it to anyone else unless allowed to do so by the agreement or in writing by the relevant chief executive; and
  - (b) must ensure the confidential information is used only for the purpose for which it was given under the agreement.

- (3) In this section—

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

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

**152 Disclosure to or by inspector**

A designated person may disclose confidential information if—

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

**153 Disclosure to Act officials**

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

**154 Disclosure to or by relevant chief executive**

- (1) A designated person or prescribed health practitioner may disclose confidential information if the disclosure is to a relevant chief executive for achieving the objects of this Act.
- (2) A relevant chief executive may disclose confidential information if the disclosure is for a function of the relevant chief executive under this Act.

**155 Disclosure to health practitioner registration board**

A designated person or prescribed health practitioner may disclose confidential information if the disclosure is to a board

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established under the Health Practitioner Regulation National Law or to the National Agency for the purposes of—

- (a) making, or giving information about, a complaint or notification about a person who is or was registered under the Health Practitioner Regulation National Law; or
- (b) answering questions or otherwise giving information as part of an investigation or a proceeding about a person who is or was registered under the Health Practitioner Regulation National Law.

**156 Disclosure to health ombudsman**

A designated person or prescribed health practitioner may disclose confidential information to the health ombudsman for the purpose of—

- (a) making, or giving information about, a complaint under the *Health Ombudsman Act 2013* or the Health Practitioner Regulation National Law (Queensland); or
- (b) answering questions or otherwise giving information as part of an investigation under the *Health Ombudsman Act 2013* about a person who is or was a health service provider under that Act; or
- (c) giving the health ombudsman information about health services; or
- (d) giving the health ombudsman aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services.

**157 Disclosure to person performing functions under Coroners Act 2003**

A designated person or prescribed health practitioner may disclose confidential information if the disclosure is to a person who requires the confidential information to perform a

function under the *Coroners Act 2003*, other than for the preparation of an annual report.

**158 Disclosure to lawyers**

A relevant chief executive may disclose confidential information if—

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

**159 Disclosure to Australian Red Cross Society**

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

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

**160 Disclosure of confidential information in the public interest**

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

- (a) the relevant chief executive of a Service or the department believes, on reasonable grounds, the disclosure is in the public interest; and
- (b) the relevant chief executive has, in writing, authorised the disclosure.

(2) The annual report of the Service or the department for a financial year under the *Financial Accountability Act 2009* must include a statement about—

- (a) the nature of any confidential information disclosed under subsection (1) during the financial year; and

- (b) the purpose for which the confidential information was disclosed.
- (3) However, the statement mentioned in subsection (2)(a) must not identify, directly or indirectly, the person to whom the confidential information relates.

### **160A Disclosure for purpose of Health Transparency Act 2019**

A designated person may disclose confidential information if the disclosure is to any of the following persons who is performing a function under, or relating to the administration of, the *Health Transparency Act 2019*—

- (a) the chief executive;
- (b) an employee of the department;
- (c) a contractor who is contracted to provide information and communication technology or information management services to the department.

### **161 Necessary or incidental disclosure**

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

*Examples of necessary or incidental disclosures—*

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

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

### **Division 3                      Access by external service provider to information system**

#### **161A Chief executive may authorise access to information system**

- (1) The chief executive may authorise an external service provider, or a person engaged by the external service provider, to access an information system.
- (2) The chief executive may authorise the access only if satisfied the access is necessary to enable the external service provider to provide a health service under an agreement between the chief executive or a Service and the service provider.
- (3) An authorisation under subsection (1)—
  - (a) must be in writing; and
  - (b) must describe the information system to which the authorisation relates; and
  - (c) may be given on conditions stated in the authorisation.

#### **161B External service provider may access confidential information under authorisation**

- (1) An external service provider that is the subject of an authorisation under section 161A, or a person engaged by the service provider, may access the information system under the authorisation.
- (2) For the purposes of the *Information Privacy Act 2009*, chapter 2, part 4—
  - (a) the external service provider is taken to be a bound contracted service provider; and

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- (b) the agreement between the chief executive or a Service and the service provider is taken to be a service arrangement; and
  - (c) the chief executive or the Service, as the case may be, is the contracting agency.

#### **Division 4                      Access by prescribed health practitioner to prescribed information system**

##### **161C Prescribed health practitioner may access prescribed information system and particular information**

- (1) A prescribed health practitioner may access a prescribed information system.
- (2) A prescribed health practitioner must not access information contained in a prescribed information system unless—
  - (a) the information is necessary for the prescribed health practitioner to facilitate the care or treatment of an individual; or
  - (b) the prescribed health practitioner accesses the information incidentally while accessing information mentioned in paragraph (a).

Maximum penalty—600 penalty units.

- (3) A prescribed health practitioner must comply with all conditions prescribed by regulation in relation to accessing a prescribed information system and any information contained in the system.

Maximum penalty—600 penalty units.

