



Health Services Act 1991

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Also see endnotes for information about—

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Queensland

Health Services Act 1991

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Health Services Act 1991

[as amended by all amendments that commenced on or before 2 November 2009]

An Act to provide for and in respect of the organisation, management and delivery of certain health services and the establishment of health community councils, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Services Act 1991*.

2 Definitions

In this Act—

applicable provisions, for part 7A, see section 63.

applied law, for a health service employee, means the provisions of the *Public Service Act 2008* as applied, under a regulation under section 23 of that Act, to the employee.

appoint, a person as a health service employee, means—

- (a) for a person who is a public service officer or is already a tenured health service employee—promote or redeploy the officer or employee; or
- (b) for another person—employ the person as a health service employee.

appointed day means 1 July 1991.

auditor means a person holding office as an auditor under an appointment under section 52.

Australian Health Care Agreement means the agreement dated 31 August 2003 between the Commonwealth and the State entered into under the *Health Care (Appropriation) Act 1998* (Cwlth).

authorised person means a person holding office as an authorised person under an appointment under section 39.

award means an award under the *Industrial Relations Act 1999* or *Workplace Relations Act 1996* (Cwlth).

blameworthy act, for part 4B, division 4, see section 38O.

case mix funding arrangement means the arrangement for funding public sector health services that includes the system of funding based on the classification of patient care episodes.

casual health service employee see section 24.

chain of events document, for part 4B, see section 38G.

chairperson, of a council, means the chairperson of the council.

chief health officer means the chief health officer under section 57B.

commencement, for part 9, division 6, see section 83.

commissioning authority, for part 4B, see section 38G.

committee, for part 4, division 2, see section 30.

confidential information, for part 7, see section 60.

contracted health service employee see section 24.

coroner, for part 4B, see section 38G.

council means a health community council established under section 28L.

designated person, for part 7, see section 60.

directive means—

- (a) a directive issued under section 27; or
- (b) a directive issued under the *Public Service Act 2008* that is binding on health service employees.

dissolved authority means a regional health authority formerly in existence under this Act.

district means a health service district declared under section 6.

elective surgery, for part 4A, see section 38A.

elective surgery waiting list, for part 4A, see section 38A.

former council, for part 9, division 6, see section 83.

former designated person, for part 7, see section 60.

funding arrangement, for a public sector health service, means the arrangement for funding the health service, and includes—

- (a) the arrangement for funding public sector health services under the Australian Health Care Agreement; and
- (b) the case mix funding arrangement; and
- (c) the resource allocation funding model.

guardian, for part 7, see section 60.

health executive means a person who is appointed, under section 28E, as a member of the health executive service.

health executive service means the health executive service established under section 28A.

health practitioner registration Act, for part 7, see section 60.

health professional, for part 7, see section 60.

Health Quality and Complaints Commission means the Health Quality and Complaints Commission established under the *Health Quality and Complaints Commission Act 2006*.

health service see section 3.

health service area means a health service area declared under section 6A.

health service area plan, for a health service area, means a plan that guides the development and delivery of public sector health services in the health service area.

health service employee means a person appointed under section 24.

health service facility, for part 4B, see section 38G.

health services agreement, for a district, means an administrative arrangement between the general manager of the health service area in which the district is situated and the manager for the district, about the delivery in the district of the public sector health services under the arrangement and funds for their delivery.

health services land means land and buildings from which public sector health services are delivered.

higher classification level means a classification level that is a higher classification level under a directive.

hospital includes any premises for the reception and treatment of the sick.

industrial agreement means an industrial agreement, certified agreement or enterprise flexibility agreement under the *Industrial Relations Act 1999*.

information, for part 4B, division 5, see section 38R.

inspector means a person appointed under section 63A as an inspector.

investigator means a person holding office as an investigator under an appointment under section 52.

lower classification level means a classification level that is a lower classification level under a directive.

manager, for a district, means the person appointed as the manager for the district under section 22.

member means a member of a council.

notice, for part 4B, see section 38G.

official means an auditor or investigator.

official traffic sign has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

owner, of a vehicle, includes the person registered as the owner of the vehicle under—

- (a) the *Transport Operations (Road Use Management) Act 1995*; or

(b) the corresponding law of another State or a Territory.

parent, for part 7, see section 60.

performance agreement means an agreement that states the criteria against which the performance of a person in an employment position is to be assessed.

personal details requirement see section 63ZB(5).

prescribed public hospital, for part 4A, see section 38A.

private health facility, for part 4B, see section 38G.

promote, a public service officer or tenured health service employee, means employ the officer or employee at a higher classification level (whether or not on different duties), other than temporarily.

public hospitals performance report, for part 4A, see section 38A.

public sector health service means a health service provided by the State, 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 see section 60.

public sector hospital means a hospital operated by the State.

public service officer means a public service officer within the department.

RCA report, for part 4B, see section 38G.

RCA team see section 38G.

redeploy, a public service officer or tenured health service employee, means employ the officer or employee, with the officer or employee's consent, at a lower classification level (whether or not on different duties), other than temporarily.

regulatory notice see section 44.

relevant person, for part 4, division 2, see section 30.

relevant person, for part 4B, see section 38G.

reportable event see section 38G.

reprisal means a reprisal as mentioned in section 38ZF(3).

resource allocation funding model means the arrangement for funding public sector health services delivered in a health service area based mainly on the number, composition and health service needs of the area's residents.

root cause analysis or **RCA** see section 38H.

security officer means a person holding office as a security officer under an appointment under section 39.

stated public hospital, for part 4A, see section 38A.

State-wide health service, for part 3C, see section 28ZB.

State-wide health services plan means the plan that guides the development and delivery of public sector health services in Queensland.

surgical outpatient waiting list, for part 4A, see section 38A.

takes a reprisal means the taking of a reprisal as mentioned in section 38ZF(3).

teaching hospital means a hospital approved as a teaching hospital under section 29.

temporarily means for a period limited by time, whether or not the time has been fixed.

temporary health service employee see section 24.

tenured health service employee see section 24.

transition period, for part 9, division 6, see section 83.

user see section 3A.

vehicle has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

3 Meaning of health service

- (1) A **health service** is a service for maintaining, improving or restoring people's health and wellbeing.
- (2) Without limiting subsection (1), a health service includes—
 - (a) a service provided to a person at a hospital, nursing home, 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 childhood immunisation program

- (3) In addition, a health service includes any administrative or other support service directly related to a health service.

Examples of support services—

catering and laundry services provided at a hospital

3A Meaning of *user*

- (1) *User*, of a public sector health service, means an individual who uses or receives the public sector health service.
- (2) An individual is not a user of a public sector health service merely because the individual arranges a public sector health service for another individual.

4 Objects of Act

- (1) The objects of this Act are to—
 - (a) protect and promote health; and
 - (b) help prevent and control illness and injury; and
 - (c) provide for the treatment of the sick.
- (2) The objects are to be achieved primarily by—
 - (a) establishing organisational arrangements for the delivery of public sector health services in the State; and
 - (b) establishing health community councils to foster community engagement in relation to, and monitor, the delivery of public sector health services; and

- (c) requiring the chief executive to prepare and give the Minister reports about the performance of certain public sector hospitals.

4A Guiding principles

The principles intended to guide the achievement of this Act's objects include the following—

- (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) there should be responsiveness to the needs of users of public sector health services about the delivery of public sector health services;
- (d) information about the delivery of public sector health services should be provided to the community in an open and transparent way;
- (e) 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;
- (f) there should be openness to complaints from users of public sector health services and a focus on dealing with the complaints quickly and transparently;
- (g) there should be collaboration with clinicians in planning, developing and delivering public sector health services;
- (h) opportunities for research and development relevant to the delivery of public sector health services should be promoted;
- (i) opportunities for training and education relevant to the delivery of public sector health services should be promoted.

5 Act binds Crown

This Act binds the Crown in right of the State, and, as far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 Health service districts and areas**6 Health service districts**

The Governor in Council may, by gazette notice—

- (a) declare an area of the State, a public sector hospital or other public sector health service facility to be a health service district; and
- (b) assign a name to the district.

6A Health service areas

The Governor in Council may, by gazette notice—

- (a) declare a health service area comprising 1 or more districts; and
- (b) assign a name to the health service area.