Hospital and Health Boards Act 2011

Part 8 Control of traffic and conduct on health services land

[s 162]

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## **Part 8                      Control of traffic and conduct    on health services land**

### **Division 1                      Interpretation**

#### **162      Definitions for pt 8**

In this part—

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

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

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

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

***personal details requirement*** see section 185(5).

***regulatory notice*** see section 175.

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

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**Division 2                      Authorised persons and security officers**

**163      Appointment of authorised persons**

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

**164      Appointment of security officers**

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

**165      Person may be appointed as authorised person and security officer**

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

**166      Appointment conditions and limit on powers**

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

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

**167 When office ends**

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

**168 Resignation**

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

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**169 Identity cards**

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

**170 Production or display of identity card**

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

**171 Return of identity card**

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

Hospital and Health Boards Act 2011

Part 8 Control of traffic and conduct on health services land

[s 172]

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Maximum penalty—10 penalty units.

### **Division 3                    Traffic control**

#### **172    Health services land for which authorised person may exercise powers**

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

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

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

#### **174    Authorised persons to control traffic on health services land**

- (1) An authorised person may control traffic on health services land and, for this purpose, may give directions to a person on the land.

- (2) The person given a direction must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

### 175 Regulatory notice

- (1) A health service chief executive may erect or display on, or at or near any vehicular entrance to, health services land, a notice (a *regulatory notice*) regulating the driving, parking or standing of vehicles on the land, including, for example—
- (a) fixing a maximum speed limit; or
  - (b) indicating a pedestrian crossing; or
  - (c) indicating a place where the driving, parking or standing of a vehicle is restricted or prohibited.

- (2) A person on health services land must comply with a regulatory notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

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

**176 Notices that contravention of regulatory notice an offence**

- (1) This section applies if a regulatory notice does not state that a contravention of the notice is an offence against this Act and the penalty for the offence.
- (2) A health service chief executive must erect or display at or near each vehicular entrance to health services land to which the regulatory notice relates, and other places the health service chief executive considers appropriate, notices stating that a contravention of a regulatory notice is an offence and the penalty for the offence.
- (3) The notice may contain any other information the health service chief executive considers appropriate.
- (4) The notice erected or displayed under this section must be easily visible to passers-by.

**177 Removal and detention of illegally parked or abandoned vehicles**

- (1) An authorised person may seize and remove a vehicle that the authorised person believes on reasonable grounds—
  - (a) is parked in contravention of a regulatory notice; or
  - (b) is abandoned.
- (2) The vehicle must be held at a safe place.
- (3) An authorised person may exercise the powers on the grounds mentioned in subsection (1)(a) only if—
  - (a) the authorised person believes on reasonable grounds that it is necessary or desirable to seize and remove the vehicle having regard to the safety and convenience of traffic on health services land; and
  - (b) the authorised person—
    - (i) can not immediately locate the driver of the vehicle; or

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- (ii) believes on reasonable grounds that the driver of the vehicle is not willing or able to remove the vehicle immediately.
- (4) As soon as is practicable and no later than 14 days after the vehicle is seized, a health service chief executive must give to the owner of the vehicle a written notice stating how the owner may recover the vehicle.
- (5) If the owner can not be ascertained or located within 14 days after the vehicle is seized, the notice may be given by publishing it in a newspaper circulating generally in the State.
- (6) If the vehicle was parked in contravention of a regulatory notice, the owner of the vehicle must pay to the relevant Service the cost of seizing, removing, holding and returning the vehicle.
- (7) In this section—  
*vehicle* includes a part of the vehicle and anything attached to, or contained in, the vehicle.

### **178 Disposal of unclaimed vehicles**

- (1) This section applies if the owner of a seized vehicle does not recover the vehicle within 2 months after notice is given to the owner under section 177(4) or (5).
- (2) After publishing a notice in a newspaper circulating generally in the State, a health service chief executive may sell the vehicle by public auction.
- (3) The notice must—
- identify the vehicle; and
  - state that the vehicle is to be sold by auction; and
  - state how the owner may recover the vehicle before the auction; and
  - state the time and place of the auction.

- (4) Compensation is not recoverable against a Service or the health service chief executive for the sale of a vehicle under this section.
- (5) In this section—  
*vehicle* includes a part of the vehicle and anything attached to, or contained in, the vehicle.

**179 Application of proceeds of sale**

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

**Division 4 Conduct on health services land**

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

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

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

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

**182 Conduct causing a public nuisance**

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

Maximum penalty—20 penalty units.

**183 Power to deal with persons causing a public nuisance**

- (1) This section applies if a security officer—
  - (a) finds a person contravening section 182; or
  - (b) finds a person in circumstances that leads the security officer to suspect on reasonable grounds that the person has just contravened section 182; or
  - (c) has information that leads the security officer to suspect on reasonable grounds that a person has just contravened section 182; or
  - (d) reasonably believes, having regard to the way a person is behaving, that the person's presence may pose a threat to the safety of anyone else on or leaving health services land; or
  - (e) has information that leads the security officer to believe, on reasonable grounds, a person's presence may pose a threat to the safety of anyone else on or leaving health services land; or

- (f) reasonably believes a person is on health services land without lawful justification or excuse.
  - (2) The security officer may direct the person to leave the health services land or a part of the health services land.
  - (3) The person must comply with the direction unless the person has a reasonable excuse for not complying with it.
- Maximum penalty—20 penalty units.

## **Division 5                      Requirements to give name and address and other matters**

### **185      Power to require name and address**

- (1) This section applies if an authorised person or security officer—
  - (a) finds a person committing an offence against this part; or
  - (b) finds a person in circumstances that lead the authorised person or security officer to reasonably suspect the person has just committed an offence against this part; or
  - (c) has information that leads the authorised person or security officer to reasonably suspect a person has just committed an offence against this part.
- (2) The authorised person or security officer may require the person to state the person's name and residential address.
- (3) The authorised person or security officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.

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- (4) When making a personal details requirement, the authorised person or security officer must give the person an offence warning for the requirement.
  - (5) A requirement under this section is a *personal details requirement*.

**186 Offence to contravene personal details requirement**

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

Maximum penalty—20 penalty units.

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

**187 Obstructing an authorised person or security officer**

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

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person or security officer and the authorised person or security officer decides to proceed with the exercise of the power, the authorised person or security officer must warn the person that—

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

- (3) In this section—

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

**188 Impersonating authorised person or security officer**

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

Maximum penalty—100 penalty units.

**Part 9 Health service investigations**

**189 Functions of health service investigators**

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

**190 Appointment of health service investigators**

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

**191 Appointment conditions and limit on powers**

- (1) A health service investigator holds office on any conditions stated in—
  - (a) the investigator’s instrument of appointment; or

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

### 192 When office ends

- (1) The office of a person as a health service investigator ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the investigator's resignation under section 193 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an investigator ends.
- (3) In this section—
- condition of office* means a condition under which the investigator holds office.

### 193 Resignation

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

**194 Powers of health service investigators**

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

*confidential information* means any information that—

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

**195 Giving health service investigator false or misleading information**

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

Maximum penalty—100 penalty units.
- (2) Subsection (1) applies to information or a document given in relation to an investigation under this part whether or not the

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information or document was given in response to a specific power under this part.

**196 Obstructing investigator**

- (1) A person must not obstruct a health service investigator exercising a power unless the person has a reasonable excuse.  
Maximum penalty—100 penalty units.
- (2) If a person has obstructed a health service investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the investigator considers the person’s conduct an obstruction.
- (3) In this section—  
*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

**197 Duty of confidentiality of health service investigators**

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

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

**198 Disclosure to person under Coroners Act 2003**

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

**199 Reports by health service investigators**

- (1) A health service investigator must prepare and provide a report to the appointer for each health service investigation.
- (2) In preparing the report, the health service investigator must—
  - (a) have regard to any report provided by a clinical reviewer under section 136; and
  - (b) attach the reviewer’s report to the investigator’s report.
- (3) The investigator’s report may include recommendations on ways in which the administration, management or delivery of public sector health services, including employment matters, can be improved.
- (4) Subsection (5) applies to a report provided to the chief executive after an investigation in a Service.

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- (5) After considering the report, the chief executive may issue a direction to the Service.
  - (6) The Service must comply with the direction.
  - (7) Subsection (8) applies to a report provided—
    - (a) to the chief executive after an investigation in the department; or
    - (b) to a health service chief executive after an investigation in the Service.
  - (8) After considering the report, the chief executive or the health service chief executive may take the action he or she considers appropriate in relation to the matters identified in the report.

**200 Chief executive may request report from health service chief executives**

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

**Part 10 Monitoring and enforcement**

**Division 1 Interpretation**

**201 Definitions for pt 10**

In this part—

*court* means a Magistrates Court.

*disposal order* see section 244(2).

*electronic document* means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

**former owner** see section 239(1).

**general power** see section 224(1).

**help requirement** see section 225(1).

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

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

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

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

**notice** means a written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

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

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

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

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***personal details requirement*** see section 245(5).

***person in control***—

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

***place*** includes the following—

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

***premises*** includes—

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

***public place*** means—

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

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

a beach, a park, a road

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

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

a saleyard, a showground

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

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

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

***vehicle***—

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

## **Division 2                    General provisions about inspectors**

### **Subdivision 1            Functions and appointment**

#### **202    Functions of inspectors**

An inspector has the following functions—

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

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**203 Appointment and qualifications**

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

**204 Appointment conditions and limit on powers**

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

*signed notice* means a notice signed by the chief executive.

**205 When office ends**

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

- (3) In this section—

*condition of office* means a condition under which the inspector holds office.

## **206 Resignation**

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

## **Subdivision 2 Identity cards**

### **207 Issue of identity card**

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

### **208 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
- (a) produce the inspector's identity card for the person's inspection before exercising the power; or

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

**209 Return of identity card**

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

Maximum penalty—10 penalty units.

**Subdivision 3 Miscellaneous provisions**

**210 References to exercise of powers**

If—

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

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

**211 Reference to document includes reference to reproductions from electronic document**

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

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

### **Division 3                    Entry of places by inspectors**

#### **Subdivision 1            Power to enter**

##### **212    General power to enter places**

- (1) An inspector may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 215 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 222 has been complied with for the occupier; or
  - (d) it is a public sector health service facility and is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

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## **Subdivision 2      Entry by consent**

### **213      Application of sdiv 2**

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

### **214      Incidental entry to ask for access**

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

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

### **215      Matters inspector must tell occupier**

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

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

### **216      Consent acknowledgement**

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—

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

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

### **Subdivision 3      Entry under warrant**

#### **217      Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.

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- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

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

**218 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
- (a) the place to which the warrant applies; and
  - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the inspector's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the day and time of the warrant's issue; and

- (i) the day, within 14 days after the warrant's issue, the warrant ends.