Part 2A Chief executive's responsibility and functions**6B Responsibility**

The chief executive, subject to the Minister, has the overall responsibility for the management, administration and delivery of public sector health services in the State.

7 Functions

- (1) The chief executive has the following functions under this Act—
 - (a) providing strategic leadership and direction in relation to the delivery of public sector health services, so as to protect, promote and maintain the health of Queensland residents;
 - (b) ensuring the development of a State-wide health services plan;
 - (c) ensuring available resources for the delivery of public sector health services are used effectively and efficiently;
 - (d) entering into performance agreements with general managers appointed for health service areas;
 - (e) entering into performance agreements with health executives, other than health executives who have entered into performance agreements with general managers appointed for health service areas;
 - (f) performing other functions given to the chief executive under this Act.
- (2) In performing the functions the chief executive must have regard to the objects of, and guiding principles for, this Act.

Part 2B General managers**21A Appointment of general managers**

- (1) There is to be a general manager appointed for each health service area.
- (2) The general manager is to be a health executive.

21B General manager's functions

- (1) The general manager of a health service area has the following functions—

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- (a) leading the delivery of public sector health services in the health service area to ensure the services are of high quality, safe and cost-effective;
 - (b) leading the delivery of particular public sector health services, within and outside the health service area, as directed by the chief executive;
 - (c) ensuring the development of a health service area plan for the health service area that complements the State-wide health services plan;
 - (d) allocating available resources to a public sector health service delivered in the health service area in accordance with—
 - (i) the health service area plan for the health service area; and
 - (ii) any funding arrangement for the public sector health service;
 - (e) developing a health services agreement for each district situated in the health service area;
 - (f) entering into a performance agreement with the manager for each district situated in the health service area;
 - (g) performing other functions as directed by the chief executive.
- (2) In performing the functions, the general manager—
- (a) is subject to the chief executive; and
 - (b) must have regard to the objects of, and guiding principles for, this Act.

Part 2C Managers for districts

22 Appointment of managers for districts

- (1) There is to be a manager appointed for each district.
- (2) The manager is to be a health executive.

23 Functions of manager for a district

- (1) The manager for a district has the following functions—
 - (a) managing the delivery of public sector health services in the district in accordance with the health services agreement for the district;
 - (b) implementing the health service area plan for the health service area in which the district is situated, in so far as the plan relates to the district;
 - (c) effectively and efficiently applying available resources for the performance of the manager's functions;
 - (d) ensuring there is a system to deal with any complaints from users of public sector health services delivered in the district;
 - (e) ensuring each council for the district has the administrative support services reasonably required to perform the council's functions effectively and efficiently;
 - (f) giving each council for the district written reports about the quality and safety of, and access to, public sector health services delivered in the district;
 - (g) performing other functions as directed by the chief executive or relevant general manager for the district.
- (2) In performing the functions, the manager—
 - (a) is subject to the chief executive and relevant general manager for the district; and
 - (b) must have regard to the objects of, and guiding principles for, this Act.

(3) In this section—

relevant general manager, for a district, means the general manager appointed for the health service area in which the district is included.

Part 3 Health service employees

24 Appointment of health service employees

- (1) The chief executive or the general manager appointed for a health service area may appoint a person, as a health service employee, in an administrative unit of the department prescribed under a regulation.
- (2) Appointment as a health service employee is—
 - (a) on tenure (a *tenured health service employee*); or
 - (b) on contract for a fixed term (a *contracted health service employee*); or
 - (c) on a temporary basis (a *temporary health service employee*); or
 - (d) on a casual basis (a *casual health service employee*).

25 Health service employees not public service employees

A health service employee is not a public service employee.

26 Basis of employment

- (1) Appointment as a tenured, contracted or temporary health service employee is on the basis of full-time or part-time employment.
- (2) A person appointed as a contracted health service employee must enter into a written contract of employment with the chief executive or the general manager appointed for a health service area.

27 Directives issued by Governor in Council

- (1) The Governor in Council may issue directives about the employment of health service employees.

Example of directive—

a directive issued about the selection process for health service employees

- (2) A directive—
- (a) is to be issued by gazette notice; and
 - (b) is binding on the employees to whom it applies.
- (3) If a directive issued under this section is inconsistent with this or another Act or subordinate legislation under this or another Act, the Act or subordinate legislation prevails over the directive to the extent of the inconsistency.
- (4) This section does not apply to a health executive.

28 Conditions of employment

- (1) A health service employee's conditions of employment are governed by—
- (a) the applied law; and
 - (b) an award, industrial agreement or directive that is binding on the employee; and
 - (c) if the employee is a contracted health service employee—the employee's contract.
- (2) In addition, the chief executive may make determinations about the conditions of employment of health service employees.
- (3) A determination has effect subject to subsection (1).
- (4) However, the chief executive may determine conditions of employment for health service employees that are more favourable than those contained in an award or industrial agreement binding on the employee.
- (5) This section does not apply to a health executive.

Part 3A Health executive service

28A Health executive service established

The health executive service is established.

28B Purpose of health executive service

The health executive service is established 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.

28C Principles of health executive service employment

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

- (a) develop a State-wide perspective about the delivery of public sector health services; and
- (b) continue their executive development; and
- (c) develop their skills through their deployment within and outside the department.

28D Composition of health executive service

The health executive service consists of the following—

- (a) general managers appointed for health service areas;
- (b) managers for districts;
- (c) other persons appointed under this part as health executives.

28E Appointment of health executives

- (1) The chief executive may appoint a person to be a health executive.
- (2) At the time of the appointment, the person must—
 - (a) be a health service employee; or

- (b) also be appointed by the chief executive as a health service employee.

28F Basis of employment for health executives

- (1) Each person appointed as a health executive must enter into a written contract of employment with the chief executive.
- (2) The person's conditions of employment are governed by this Act and the contract.
- (3) The contract of employment must state—
 - (a) the term, 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 set by the chief executive; and
 - (e) the person's classification level, and the remuneration to which the person is entitled; and
 - (f) that the person may resign by signed notice of resignation given to the chief executive at least 1 month before the notice is to take effect; and
 - (g) that the person's appointment and contract of employment may be terminated by the chief executive by written notice signed by the chief executive and given to the person at least 1 month before it is to take effect.

28G Performance review

- (1) A health executive's performance in that capacity must be reviewed, at least annually, by the chief executive.
- (2) The review must have regard to any performance criteria, including, for example, performance criteria contained in—
 - (a) the contract of employment between the chief executive and health executive; and

- (b) the performance agreement for the relevant employment position.

28H 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 1999*.
- (2) However, this section has no effect on the *Industrial Relations Act 1999*, section 276.
- (3) Without limiting subsection (1), awards and industrial agreements do not apply to a health executive.
- (4) 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*.
- (5) 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.

28I Fixing of remuneration packages and classification levels for health executives

- (1) The chief executive may from time to time fix the remuneration packages for health executives and the classification levels at which they are to be employed.
- (2) In exercising the chief executive's powers under subsection (1), the chief executive must have regard to—
 - (a) despite section 27(4), any relevant directives issued under section 27; and
 - (b) the remuneration packages and classification levels for public sector employees employed in Queensland or other States; and

- (c) the remuneration arrangements for similar private sector employees employed in Queensland.

28J Transfer of health executives

- (1) The chief executive may transfer health executives.
- (2) The transfer of a health executive under this section—
 - (a) may involve a change in the location where the health executive performs functions; and
 - (b) has effect despite anything in the contract under which the health executive is employed.

28K Consequence if transfer refused

- (1) If a health executive is transferred under section 28J, the transfer has effect unless the health executive establishes reasonable grounds for refusing the transfer to the satisfaction of the chief executive.
- (2) If the health executive refuses the transfer after failing to establish reasonable grounds for refusing the transfer to the chief executive's satisfaction, the chief executive may end the health executive's employment by signed notice given to the health executive.
- (3) If the health executive establishes reasonable grounds to the chief executive's satisfaction—
 - (a) the transfer is cancelled; and
 - (b) the refusal must not be used to prejudice the health executive's prospects for future promotion or advancement.

Part 3B Health community councils

Division 1 Establishment of health community councils

28L Establishment

- (1) The Minister may establish as many health community councils for a district as the Minister considers appropriate for the administration of this Act.
- (2) However, there is to be at least 1 health community council for each district.