**219 Electronic application**

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

**220 Additional procedure if electronic application**

- (1) For an application made under section 219, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 219; and
  - (b) the way the application was made under section 219 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
  - (b) otherwise—

- 
- (i) the magistrate must tell the inspector the information mentioned in section 218(2); and
    - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 218(2) provided by the magistrate.
  - (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
  - (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
    - (a) the written application complying with section 217(2) and (3); and
    - (b) if the inspector completed a form of warrant under subsection (2)(b)—the completed form of warrant.
  - (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
    - (a) attach the documents to the original warrant; and
    - (b) give the original warrant and documents to the clerk of the court of the relevant Magistrates Court.
  - (6) Despite subsection (3), if—
    - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
    - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
  - (7) This section does not limit section 217.
  - (8) In this section—

*relevant Magistrates Court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

**221 Defect in relation to a warrant**

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

*warrant* includes a duplicate warrant mentioned in section 220(3).

**222 Entry procedure**

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

place is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

*warrant* includes a duplicate warrant mentioned in section 220(3).

## **Division 4                    General powers of inspectors after entering places**

### **223    Application of div 4**

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

### **224    General powers**

- (1) The inspector may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic

document to another place to produce an image or writing;

- (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this division;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
  - (3) If the inspector takes a document from the place to copy it, the inspector must copy and return the document to the place as soon as practicable.
  - (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

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

**225 Power to require reasonable help**

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

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- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

**226 Offence to contravene help requirement**

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

Maximum penalty—100 penalty units.

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

**Division 5 Seizure and forfeiture**

**Subdivision 1 Power to seize**

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

An inspector who enters a place the inspector may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

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

- (1) This section applies if—
- (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and

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

**229 Seizure of property subject to security**

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

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## Subdivision 2 Powers to support seizure

### 230 Requirement of person in control of thing to be seized

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

### 231 Offence to contravene seizure requirement

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

Maximum penalty—100 penalty units.

### 232 Power to secure seized thing

- (1) Having seized a thing under this division, an inspector may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—

(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

*Example—*

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

**233 Offence to contravene other seizure requirement**

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

Maximum penalty—100 penalty units.

**234 Offence to interfere**

(1) If access to a seized thing is restricted under section 232, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an inspector's approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If access to a place is restricted under section 232, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an inspector's approval; or

(b) a reasonable excuse.

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Maximum penalty—100 penalty units.

### **Subdivision 3      Safeguards for seized things**

#### **235      Receipt and information notice for seized thing**

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

- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

**236 Access to seized thing**

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

**237 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
  - (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 6.
- (2) The inspector must return the seized thing to an owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—
  - (a) its continued retention as evidence is no longer necessary; and

- (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
  - (c) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **238      Forfeiture by chief executive decision**

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

**239 Information notice about forfeiture decision**

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

**240 Forfeiture on conviction**

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

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**241 Procedure and powers for making forfeiture order**

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

**Subdivision 5 Dealing with property forfeited or transferred to State**

**242 When thing becomes property of the State**

A thing becomes the property of the State if—

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

**243 How property may be dealt with**

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

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

## Division 6                      Disposal orders

### 244      Disposal order

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

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

## **Division 7            Other information-obtaining powers**

### **245    Power to require name and address**

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

**246 Offence to contravene personal details requirement**

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

Maximum penalty—100 penalty units.

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

**247 Power to require information**

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

**248 Offence to contravene information requirement**

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

Maximum penalty—100 penalty units.

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

## **Division 8                      Miscellaneous provisions relating to inspectors**

### **Subdivision 1                  Damage**

#### **249      Duty to avoid inconvenience and minimise damage**

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

*Note—*

See also section 251.

#### **250      Notice of damage**

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

- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of an inspector's functions.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 251.

## **Subdivision 2 Compensation**

### **251 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under this part.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or lawful forfeiture.

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

*loss* includes costs and damage.

### **Subdivision 3      Other offences relating to inspectors**

#### **252      Giving inspector false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an inspector information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.
- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the

information or document was given in response to a specific power under this Act.

**253 Obstructing inspector**

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

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

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

- (3) In this section—

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

**254 Impersonating inspector**

A person must not impersonate an inspector.

Maximum penalty—100 penalty units.

**Division 9                      Reviews and appeals**

**255 Right of appeal**

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

*Note—*

Information notices are given under sections 235 and 239.

**256 Appeal process starts with internal review**

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

**257 How to apply for review**

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

- (b) does not apply to a decision made by the chief executive.

**258 Stay of operation of decision**

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

**259 Review decision**

- (1) The chief executive must, within 30 business days after receiving the application—
  - (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or

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

**260 Who may appeal**

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

**261 Procedure for an appeal to the court**

- (1) An appeal to the court is started by filing a notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the chief executive.
- (3) The notice of appeal must be filed within 28 days after the review notice day.