Division 2 Functions and membership of councils

28M Functions

A council is an advisory body having the following functions—

- (a) undertaking community engagement activities about the health of, or health care for, the community, including, for example—
 - (i) obtaining information and feedback from users of public sector health services about public sector health service issues; and
 - (ii) considering planning proposals in relation to the delivery of public sector health services, and facilitating community debate and feedback on the proposals; and
 - (iii) advocating for users of public sector health services, so as to influence decision-making about the delivery of the services;
- (b) monitoring the quality, safety and effectiveness of public sector health services delivered in the council's district;

- (c) considering and evaluating reports about the delivery of public sector health services in the council's district;
- (d) enhancing community education about the delivery of public sector health services;
- (e) advising, and making recommendations to, the manager for the council's district about the matters mentioned in paragraphs (a) to (d);
- (f) giving the Minister, within 3 months after the end of each year, a written report on the performance of its other functions during the year;
- (g) performing other functions as directed by the Minister.

28N Appointment of members

- (1) A council is to consist of not more than 8 members appointed by the Minister.
- (2) However, a council may consist of more than 8, but not more than 10, members appointed by the Minister if the Minister is satisfied that having more than 8 members will substantially improve the council's ability to perform its functions.
- (3) The Minister may only appoint as members persons nominated as suitable for appointment by the Health Quality and Complaints Commission.

Note—

It is a function of the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006*, section 16(d) to nominate to the Minister persons it considers suitable for appointment as members of councils.

- (4) A council must, if practicable, include at least 1 member who is a general practitioner.
- (5) A council must not include more than 1 member who is engaged in the delivery of public sector health services in the council's district.

28O Chairperson of council

- (1) The Minister is to appoint a member as the chairperson of a council.

- (2) The chairperson is to preside at all meetings of the council at which the chairperson is present.
- (3) If the chairperson is not present at a meeting, a member chosen by the members present at the meeting is to preside.

28P Term of appointment

A member is to be appointed for a term of not more than 4 years.

28Q Disqualification from membership

- (1) A person can not become, or continue as, a member if the person—
 - (a) is under 18 years; or
 - (b) is an insolvent under administration within the meaning of the Corporations Act, section 9; or
 - (c) is convicted of an indictable offence.
- (2) In subsection (1)(c), mention of a conviction does not include a conviction that is not part of the person's criminal history.
- (3) The Minister may ask the commissioner of the police service for a written report about the person's criminal history.
- (4) If asked by the Minister, the commissioner of the police service must give the Minister a written report about the criminal history of the person, including the criminal history in the commissioner's possession or to which the commissioner has access.
- (5) In this section—

convicted, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

convicted of an indictable offence includes convicted of an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

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

rehabilitation period has expired, and has not been revived, under that Act.

Minister includes a person authorised by the Minister for this section.

28R Vacation of office

A member is taken to have vacated office if the member—

- (a) resigns from office by signed notice of resignation given to the Minister; or
- (b) is disqualified from holding office; or
- (c) is removed from office; or
- (d) is absent without the council's leave and without reasonable excuse from 3 consecutive meetings of the council.

28S When notice of resignation takes effect

A notice of resignation under section 28R(a) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

28T Remuneration of members

A member is entitled to be paid the fees and allowances decided by the Governor in Council.

Division 3 Business and meetings of councils

28U Conduct of business

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

28V Times and places of meetings

- (1) Meetings of a council are to be held at least once every 2 months at the times and places the chairperson decides.

- (2) However, the chairperson must call a meeting of the council to consider a matter, if directed to do so by the Minister, within the period stated by the Minister.

28W Attendance by manager

The manager for a district must attend meetings of each council for the district.

28X Minutes

A council must keep minutes of its meetings.

28Y Disclosure of interests

- (1) This section applies if—
 - (a) a member of a council has a direct or indirect personal interest in an issue being considered, or about to be considered, by the council; and
 - (b) the interest could conflict with the proper performance of the member's duties in considering the issue.
- (2) The member must disclose the nature of the interest to a meeting of the council as soon as practicable after the member becomes aware of the possible conflict of interest.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the council otherwise directs, the member must not—
 - (a) be present when the council considers the issue; or
 - (b) take part in a decision of the council on the issue.
- (5) A member who makes a disclosure must not—
 - (a) be present when the council is considering whether to give a direction under subsection (4); or
 - (b) take part in the decision about giving the direction.
- (6) If, because of this section, a member is not present at a council meeting for considering or deciding an issue, but there would be a quorum if the member were present, the remaining

members present are a quorum for considering or deciding the issue at the meeting.

28Z Guidelines

- (1) The Minister may issue guidelines about a matter relating to a function of a council under section 28M.
- (2) A guideline is for the guidance of councils.
- (3) If a guideline is inconsistent with this or another Act, the Act prevails over the guideline to the extent of the inconsistency.

28ZA Tabling of council reports

- (1) This section applies to a report for a year given to the Minister by a council under section 28M(f).
- (2) The Minister must table the report in the Legislative Assembly within 1 month of receiving it.

Part 3C State-wide health services

28ZB Definition for pt 3C

In this part—

State-wide health service see section 28ZC.

28ZC Establishment of State-wide health service

The Governor in Council may, by gazette notice, establish a public sector health service (a *State-wide health service*) that is to be delivered in more than 1 district.

28ZD State-wide health service manager

- (1) There is to be a manager appointed for each State-wide health service.
- (2) The manager is to be a health service employee.

Health Services Act 1991

- (3) The manager's functions in relation to the State-wide health service for which the manager is appointed are the following—
- (a) to manage the delivery of the State-wide health service in accordance with the State-wide health service agreement for the State-wide health service;
 - (b) to implement the State-wide health services plan in relation to the delivery of the State-wide health service;
 - (c) to ensure available resources for the delivery of the State-wide health service are used effectively and efficiently;
 - (d) to perform other functions as directed by the chief executive.
- (4) In performing the functions—
- (a) the manager is subject to the chief executive; and
 - (b) the manager must have regard to the objects of, and guiding principles for, this Act.
- (5) In this section—

chief executive includes a person authorised by the chief executive for this section.

State-wide health service agreement, for a State-wide health service, means an administrative arrangement between the chief executive and manager appointed under this section for the State-wide health service about the delivery of the State-wide health service in more than 1 district under the arrangement and funds for its delivery.

Part 4 Teaching hospitals and quality assurance

Division 1 Teaching hospitals

29 Approval of hospitals for training of medical and other students

- (1) The Minister, by gazette notice, may approve that a hospital be a teaching hospital in respect of—
 - (a) all branches of medicine or dentistry or such branches of medicine or dentistry as are specified in the notification; or
 - (b) training that is ancillary to those branches; or
 - (c) training in such courses and for such purposes at such universities or other educational institutions as may be specified in the notification.
- (2) Prior to making the approval—
 - (a) the Minister may have regard to any recommendation of the Senate of any university established in Queensland, or the governing body of any university or other educational institution approved pursuant to this section, in respect of which the hospital in question is to be approved as a training school; and
 - (b) if the hospital in question is not subject to this Act—the consent of the governing body of the hospital to the proposed approval must be obtained.
- (3) A teaching hospital is a centre of excellence in patient care, teaching and research and the designation of a hospital as a teaching hospital will be based on its having at least 1 academic unit in a major health discipline, a significant body of recognised research and a major role in postgraduate education and training.
- (4) The Minister may, by gazette notice, declare—
 - (a) a university or other educational institution established in Queensland; or

- (b) a course of study within that university or institution; to be an approved university, educational institution or course for the purposes of subsection (5).
- (5) A student who is admitted to or enrolled with an approved university or approved educational institution to study an approved course—
- (a) is entitled to attend at the hospital approved as a teaching hospital in respect of the university or institution into which that student is admitted or enrolled, for instruction in connection with that approved course; and
- (b) may be admitted to such portions of the clinical practice or departments of that approved hospital as may be necessary for the carrying out of the student's special duties; and
- (c) is subject to any statutes and regulations made by the governing body of that university or institution and to any regulations or by-laws made by the governing body of that hospital.

Division 2 Quality assurance

30 Definitions

In this division—

committee means a committee declared to be an approved quality assurance committee under section 31.

relevant person, for a committee, means a person authorised by the committee to receive information to enable the committee to perform its functions.

31 Approved quality assurance committees

- (1) The Minister may, by gazette notice, declare that a specified quality assurance committee is an approved quality assurance committee for the purposes of this division.

- (2) A quality assurance committee may be established by 1 or more of the following—
- (a) an entity of the State that provides a public sector health service;
 - (b) the chief executive;
 - (c) the licensee of a private health facility under the *Private Health Facilities Act 1999*;
 - (d) a professional association, society, college or other entity whose functions relate to the provision of health services or to the providers of health services.
- (3) The Minister is not to make a declaration under subsection (1) 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
 - (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 those functions would be facilitated by the provision of immunities and protections afforded by this division; and
 - (e) that it is in the public interest to restrict the disclosure of information compiled by the committee in the course of the exercise of those functions.

32 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 services unless the individual has consented in writing to that disclosure.

33 Disclosure etc. of information

- (1) A person who is or was a member of a committee must not make a record of, or divulge or communicate 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) under a regulation made, or direction given, under section 37.

Maximum penalty—50 penalty units.

- (2) Also, a person who is or was a relevant person for a committee must not make a record of, or divulge or communicate to someone else, information acquired by the person as a relevant person for the committee, other than for the purpose of enabling the committee to perform its functions.

Maximum penalty—50 penalty units.

34 Information not to be given in evidence

- (1) A person who is or was a member of a committee, or relevant person for a committee, is neither competent nor compellable—
 - (a) to produce, in compliance with a requirement under an Act, or legal process, any document in the person's possession or under the person's control created by, at the request of, or solely for the purpose of, the committee; or
 - (b) to divulge or communicate, in compliance with a requirement under an Act, or legal process, information that came to the person's notice as a member of the committee or relevant person for the committee.

- (2) Subsection (1) does not apply to a requirement made in proceedings about an act or omission by the person or committee.

35 Findings of committee not evidence of certain matters

A finding or recommendation by a committee as to the need for changes or improvements in relation to a procedure or practice is not admissible as evidence in any proceedings that the procedure or practice is, or was, careless or inadequate.

36 Personal liability of members etc.

- (1) Anything done by a committee or any person acting under the direction or at the request of a committee, in good faith for the purposes of the exercise of the committee's functions, does not subject the committee or person personally to any action, liability, claim or demand.
- (2) For the purposes of the law relating to defamation, and without limiting subsection (1), it shall be accepted that—
- (a) the committee and any person acting under the direction or at the request of a committee, in relation to making any investigation or inquiry, have an interest in knowing the truth concerning the reputation and character of the person who is the subject of the investigation or inquiry; and
 - (b) there are reasonable grounds for belief by any person of whom inquiry is made for information, that the committee and any person acting under the direction or at the request of the committee have the interests referred to in paragraph (a).
- (3) If a committee, or a person acting under the direction or at the request of a committee, incurs costs in defending proceedings relating to a liability against which the committee or person is protected under this section, the committee or person is to be indemnified by—
- (a) if the committee was established by an entity mentioned in section 31(2)(a) or (b)—the State; or
 - (b) otherwise—the entity that established the committee.

- (4) For subsection (3), if a committee is established by more than 1 entity, a particular member of the committee is to be indemnified by—
- (a) if the member was appointed by an entity mentioned in section 31(2)(a) or (b)—the State; or
 - (b) otherwise—the entity that appointed the member.
- (5) For subsections (1) to (3)—
- committee* includes all or each of the members of the committee.

37 Further responsibilities of committees

- (1) 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 furnish reports concerning their activities to the Minister and such other authority as the Minister determines; and
 - (d) requiring committees to give specified information to the chief executive.
- (2) To the extent that the matters referred to in subsection (1) are not prescribed, the Minister may give directions in relation to those matters.

38 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.

Part 4A Public hospitals performance reports

38A Definitions for pt 4A

In this part—

elective surgery means surgery that, in the opinion of the treating doctor, is necessary but for which admission to hospital can be delayed for at least 24 hours.

elective surgery waiting list means a register kept by a prescribed public hospital that lists each patient assessed as needing elective surgery from the time the hospital accepts the referral of the patient for surgery until—

- (a) the surgery is performed; or
- (b) the patient's name is sooner removed from the register.

prescribed public hospital means—

- (a) a public sector hospital that falls within criteria prescribed under a regulation; or

Examples of what criteria included in a regulation may be about—

budget, type and volume of services offered, number of patients treated

- (b) the Mater Misericordiae Public Hospitals.

public hospitals performance report see section 38B(1).

stated public hospital means a prescribed public hospital that—

- (a) uses an electronic appointment scheduling system; and
- (b) collects data relating to surgery under guidelines established by the chief executive.

surgical outpatient waiting list means a register kept by a stated public hospital that lists each patient who requires an appointment at a surgical outpatient clinic from the time the hospital accepts the referral of the patient until—

- (a) the patient attends the initial appointment; or
- (b) the patient's name is sooner removed from the register.

38B Chief executive to give Minister annual report about the performance of public hospitals

- (1) The chief executive must prepare and give the Minister a report (a *public hospitals performance report*) each year about the performance of prescribed public hospitals.
- (2) The report must state the period it covers.
- (3) The first report must be given in 2006.

38C Matters to be included in report—key indicators

- (1) A public hospitals performance report must include information for each prescribed public hospital about the following key indicators—
 - (a) clinical performance, including the quality of care and clinical practice;
 - (b) efficiency, including the cost of services and resource management;
 - (c) patient satisfaction, including patients' views on the quality and outcomes of care and treatment received;
 - (d) system integration and change, including—
 - (i) the use of benchmarks and standardised approaches to clinical management; and
 - (ii) integration with the local community; and
 - (iii) quality and use of information; and
 - (iv) safety and quality of services; and
 - (v) work force management.
- (2) By using the key indicators, the report must compare each prescribed public hospital—
 - (a) with prescribed public hospitals that are of a similar type; and
 - (b) generally with all prescribed public hospitals.

38D Other information about surgery to be included in report

- (1) A public hospitals performance report must also include the following information for each stated public hospital—
 - (a) the number of patients on elective surgery waiting lists as at a date stated in the report;
 - (b) the number of patients on surgical outpatient waiting lists as at a date stated in the report;
 - (c) the number of patients who received elective surgery for a period stated in the report;
 - (d) the number of patients who attended an appointment at a surgical outpatient clinic for a period stated in the report.
- (2) A date or period mentioned in subsection (1) need not be in, or be the same as, the period stated in the report under section 38B(2).

38E Information relating to Mater Misericordiae Public Hospitals

This part is to be construed as requiring the chief executive to include information relating to the Mater Misericordiae Public Hospitals in a public hospitals performance report only to the extent the information is available to the chief executive.

38F Report may be included in department's annual report

- (1) A public hospitals performance report given to the Minister in a particular year may be included in the department's annual report under the *Financial Accountability Act 2009* given to the Minister in that year.
- (2) If the public hospitals performance report is not included, or to be included, in the department's annual report, the Minister must table it in the Legislative Assembly within 7 sitting days after receiving it.

Part 4B Root cause analyses

Division 1 Preliminary

38G Definitions for pt 4B

In this part—

chain of events document see section 38M(2).

commissioning authority see section 38K.

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) the Mater Misericordiae Public Hospitals.

notice means written notice.

private health facility see the *Private Health Facilities Act 1999*, section 8.

RCA report see section 38M(1).

RCA team means a group of persons appointed under section 38K.

relevant person—

- (a) for a commissioning authority, means a person who provides administrative or secretarial services to the commissioning authority to help it exercise its powers under this part; or
- (b) for an RCA team, means a person—
 - (i) who provides administrative or secretarial services to the RCA team; or
 - (ii) who advises the RCA team about—
 - (A) conducting an RCA of a reportable event; or
 - (B) preparing an RCA report or chain of events document for a reportable event.

reportable event—

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

38H 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.

38I Purpose of pt 4B

The purpose of this part is to facilitate the use of root cause analyses by health service facilities as a quality improvement technique to assess and respond to reportable events that happen while health services are being provided at the facilities.

38J 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 at a health service

- facility 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.

Division 2 RCA teams

38K 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—the chief executive;
- (b) if the event happens while a health service is being provided at a private health facility—the individual who has the day-to-day management of the facility or the individual who has overall management responsibility for the facility;
- (c) if the event happens while a health service is being provided at the Mater Misericordiae Public Hospitals—the individual who has the day-to-day

management of the Mater Misericordiae Public Hospitals or the chief executive of Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922.