- (4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

**262 Stay of operation of review decision**

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

**263 Powers of court on appeal**

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

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- (b) set aside the review decision and substitute another decision; or
  - (c) set aside the review decision and return the matter to the chief executive with directions the court considers appropriate.

**264 Effect of decision of court on appeal**

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

**Part 11 Legal proceedings**

**Division 1 Application**

**265 Application of pt 11**

This part applies to a legal proceeding under this Act.

**Division 2 Evidentiary aids**

**266 Appointments and authority**

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

- (a) the chief executive's appointment;

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

## **267 Signatures**

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

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

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**268 Evidentiary provisions**

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

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

**Division 3 Offence proceedings**

**269 Summary offences**

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

**270 Limitation on time for starting proceedings for summary offence**

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

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

**271 Proceedings for indictable offences**

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

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

**272 Limitation on who may summarily hear indictable offence**

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

**273 Allegations of false or misleading information or document**

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

**Part 12 Miscellaneous**

**Division 1 Transfer notices**

**273A Transfer notice**

- (1) This section applies to each of the following interests held by the State or a Service—

- (a) freehold land;
  - (b) a lease under the *Land Act 1994*;
  - (c) a reserve under the *Land Act 1994*;
  - (d) any other interest in land.
- (2) The Minister may do any of the following by gazette notice (a *transfer notice*)—
- (a) transfer an interest held by the State to a Service;
  - (b) transfer an interest held by a Service to the State or another Service;
  - (c) transfer or grant, to the State or another Service, an associated interest;
  - (d) vary an associated interest held by the State or another Service.
- (3) A transfer notice may amend an earlier transfer notice, or a further transfer notice may be made, to correct an error in an earlier transfer notice.
- (4) A transfer notice may include conditions applying to something done or to be done under the notice.
- (5) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—
- (a) signed by the Minister; and
  - (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
- (6) A transfer notice has effect despite any other law or instrument.
- (7) A transfer notice—
- (a) has effect on the day it is published in the gazette or another day stated in the notice; and

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- (b) may have retrospective operation to a day not earlier than the day this section commences.
  - (8) The transfer of a liability of the State under a transfer notice discharges the State from the liability, except to the extent stated in the notice.
  - (9) No government duties, fees or charges are payable for anything done under a transfer notice.
  - (10) In this section—
    - associated interest* means a lease, easement, occupancy right, contract, agreement, asset, liability, licence, instrument or other right, function or obligation associated with an interest transferred under subsection (2)(a) or (b).
    - earlier transfer notice* includes an earlier transfer notice under section 307.

### **273B Registering authority to note transfer or other dealing**

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
  - (a) may, without formal application, register or record in the appropriate way a transfer or other dealing affecting an asset or liability under a transfer notice; and
  - (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity
- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.

- (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.
- (4) In this section—
- transferee entity* means the entity to which an asset or liability is transferred under a transfer notice.
- transferor entity* means the entity from which an asset or liability is transferred under a transfer notice.

**273C Decisions not reviewable**

- (1) Unless the Supreme Court decides that a decision relating to a transfer notice is affected by jurisdictional error, the decision—
- (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity); and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
- decision*, relating to a transfer notice, includes—
- (a) a decision to give a transfer notice; and
  - (b) a decision or conduct leading up to or forming part of the process of making a decision to give a transfer notice.

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**273D Effect on legal relationships**

- (1) Nothing done under a transfer notice—
- (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or
    - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
    - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iv) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under a transfer notice, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

*Example—*

A contract entered into by the State provides that the State agrees not to transfer a particular asset without a particular person's consent and that, if the consent is given, it may be subject to particular conditions. If the

asset is transferred to another entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

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

### **273E Things done under transfer notice**

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

## **Division 2                    General provisions**

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

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

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

**275 Governor in Council may dismiss members of board**

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

**276 Governor in Council may appoint administrator for Service**

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

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

**277 Term and role of administrator**

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

**278 Ministerial advisory committees**

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

**279 Delegation by Minister**

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

- (c) the function to appoint a person to be an adviser to a board under section 44A; or
- (d) the functions under part 3A, division 4 in relation to the appointment, suspension or removal of the administrator; or
- (e) the function to grant a temporary exemption, or extend a temporary exemption, under section 138C.

## **280 Protecting officials**

- (1) This section applies to each of the following persons—
  - (a) a member of a board;
  - (b) a member of a committee of a board;
  - (c) a health service chief executive;
  - (d) a health service auditor, clinical reviewer or health service investigator appointed by a health service chief executive;
  - (e) an authorised person or security officer;
  - (f) the chief executive;
  - (g) a health service auditor, clinical reviewer or health service investigator appointed by the chief executive;
  - (h) an inspector or a person acting under the direction or authority of an inspector;
  - (i) the administrator appointed under section 53K.
- (2) The person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to—
  - (a) for a person mentioned in subsection (1)(a) to (e)—the Service; or
  - (b) for a person mentioned in subsection (1)(f) to (i)—the State.