38L 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 health service at a health service facility during the provision of which the event happened; and

(b) the conduct of an RCA of the event would be helped by the provision of immunities and protections provided to persons under divisions 5 and 6; and

(c) the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information under division 5.

(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.

Division 3 Reporting

38M RCA team's report and chain of events document

(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 during the provision of health services.
- (2) In addition to the RCA report, the RCA team may prepare a document (the *chain of events document*) that details, or pictorially represents, the chain of events identified by the RCA team as having led to the happening of the reportable event.
- (3) The RCA report or chain of events document 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.
- (4) In this section—
- relevant health service* means the health service during the provision of which the reportable event happened.

38N Reporting to commissioning authority

- (1) 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.
- (2) If the RCA team prepares a chain of events document for the reportable event, it must at the time of giving the RCA report under subsection (1) also give the document to the commissioning authority.

Division 4 Stopping conduct of RCA of reportable event

38O Definition for div 4

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.

38P 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) The RCA team must—
 - (a) stop conducting the RCA; and
 - (b) give notice to the commissioning authority that appointed the RCA team members that the RCA team has stopped conducting the RCA.
- (3) For subsection (2)(b), the notice—
 - (a) must be in the form approved by the chief executive; and
 - (b) must not contain any information about why the RCA team stopped conducting the RCA.
- (4) In this section—

relevant health service means the health service during the provision of which the reportable event happened.

38Q 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 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 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 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 form approved by the chief executive.
- (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 Quality and Complaints Commission; or
 - (b) a coroner; or

- (c) a board under the *Health Practitioner (Professional Standards) Act 1999*; or
- (d) the Queensland Nursing Council; or
- (e) the commissioner of the police service; or
- (f) another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event.

relevant health service means the health service during the provision of which the reportable event happened.

Division 5 Disclosure or release of information

38R Definition for div 5

In this division—

information includes a document.

38S 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 chain of events document; or
 - (c) the RCA team giving the commissioning authority that appointed the RCA team members—
 - (i) an RCA report or chain of events document under section 38N; or
 - (ii) a notice under section 38P; or
 - (d) the RCA team complying with a requirement of an inspector made of the RCA team in the performance of the inspector's functions under section 63.

Maximum penalty—50 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—50 penalty units.

- (3) If information that may be disclosed under subsection (1) or (2) for an authorised purpose is information to which section 62A(1) applies, the information is for the purposes of section 62B information that is expressly required or permitted to be given under this Act.

- (4) 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.

38T 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 chain of events document, or give someone else a copy of an RCA report or chain of events document, received by the person under section 38N, other than—

- (a) as required or permitted under sections 38U to 38ZA; or
(b) as permitted under subsection (2).

Maximum penalty—50 penalty units.

- (2) A commissioning authority may give a safety and quality report prepared by the commissioning authority to—

- (a) an individual involved in providing a health service at the health service facility to which the report relates; or
(b) an entity with responsibilities for the management of patient safety initiatives and programs for the health service facility.

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- (3) Also, 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—50 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 part; or
 - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person in the performance of the inspector's functions under section 63.

- (5) Also, 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—50 penalty units.

- (6) Subsection (5) does not apply to—
- (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 part; or
 - (b) the disclosure of information by a person in compliance with a requirement of an inspector made of the person in the performance of the inspector's functions under section 63.

- (7) If information that may be disclosed under this section is information to which section 62A(1) applies, the information is for the purposes of section 62B information that is expressly required or permitted to be given under this Act.

- (8) This section does not authorise the attachment of a copy of an RCA report or chain of events document to a safety and quality report.
- (9) 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.

38U Release of information to Health Quality and Complaints Commission

- (1) A commissioning authority must, as soon as practicable after receiving an RCA report under section 38N, give the Health Quality and Complaints Commission—
- (a) a copy of the report; and
 - (b) details of the name and address of the health service facility at which the reportable event happened.
- (2) The commissioning authority need not comply with subsection (1) if there is an agreement in force under section 38W relating to the report and details.

38V Release of information to chief health officer

- (1) This section applies if a commissioning authority receives an RCA report under section 38N 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.

38W Release of information by chief health officer to Health Quality and Complaints Commission

- (1) This section applies if—

- (a) a commissioning authority complies with section 38V(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 Quality and Complaints Commission.
- (2) The chief health officer must as soon as practicable give a copy of the RCA report and details to the Health Quality and Complaints Commission.

38X Giving of copy of RCA report or chain of events document—patient safety entity

- (1) If authorised by the chief executive to do so, a commissioning authority must give a copy of each RCA report or chain of events document received by the commissioning authority under section 38N to a prescribed patient safety entity for an authorised purpose for the entity.

Example for subsection (1)—

If an authorisation is given under subsection (1) to a commissioning authority, and an authorised purpose for a prescribed patient safety entity is the use of information contained in RCA reports to prepare an annual report containing aggregated data about reportable events that happened at health service facilities, the authority must give a copy of each RCA report received by the authority under section 38N to the entity for the authorised purpose.

- (2) The chief executive, acting in the capacity of a commissioning authority, may give a copy of each RCA report or chain of events document received by the chief executive under section 38N 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 or chain of events document to an entity under subsection (1) or (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 health service facility at which the event happened.

- (4) A person who performs functions for the entity—
- (a) must not give a copy of the report or document to anyone else; and
 - (b) must not disclose any information contained in the copy of the report or document, or information mentioned in subsection (3), 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, and the information mentioned in subsection (3), other than for the authorised purpose for which the copy of the report or document was given.

Maximum penalty—50 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 chain of events document, 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 facility.

prescribed patient safety entity means a patient safety entity prescribed under a regulation for the health service facility at which the reportable event happened.

relevant health service means the health service during the provision of which the reportable event happened.

38Y 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 at a health service facility.
- (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 at a health service facility may be relevant to the investigation; and
 - (c) the 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 health service facility 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—
 - (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 38N, 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 38P(2) or 38Q(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) otherwise—give the coroner or police officer a stop notice as soon as practicable.
- (8) In this section—

stop notice means a notice stating—

- (a) if the RCA team stopped conducting the RCA under section 38P(2)—that fact; or
- (b) if the RCA team stopped conducting the RCA because of a direction given by the commissioning authority under section 38Q(2) or (3)—
 - (i) that fact; and
 - (ii) the reasons for giving the direction.

38Z 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 38N; and
 - (b) if an RCA report has been received by the authority under section 38N—for a copy of the report.
- (2) The authority must comply with the request as soon as practicable.

Maximum penalty—50 penalty units.

38ZA 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 38N, 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.

38ZB Information not to be given in evidence

- (1) A stated person is neither competent nor compellable—
- (a) to produce in a proceeding, or in compliance with a requirement under an Act or legal process, any document in the person's possession or under the person's control created—
 - (i) by, or at the request of, a person under this part; or
 - (ii) solely for the conduct of an RCA of a reportable event; or
 - (b) to divulge or communicate in a proceeding, or in compliance with a requirement under an Act or legal process, information that came to the person's notice as a stated person.

Example—

Under subsection (1), a stated person is neither competent nor compellable to produce a document or give information mentioned in paragraph (a) or (b) of the subsection to—

- (a) a panel of inquiry conducting an inquiry under the *Public Health Act 2005*, chapter 7; or

- (b) an authorised person under a notice given to the stated person under the *Health Quality and Complaints Commission Act 2006*, section 123.
- (2) Subsection (1) does not apply to a requirement made in proceedings for an alleged offence against this part or part 7A by the stated person.
- (3) In this section—
information includes—
 - (a) the identity of a member of an RCA team; and
 - (b) information from which a member of an RCA team could be identified.

stated person means a person who is or was any of the following—

- (a) a member of an RCA team;
- (b) a commissioning authority;
- (c) a relevant person for an RCA team or commissioning authority;
- (d) a person who performs functions for an entity that received a copy of an RCA report or chain of events document under section 38X(1) or (2).

38ZC 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 for its conduct of an RCA of a reportable event;
- (b) what information the person gave to an RCA team for its conduct of an RCA of a reportable event;
- (c) a document given by the person to an RCA team that was created by the person or another person solely for its conduct of an RCA of a reportable event;

- (d) information the person was given, or questions the person was asked, by an RCA team during its conduct of an RCA of a reportable event.

Division 6 Protections

38ZD 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 part.
- (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) otherwise—the person who appointed the RCA team members.

38ZE 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.

Examples of persons who may give information under subsection (1)—

- a commissioning authority
 - a relevant person for a commissioning authority
- (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.

38ZF 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.

38ZG Offence for taking reprisal

- (1) A person who takes a reprisal commits an offence.
Maximum penalty—167 penalty units or 2 years imprisonment.
- (2) The offence is a misdemeanour.

38ZH 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.
- (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.

Division 7 Miscellaneous**38ZI Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's power of appointment under section 38K(a), or power to give an authorisation under section 38X(1), to—
 - (a) an appropriately qualified officer or employee of the department or health service employee; or
 - (b) a health executive.
- (2) In this section—

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

Example of standing—

a person's classification level in the department

38ZJ Application of provisions of this part

If a commissioning authority acts or purports to act under section 38K and it transpires the event the basis of the action is not a reportable event, the provisions of this part apply as if the event were a reportable event.

38ZK RCA report not admissible in evidence

- (1) An RCA report is not admissible in evidence in any proceedings, including, for example—
 - (a) a civil proceeding; or
 - (b) a criminal proceeding; or
 - (c) a disciplinary proceeding under the *Health Practitioners (Professional Standards) Act 1999*.
- (2) However, a copy of an RCA report given to a coroner under section 38Y 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 38Y(1) applies—if the reportable event is the death; or
 - (b) if section 38Y(2) applies—if the reportable event happened while a health service was being provided to the person at a health service facility.
- (3) Subsection (1) applies subject to section 38ZB(2).

38ZL Review of pt 4B

- (1) The Minister must, before the second anniversary of the commencement of section 38K, start a review of this part to ensure it is adequately meeting community expectations and its provisions remain appropriate.

- (2) The Minister must, as soon as practicable after the review is finished, cause a report of the outcome of the review to be laid before the Legislative Assembly.

Part 5 Control of traffic and conduct on health services land

Division 1 Authorised persons and security officers

39 Appointment of authorised persons and security officers

- (1) The chief executive may, in writing, appoint a person who the chief executive is satisfied has the necessary training, or knowledge and experience, to be an authorised person under this Act.
- (2) The chief executive may, in writing, appoint a person who the chief executive is satisfied has the necessary training, or knowledge and experience, to be a security officer under this Act.
- (3) A person may be appointed both an authorised person and a security officer.

40 Terms of appointment

- (1) An authorised person or security officer holds office on the conditions stated in the instrument of appointment.
- (2) If the instrument provides for a term of appointment, the authorised person or security officer ceases to hold office at the end of the term.
- (3) An authorised person or security officer may resign by signed notice given to the chief executive.

41 Identity cards

- (1) The chief executive must issue an identity card to each authorised person and security officer.
- (2) The identity card must—
 - (a) contain a recent photograph of the authorised person or security officer; and
 - (b) be in a form approved by the chief executive; and
 - (c) be signed by the authorised person or security officer.
- (3) A person who ceases to be an authorised person or security officer must, as soon as practicable, return the person's identity card to the chief executive, unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (3)—10 penalty units.

42 Proof of authority

- (1) An authorised person or security officer may exercise a power under this Act in relation to someone else only if the person or officer—
 - (a) first produces his or her identity card for inspection by the other person; or
 - (b) has his or her identity card displayed so that it is clearly visible.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person or security officer must produce the identity card for inspection by the person at the first reasonable opportunity.
- (3) If subsection (2) is relevant and is complied with by an authorised person or security officer, the exercise of a power in relation to someone else by the authorised person or security officer is not invalid merely because of subsection (1).

Division 2 Traffic control

43 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 must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—10 penalty units.

44 Regulatory notice

- (1) The 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—10 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), the chief executive may erect and 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 chief executive.
- (6) A regulatory notice erected or displayed under this section must be easily visible to passers-by.

45 Information notices

- (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) The 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 chief executive considers appropriate, information notices stating that a contravention of a regulatory notice is an offence and the penalty for the offence.
- (3) An information notice may contain any other information the chief executive considers appropriate.
- (4) An information notice erected or displayed under this section must be easily visible to passers-by.
- (5) In this section—
regulatory notice does not include an official traffic sign.

46 Removal and detention of illegally parked or abandoned vehicles

- (1) An authorised person may seize, remove and hold, 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

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- 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
 - (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, the 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 chief executive 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.

47 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 46(4) or (5).
- (2) After publishing a notice in a newspaper circulating generally in the State, the chief executive may sell the vehicle by public auction.
- (3) The notice must—
- (a) identify the vehicle; and
 - (b) state that the vehicle is to be sold by auction; and
 - (c) state how the owner may recover the vehicle before the auction; and

- (d) state the time and place of the auction.
- (4) Compensation is not recoverable against the 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.

48 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 the chief executive for a payment under this section.

Division 3 Conduct on health services land

49 Conduct causing a public nuisance

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

Maximum penalty—20 penalty units.

50 Power to deal with persons causing a public nuisance

- (1) This section applies if a security officer—
 - (a) finds a person contravening section 49; or
 - (b) finds a person in circumstances that leads the security officer to suspect on reasonable grounds that the person has just contravened section 49; or

- (c) has information that leads the security officer to suspect on reasonable grounds that a person has just contravened section 49; 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 the 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 the land; or
 - (f) reasonably believes a person is on the land without lawful justification or excuse.
- (2) The security officer may direct the person to leave health services land or a part of 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—10 penalty units.

51 Prohibition of smoking

- (1) A person must not smoke on health services land other than in a nominated smoking place.
- (2) If an authorised person or security officer finds a person smoking on health services land in contravention of subsection (1), the authorised person or security officer may direct the person—
 - (a) to stop or refrain from smoking; or
 - (b) to leave the land or, if the person wishes to smoke, to smoke only in a nominated smoking place.
- (3) The person must comply with the direction unless the person has a reasonable excuse for not complying with it.

Maximum penalty—10 penalty units.

- (4) The chief executive must not nominate a prohibited place as a smoking place.
- (5) In this section—

nominated smoking place means a place nominated as a smoking place by the chief executive, and designated as such by signs erected by the chief executive.

prohibited place means a place in which a person must not smoke under the *Tobacco and Other Smoking Products Act 1998*.

Part 6 Administration

Division 1 Officials

52 Appointment of officials

- (1) The chief executive may appoint a person as an auditor or investigator.
- (2) A person may be appointed as an auditor only if, in the opinion of the chief executive, the person has the necessary expertise or experience to be an auditor.
- (3) A person may be appointed as an investigator only if, in the opinion of the chief executive, the person has the necessary expertise or experience to be an investigator.

53 Terms of appointment

- (1) An official holds office on the conditions stated in the instrument of appointment.
- (2) If the instrument provides for a term of appointment, the official ceases to hold office at the end of the term.
- (3) An official may resign by signed notice given to the chief executive.

54 Functions of auditors

The functions of an auditor are to verify patient and statistical data reported under a funding arrangement.

55 Functions of investigators

- (1) The functions of an investigator are to investigate and report to the chief executive on any matters relating to the management, administration or delivery of public sector health services, including, for example, matters relating to clinical practices and standards of health care in the delivery of public sector health services.
- (2) In this section—
chief executive includes a delegate of the chief executive who appointed the investigator under section 52.

56 Power of officials to ask for documents

- (1) An official may, in the exercise of the official's functions, ask an officer or employee of the department to give to the official a document, including a document containing confidential information, that—
 - (a) is relevant to the official's functions stated in the official's instrument of appointment; and
 - (b) is in the possession or control of the officer or employee.
- (2) The officer or employee must comply with the request.
- (3) If requested by the officer or employee, the official must produce the official's instrument of appointment to the officer or employee.
- (4) The official may make copies of, and take extracts from, the document.
- (5) 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) identifies, or is likely to identify, the person.

57 Duty of confidentiality of officials

- (1) This section applies to a person who—
 - (a) is or has been an official; and

- (b) in that capacity was given information.
- (2) A person to whom this section applies must not disclose the information to anyone else.
Maximum penalty—50 penalty units.
- (3) However, a 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 disclosure is otherwise required or permitted by law.
- (4) Also, a person may disclose the information to someone else if—
 - (a) the disclosure is to—
 - (i) the chief executive; or
 - (ii) another officer, employee or agent of the department who is authorised in writing by the chief executive to receive the information; and
 - (b) the purpose of the giving and receipt of the information is to give the information under section 62F.