**281 Approval of forms**

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

**282 Regulation-making power**

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

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

Hospital and Health Boards Act 2011

Part 13 Repeal, savings and transitional provisions

[s 283]

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

### **Division 1**                      **Repeal**

#### **283**      **Repeal of Health Services Act 1991**

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

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

#### **284**      **Definitions for div 2**

In this division—

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

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

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

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

#### **285**      **Existing health service employees**

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

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

**286 Existing health executives employed in health service districts**

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

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

**287 Chief health officer**

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

**288 Continued appointment of inspectors**

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

**289 Continued appointment of authorised persons**

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

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

**290 Continued appointment of security officers**

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

**291 Continued appointment of auditors**

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

**292 Continued appointment of investigators**

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

**293 Continuation of RCA teams**

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

**294 Continuation of quality assurance committees**

- (1) This section applies to a quality assurance committee established under the repealed Act.

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- (2) The committee continues in force under this Act and is taken to be established by the entity prescribed under a regulation.

**295 Continuation of Ministerial advisory committees**

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

**296 Health service audits**

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

**297 Health service investigations**

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

**298 Regulatory notices and information notices**

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

**299 Authorisations and considerations by chief executive**

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

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

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

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**301 Applications under Information Privacy Act 2009, s 99**

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

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

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

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

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

**304 Applications under Right to Information Act 2009, s 85**

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

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

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

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

**306 Assistance must be provided**

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

**307 Transfer notice**

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

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

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

- (5) The transfer of a liability of the State under a transfer notice discharges the State from the liability, except to the extent stated in the notice.
- (6) A transfer notice has effect despite any other law or instrument.
- (7) A transfer notice—
  - (a) has effect on the day it is published in the gazette or another day stated in the notice; and
  - (b) may have retrospective operation to a day not earlier than the day this section commences.
- (8) If a transfer notice makes provision for a matter under subsection (2)(i) in relation to an instrument, the responsible entity for the instrument must take the action necessary to register or record the effect of the transfer notice, including—
  - (a) updating a register or other record; and
  - (b) amending, cancelling, issuing or transferring an instrument.
- (9) No government duties, fees or charges are payable for anything done under a transfer notice under this section.
- (10) A transfer notice must not be made under this section after 30 June 2013.
- (11) In this section—

*authority* includes accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.

*instrument* includes an application or authority under an Act.

*responsible entity*, for an instrument, means the entity required or authorised by law to register or record matters in relation to the instrument.

### 308 Decisions not reviewable

- (1) A decision relating to a transfer notice—

- (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
- decision** includes—
- (a) a decision to give a transfer notice; and
  - (b) a decision or conduct leading up to or forming part of the process of making a decision.

**309 Severability**

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

**310 Registering authority to note transfer or other dealing**

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

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

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

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

### 311 Effect on legal relationships

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

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

*Example—*

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

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

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

Hospital and Health Boards Act 2011

Part 13 Repeal, savings and transitional provisions

[s 312]

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**312 Things done under transfer notice**

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

**313 Requirement for Service to develop engagement strategies**

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

**314 Requirement for Service to develop protocol**

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

**315 Advertising for members of boards before commencement**

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

**316 Reporting obligations for prescribed public hospitals to continue**

- (1) This section applies to the obligations under the repealed Act, part 4A about reporting the performance of prescribed public hospitals.
- (2) The obligations under the repealed Act, part 4A continue to apply until a day prescribed by regulation.

**317 When chief executive may decide service agreement**

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

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

**319A Definitions for div 3**

In this division—

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

*commencement* means 1 July 2012.

Hospital and Health Boards Act 2011

Part 13 Repeal, savings and transitional provisions

[s 319B]

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

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

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

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

**Division 4 Transitional provisions for the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013**

**320 Senior health service employees**

Section 74A applies to a person appointed as a health service employee, whether the appointment was made before or after the commencement of the section.

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**Division 5**                      **Transitional provision for Health  
and Other Legislation Amendment  
Act 2014**

**322**      **Transitional provision for chain of event documents**

- (1) This section applies if, before the commencement, an RCA team conducting an RCA of a reportable event prepared a chain of events document in relation to the event.
- (2) Part 6, division 2, subdivisions 5 and 6, as in force immediately before the commencement, continue to apply in relation to the chain of events document as if the *Health and Other Legislation Amendment Act 2014* had not been enacted.
- (3) In this section—  
*chain of events document* see section 100(2) as in force from time to time before the commencement.

**Division 6**                      **Transitional provisions for  
Industrial Relations (Restoring  
Fairness) and Other Legislation  
Amendment Act 2015**

**323**      **Definitions for div 6**

In this division—

*amending Act* means the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015*.

*commission* means the Queensland Industrial Relations Commission.

*interim SMO contract* means—

- (a) a continuing contract within the meaning of the *Industrial Relations Act 1999*, section 854A(1), under which a senior medical officer is engaged; or

- (b) a contract entered into with a senior medical officer—
  - (i) on or after the commencement; and
  - (ii) before an agreement is certified, or an arbitration determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers all senior medical officers.

***pre-modernisation health agreement*** means the ‘Medical Officers’ (Queensland Health) Certified Agreement (No. 3) 2012’.