57A Application of s 57 to person under Coroners Act 2003

Section 57 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 the preparation of an annual report.

Division 1A Chief health officer

57B 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 doctor.

57C Functions of chief health officer

The functions of the chief health officer are—

- (a) providing 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) performing other functions given to the chief health officer under another Act.

Division 2 General**58 Ministerial advisory committees**

- (1) The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of the Act.
- (2) An advisory committee has the functions the Minister decides.
- (3) A member of an advisory committee is entitled to be paid the fees and allowances decided by the Governor in Council.
- (4) However, a member may waive payment in whole or part.

Part 7 Confidentiality**Division 1 Interpretation and application****60 Definitions for pt 7**

In this part—

confidential information see section 62A(1).

designated person means a person who is—

- (a) a public service employee employed in the department;
- or

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- (b) a health service employee; or
- (c) the chief health officer; or
- (d) the director of mental health appointed under the *Mental Health Act 2000*; or
- (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service on behalf of the department, whether at a public sector health service facility or another place; or
- (f) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for the department; or
- (g) 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
- (h) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (g); or
- (i) a volunteer carrying out duties at a public sector health service facility on behalf of the department; or
- (j) another person prescribed under a regulation for this paragraph to be a designated person.

former designated person means a person who was, but is no longer, a designated person.

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.

health practitioner registration Act means any 1 of the following Acts—

- *Chiropractors Registration Act 2001*

- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Practitioners Registration Act 2001*
- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001.*

health professional means—

- (a) a person registered under a health practitioner registration Act or enrolled, registered or authorised to practise under the *Nursing Act 1992*; 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.

parent see section 61.

public sector health service facility means a facility at which public sector health services are usually delivered by or for the department.

61 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.

62 Part does not apply to official

This part does not apply to a person who is or was an official to the extent the person acquired information because of being an official.

Division 2 Confidentiality

62A Confidentiality

- (1) A designated person or former designated person must not disclose to another person, whether directly or indirectly, any information (*confidential information*) acquired because of being a designated person if a person who is receiving or has received a public sector health service could be identified from the confidential information.

Maximum penalty—50 penalty units.

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

62B Disclosure required or permitted by law

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is required or permitted by an Act or another law.

62C Disclosure with consent

Section 62A(1) does not apply to the disclosure of confidential information by a designated person 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
 - (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.

62D Disclosure to person who has sufficient interest in health and welfare of person

- (1) Section 62A(1) does not apply to the disclosure of confidential information by a designated person 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 media 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 interest in the health and welfare of the person to whom the information relates.

Example of persons who a health professional could possibly reasonably opine to be persons having sufficient personal interest in the health and welfare of a person to whom the confidential information relates—

- the person's spouse
 - the person's child, parent or guardian
 - another person related by blood, marriage or adoption, or because of a de facto relationship or foster care relationship, to 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.

62E Disclosure of confidential information for care or treatment of person

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is required for the care or treatment of the person to whom the information relates and—

- (a) the designated person is a health professional and the disclosure is in accordance with the recognised standards of the relevant health profession; or

- (b) the disclosure is to a designated person who is a health professional.

62F Disclosure of confidential information in the public interest

- (1) Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—
 - (a) the chief executive believes, on reasonable grounds, the disclosure is in the public interest; and
 - (b) the chief executive has, in writing, authorised the disclosure.
- (2) The department's annual report for a financial year under the *Financial Accountability Act 2009* must include details of—
 - (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 details mentioned in subsection (2)(a) must not identify, directly or indirectly, the person to whom the confidential information relates.
- (4) Despite the *Public Service Act 2008*, section 103, the chief executive may not delegate the chief executive's power under subsection (1).

62G Disclosure for data collection and public health monitoring

- Section 62A(1) does not apply to the disclosure of confidential information by a designated person 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 chief executive to receive the confidential information.

62H Disclosure for purposes relating to health services

Section 62A(1) does not apply to the disclosure of confidential information by a designated person 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.

62I Disclosure to prevent serious risk to life, health or safety etc.

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the chief executive believes, on reasonable grounds, the disclosure is necessary to assist in averting 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 chief executive has, in writing, authorised the disclosure.

62J Disclosure to or by inspector

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if—

- (a) the disclosure is to an inspector and the confidential information is relevant in relation to the performance of the inspector's function under part 7A; or

- (b) the disclosure is by an inspector and is necessary for performing the inspector's function under part 7A.

62K Disclosure to official

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to an official and the confidential information is relevant to the functions being performed by the official.

62L Disclosure to health practitioner registration board or Queensland Nursing Council

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to a board established under a health practitioner registration Act or the Queensland Nursing Council for the purposes of—

- (a) making, or giving information about, a complaint about a person who is or was—
 - (i) registered under the health practitioner registration Act; or
 - (ii) registered, enrolled or authorised to practise under the *Nursing Act 1992*; or
- (b) answering questions or otherwise giving information as part of an investigation or a disciplinary proceeding about a person who is or was—
 - (i) registered under the health practitioner registration Act; or
 - (ii) registered, enrolled or authorised to practise under the *Nursing Act 1992*.

62LA Disclosure to Health Quality and Complaints Commission

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to the Health Quality and Complaints Commission for the purpose of—

- (a) making, or giving information about, a complaint about a provider of health services; or
- (b) answering questions or otherwise giving information as part of an investigation under the *Health Quality and Complaints Commission Act 2006* about a person who is or was a provider of health services; or
- (c) giving the commission information about health services including information requested by the commission under the *Health Quality and Complaints Commission Act 2006*, section 21; or
- (d) giving the commission aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services.

62M Disclosure to approved quality assurance committee

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to a committee declared under section 31(1) to be an approved quality assurance committee, or to a person authorised by the committee to receive the confidential information, to enable the committee to perform its functions.

62N Disclosure to Commonwealth, another State or Commonwealth or State entity

- (1) Section 62A(1) does not apply to the disclosure of confidential information by the chief executive 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 Queensland and the Commonwealth, State or entity; and
 - (B) prescribed under a regulation for this paragraph; and

- (ii) is considered by the chief executive to be in the public interest; 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 and the entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the chief executive to be in the public interest.
- (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 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 State includes a department and an entity established under an Act for a public purpose.

62O Disclosure to Australian Red Cross Society

Section 62A(1) does not apply to the disclosure of confidential information by a designated person if the disclosure is to the Australian Red Cross Society for the purpose of tracing blood or tissue, or blood products derived from blood, infected with any disease or the donor or recipient of that blood or tissue.

62P Disclosure to person performing function under Coroners Act 2003

Section 62A(1) does not apply to the disclosure of confidential information by a designated person to a person

who requires the confidential information to perform a function under the *Coroners Act 2003*, other than the preparation of an annual report.

62Q Necessary or incidental disclosure

Section 62A(1) does not apply to the disclosure of confidential information by a designated person that 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 the Health Insurance Commission 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 about authorising the disclosure of confidential information in the public interest under section 62F or to collect confidential information for the purpose of a prescribed agreement under section 62N
- accessing contact details for a person to seek the person's consent under section 62C 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

62R Former designated persons

- (1) Sections 62B, 62C(a), 62F, 62J, 62L or 62Q (the *relevant provisions*) apply to the disclosure of confidential information by a former designated person in the same way as they apply to the disclosure of confidential information by a designated person.
- (2) For subsection (1), a reference in the relevant provisions to a designated person is taken to be a reference to a former designated person.

Part 7A Investigation and enforcement

Division 1 Inspectors

63 Functions

An inspector has the function of monitoring and enforcing compliance with section 33, part 4B, division 5, sections 38ZG and 57, part 7 and this part (the *applicable provisions*).

63A Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as inspectors—
 - (a) a public service officer employed in 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 to be an inspector.

63B 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.
- (2) The instrument of appointment or a signed notice given to the inspector may limit the inspector's powers under this part.
- (3) In this section—

signed notice means a notice signed by the chief executive.

63C Issue of identity cards

- (1) The chief executive must issue an identity card to each inspector.

- (2) The identity card must—
 - (a) contain a copy of 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.

63D Production or display of identity card

- (1) In exercising a power under this part in relation to a person, an inspector must—
 - (a) produce the inspector's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other 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 other 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 63H(1)(b) or (2).