***pre-modernisation health award*** means—

- (a) the ‘District Health Services - Senior Medical Officers and Resident Medical Officers’ Award - State 2012’; or
- (b) the ‘Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals, Award - State 2012’.

***pre-modernisation health instruments*** means each of the following—

- (a) a pre-modernisation health award;
- (b) the pre-modernisation health agreement.

***senior medical officer*** means a senior health service employee employed in a position at a classification level mentioned in the *Hospital and Health Boards Regulation 2012*, schedule 1A, part 1.

### **324 Pre-modernisation industrial instruments**

- (1) Despite the repeal of the *Industrial Relations Act 1999*, chapter 6A by the amending Act, a pre-modernisation industrial instrument does not apply to a senior medical officer from the commencement.
- (2) Subsection (1) applies subject to section 326.

- (3) On reaching its nominal expiry date, the pre-modernisation health agreement does not become a continuing agreement under the *Industrial Relations Act 1999*, section 827(2).
- (4) In this section—  
*pre-modernisation industrial instrument* see the *Industrial Relations Act 1999*, schedule 5.

**325 Making of order by commission to apply pre-modernisation health instruments to senior medical officers**

- (1) This section starts applying on 1 August 2015.
- (2) Subject to subsection (4), a person mentioned in subsection (3) may apply to the commission for an order to apply the pre-modernisation health instruments to senior medical officers.
- (3) The application may be made by—
  - (a) the chief executive; or
  - (b) an employee organisation, within the meaning of the *Industrial Relations Act 1999*, that is a party to the pre-modernisation health agreement.
- (4) An application may not be made under subsection (2) if section 327 has started applying to all senior medical officers.
- (5) If an application is made under subsection (2), the commission must make an order declaring that the pre-modernisation health instruments apply to senior medical officers.
- (6) However, subsection (5) does not apply if the applicant withdraws the application before the order is made.

**326 Effect of pre-modernisation instrument order**

- (1) This section applies if the commission makes an order under section 325(5).

- (2) From the start of a senior medical officer's first full pay period that starts on or after the day the order is made—
  - (a) subject to subsection (3) and section 327(3), the pre-modernisation health instruments apply to the senior medical officer; and
  - (b) the senior medical officer's interim SMO contract is terminated, other than to the extent it provides for the senior medical officer's private practice and employment details.

*Note—*

While the pre-modernisation health instruments apply to the senior medical officer, the employment conditions under the *Industrial Relations Act 1999*, chapter 2 apply to the officer—see sections 8AA and 71B of that Act.

- (3) Clause 4.11 of the pre-modernisation health agreement does not apply to the senior medical officer despite the making of the order.

*Note—*

Clause 4.11 of the pre-modernisation health agreement is about private practice arrangements.

- (4) The operation of subsection (2) does not—
  - (a) constitute a termination of the senior medical officer's employment; or
  - (b) entitle the senior medical officer to a payment of money or other compensation.
- (5) In this section—

*employment details*, in relation to an interim SMO contract, means a matter provided for under schedule 2, items 1 to 8 (other than item 8a) of the contract.

**327 Making of new certified agreement or determination**

- (1) This section applies to a senior medical officer if, after the commencement, a new agreement is certified, or an arbitration

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determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers the senior medical officer.

- (2) If immediately before the relevant day the pre-modernisation health instruments do not apply to the senior medical officer under section 326, the senior medical officer's interim SMO contract is terminated on the relevant day.
- (3) If immediately before the relevant day the pre-modernisation health instruments apply to the senior medical officer under section 326, on the relevant day—
  - (a) the senior medical officer's interim SMO contract is terminated to the extent it provided for a matter mentioned in section 326(2)(b); and
  - (b) the pre-modernisation health instruments stop applying to the senior medical officer.
- (4) The operation of subsection (2) or (3) does not—
  - (a) constitute a termination of the senior medical officer's employment; or
  - (b) entitle the senior medical officer to a payment of money or other compensation.
- (5) In this section—

*relevant day* means the day the agreement mentioned in subsection (1) is certified, or the arbitration determination mentioned in subsection (1) is made, as the case may be.

### **328 Application of amended s 75**

Section 75 as amended by the amending Act applies to a decision made, or a matter otherwise arising, on or after the commencement.

## **Schedule 1      Conduct of business by boards**

section 32

### **1      Application of sch 1**

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

### **2      Conduct of business by board**

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

### **3      Times and places of meetings**

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

### **4      Quorum**

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

### **5      Presiding at meetings**

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

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**6 Conduct of meetings**

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

*Example of use of technology—*

teleconferencing

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

**7 Minutes**

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

**8 Committees**

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

*Note—*

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

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

**9 Disclosure of interests**

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

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

## Schedule 2 Dictionary

section 14

*Editor's note—*

Replacement of the definitions *excluded notifiable conduct* and *public risk notifiable conduct* are uncommenced amendments—see 2019 Act No. 3 s 32.

**Act official** see section 141(2).

**administrator**—

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

**ancillary board** means a Hospital and Health Ancillary Board.

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

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

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

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

**appointer** means—

- (a) for a health service audit under part 4, division 2—a person who appoints a health service auditor under section 56; or

- (b) for a clinical review under part 6, division 3—a person who appoints a clinical reviewer under section 125; or
- (c) for part 8—the person who appoints an authorised person under section 163 or a security officer under section 164; or
- (d) for a health service investigation under part 9—a person who appoints a health service investigator under section 190.

**approved form** means a form approved by the chief executive.

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

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

**award** see the *Industrial Relations Act 2016*, schedule 5.

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

**board** means a Hospital and Health Board.

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

*Examples—*

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

**certified agreement** see the *Industrial Relations Act 2016*, schedule 5.

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

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

**chief psychiatrist** see the *Mental Health Act 2016*, schedule 3.

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

***clinical reviewer*** means a clinical reviewer appointed under section 125.

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

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

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

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

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

***confidential information***, for part 7, see section 139.

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

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

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

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

***court***, for part 10, see section 201.

***designated person***, for part 7, see section 139.

***disposal order***, for part 10, see section 201.

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

***electronic document***, for part 10, see section 201.

***enrolled nurse***, for part 6, division 5, see section 138G.

***excluded notifiable conduct***, for a registered health practitioner, means—

- (a) practising the practitioner’s profession while intoxicated by alcohol or drugs; or

- (b) practising the practitioner's profession in a way that constitutes a significant departure from accepted professional standards but not in a way that places the public at risk of substantial harm; or
- (c) engaging in sexual misconduct in connection with the practice of the practitioner's profession.

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

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

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

**former owner**, for part 10, see section 201.

**functions** includes powers.

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

**general power**, for part 10, see section 201.

**guardian**, for part 7, see section 139.

**health employment directive** means a health employment directive issued by the chief executive under section 51A.

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

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

**health ombudsman** means the health ombudsman under the *Health Ombudsman Act 2013*.

**health professional** means—

- (a) a person registered under the Health Practitioner Regulation National Law; or
- (b) a person, other than a person referred to in paragraph (a), who provides a health service, including, for example, an audiologist, dietitian or social worker.

**health service** see section 15.

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

**health service audit** see section 55(2).

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

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

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

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

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

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

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

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

**help requirement**, for part 10, see section 201.

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

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

**Hospital and Health Service**—

- (a) for part 3A, division 4—has the meaning given in section 53I; and

- (b) otherwise—means a Hospital and Health Service established under section 17.

***identity card***—

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

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

***industrial instrument*** see the *Industrial Relations Act 2016*, schedule 5.

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

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

***information notice***, for part 10, see section 201.

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

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

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

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

***major capital works*** means the capital works prescribed by regulation.

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

***midwife***, for part 6, division 4, see section 138A.

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

***misconduct***, for a member of a board, means—

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

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

***national clinical standards*** means clinical standards the Commonwealth and the States have agreed apply to health services, including standards developed by the Australian Commission on Safety and Quality in Health Care.

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

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

***notice***, for part 10, see section 201.

***nurse***—

(a) [for part 6, division 4, see section 138A; or](#)

(b) [for part 6, division 5, see section 138G.](#)

~~***nurse***, for part 6, division 4, see section 138A.~~

***nursing and midwifery regulation***, for part 6, division 4, see section 138A.

***nursing and midwifery workload management information***, for part 6, division 4, see section 138A.

***occupier***, for part 10, see section 201.

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

***offence warning***—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

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

***owner***—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

**parent**, for part 7, see section 139.

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

**personal details requirement**—

(a) for part 8—see section 162; or

(b) for part 10—see section 201.

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

**place**, for part 10, see section 201.

**premises**, for part 10, see section 201.

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

**prescribed health practitioner**, for part 7, see section 139.

**prescribed information system**, for part 7, see section 139.

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

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

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

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

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

**public place**, for part 10, see section 201.

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

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

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

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

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

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

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

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

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

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

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

**reasonably believes**, for part 10, see section 201.

**reasonably suspects**, for part 10, see section 201.

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

**registered health practitioner** means an individual who—

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

**registered nurse**, for part 6, division 5, see section 138G.

**regulatory notice**, for part 8, see section 162.

**relevant chief executive** means—

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

**relevant health practitioner**, for part 7, see section 139.

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

**relevant person** means—

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

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

**repealed Act** means the *Health Services Act 1991*.

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

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

**resident, at a State aged care facility, for part 6, division 5, see section 138G.**

**residential care, for part 6, division 5, see section 138G.**

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

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

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

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

**senior health service employee** see section 74A.

**Service** means a Hospital and Health Service.

**service agreement**, for a Service, see section 16.

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

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

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

**State aged care facility**, for part 6, division 5, see the *Public Health Act 2005*, section 61A.

**State aged care facility regulation**, for part 6, division 5, see section 138G.

**State aged care facility workload management information**, for part 6, division 5, see section 138G.

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

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

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

*Examples of business support service—*

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

*Examples of clinical support service—*

- a pathology service
- a blood management service

**support worker**, for part 6, division 5, see section 138G.

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

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

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

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

**transfer notice**—

- (a) for part 12, division 1—see section 273A(2); or
- (b) for part 13—see section 307(2).

**vehicle**—

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

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

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

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

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