63E When inspector ceases to hold office

- (1) An inspector ceases to hold office 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 inspector ceases to hold office;
 - (c) the inspector's resignation under section 63F takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—

condition of office means a condition on which the inspector holds office.

63F Resignation

An inspector may resign by notice to the chief executive.

63G Return of identity card

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 2 Powers of inspectors

Subdivision 1 Entry of places

63H Power to enter places

- (1) An inspector may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant.
- (2) For the purpose of asking the occupier of a place for consent to enter, 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 the occupier.

Subdivision 2 Procedure for entry

63I Entry with consent

- (1) This section applies if an inspector intends to ask the occupier of a place to consent to the inspector or another inspector entering the place.
- (2) Before asking for the consent, the inspector must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs an acknowledgment, the inspector must immediately give a copy to the occupier.
- (6) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (4) 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.

63J 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.
- (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.

63K 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—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against an applicable provision; and
 - (b) the evidence is at the place or, within the next 7 days, will be at the place.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated 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 under this division; and
 - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; 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 date and time of the warrant's issue; and
- (i) the date, within 14 days after the warrant's issue, the warrant ends.

63L Application by electronic communication and duplicate warrant

- (1) An application under section 63J 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 63J(2); but
 - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- (4) 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, for example, by sending a copy by fax or email, the

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- magistrate must immediately give a copy of the warrant to the inspector; or
- (b) otherwise—
- (a) the magistrate must tell the inspector the date and time the warrant is issued and the other terms of the warrant; and
- (ii) the inspector must complete a form of warrant, including by writing on it—
- (A) the magistrate's name; and
- (B) the date and time the magistrate issued the warrant; and
- (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (6) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 63J(2) and (3); and
- (b) if the inspector completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (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
- (8) Despite subsection (5), 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.

- (9) This section does not limit section 63J.
- (10) In this section—

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

63M Defect in relation to warrant

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 63J, 63K or 64L, 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 63L(5).

63N Warrants—procedure before entry

- (1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (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 present at the place who is an occupier of the place in the way stated in section 63D;
 - (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 immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

- (4) In this section—
warrant includes a duplicate warrant mentioned in section 63L(5).

Subdivision 3 Powers after entry

630 General powers after entering places

- (1) This section applies to an inspector who enters a place.
- (2) However, if an inspector enters a place to get the occupier's consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with part 7 or this part, the inspector may—
 - (a) search any part of the place; or
 - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
 - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
 - (d) take an extract from, or copy, a document at the place; or
 - (e) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this division; or
 - (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e); or
 - (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector find out whether part 7 or this part is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

63P Failure to help inspector

- (1) A person required to give reasonable help under section 63O(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a requirement under section 63O(3)(f) relates to a document, it is a reasonable excuse for the person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

63Q Failure to give information

- (1) A person of whom a requirement is made under section 63O(3)(g) must comply with the requirement, unless the person has a reasonable excuse.¹

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

Subdivision 4 Power to seize evidence**63R Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place under this division without the consent of the occupier and without a warrant, may seize a thing at the place only if the inspector reasonably believes the thing is evidence of an offence against an applicable provision.

63S Seizing evidence at a place that may only be entered with consent or warrant

- (1) This section applies if—

¹ Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 63ZG (False or misleading statements).

- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
 - (b) the inspector enters the place after obtaining the necessary consent or 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 an applicable provision; and
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector also may seize anything else at the place if the inspector reasonably believes—
- (a) the thing is evidence of an offence against an applicable provision; 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) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against an applicable provision.

63T Securing seized things

Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- 1 sealing a thing and marking it to show access to it is restricted

- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

63U Tampering with seized things

- (1) If an inspector restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—50 penalty units.

- (2) In this section—

tamper includes attempt to tamper.

63V Powers to support seizure

- (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 reasonable time.

- (2) The requirement—

- (a) must be made by signed notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by signed notice as soon as practicable.

- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (5) Subject to section 63ZF, the cost of complying with subsection (4) must be borne by the person.

63W Inspector may require thing's return

- (1) If an inspector has required a person to take a thing to a stated place by a stated reasonable time under section 63V the inspector may require the person to return the thing to the place from which it was taken.
- (2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (3) Subject to section 63ZF, the cost of complying with subsection (2) must be borne by the person.

63X Receipts for seized things

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

63Y Forfeiture of seized things

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
 - (a) can not find its owner, after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

63Z Return of seized things

- (1) If a thing has been seized but not forfeited, the inspector must return it to its owner—
- (a) at the end of 6 months; or
 - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

63ZA Access to seized things

- (1) Until a thing that has been seized is forfeited or returned, an inspector must allow its owner to inspect it and, 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.

Subdivision 5 Power to obtain information

63ZB Power to require name and address

- (1) This section applies if—
 - (a) an inspector finds a person committing an offence against an applicable provision; or
 - (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector reasonably to suspect the person has just committed an offence against an applicable provision.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The inspector may require the person to give the inspector evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

63ZC Failure to give name or address

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

Maximum penalty—50 penalty units.
- (2) A person does not commit an offence against subsection (1) if—
 - (a) the person was required to state the person's name and residential address by an inspector who suspected the person had committed an offence against an applicable provision; and
 - (b) the person is not proved to have committed the offence.

63ZD Power to require information

- (1) This section applies if an inspector reasonably believes—
 - (a) an offence against an applicable provision 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 information about the offence to the inspector at a stated reasonable time and place.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

Division 3 General enforcement matters**63ZE Notice of damage**

- (1) This section applies if—
 - (a) an inspector damages property when exercising or purporting to exercise a power; or
 - (b) a person (the *other person*) acting under the direction or authority of an inspector damages property.
- (2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a

conspicuous position and in a reasonably secure way where the damage happened.

- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In this section—
owner, of property, includes the person in possession or control of it.

63ZF Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 2 by or for an inspector, the person may claim compensation from the State—
 - (a) subdivision 1 (Entry of places);
 - (b) subdivision 3 (Powers after entry);
 - (c) subdivision 4 (Power to seize evidence).
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against an applicable provision brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

63ZG False or misleading statements

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

63ZH False or misleading documents

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

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

63ZI Obstructing an inspector

- (1) A person must not obstruct an inspector 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 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 obstruct the inspector unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct an obstruction.

- (3) In this section—

obstruct includes hinder and attempt to obstruct or hinder.

63ZJ Impersonating inspector

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

Part 7B Proceedings

63ZK Summary offences

An offence against this Act, other than an offence against section 38ZG(1), is a summary offence.

63ZL 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.

63ZM 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).

63ZN 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*.

Part 8 Miscellaneous

64 Obstructing execution of Act

A person who obstructs any person who is exercising any powers or performing any functions or duties under this Act commits an offence against this Act and is liable to a penalty not exceeding 10 penalty units.

66 Effect of Act on private practice arrangements

This Act is not to be construed so as to adversely affect the operation of any arrangements in force in any public sector hospital immediately before the day the *Health Services Act 1991* receives the Royal Assent under which any medical officers or employees of that hospital are authorised to engage

in private practice in conjunction with their employment with that hospital.

67 Effect of Act on certain other Acts

This Act is not to be construed so as to derogate from the provisions of any other Act in force from time to time that provides for investigations and inquiries to be made in connection with any public sector health service.

68 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) provide that, on conditions or unconditionally, persons, matters or things, or a class of persons, matters or things may be exempted from the provisions of the regulations and for the revocation of any exemption or conditional exemption so granted; or
 - (b) provide for the fees, charges, allowances, costs and expenses payable or to be paid under and for the purposes of this Act and the fixing thereof; matters and things in respect of which they are payable or to be paid; the circumstances in which the chief executive may waive those fees, charges, allowances, costs and expenses (the chief executive being hereby authorised to do so); methods of collection thereof; manner, time and place of payment thereof; persons by whom or to whom they are payable; or
 - (c) provide for—
 - (i) fees and charges that may be charged for patient accommodation, medical and nursing services, dental, diagnostic and therapeutic services, special medical examinations or reports; or
 - (ii) fees for the charging of maintenance in relation to public sector nursing home and hostel residents and public sector psychiatric health services; or

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- (d) provide for the forms to be used for the purpose of this Act and the particular purposes for which those forms are respectively to be used; or
 - (e) regulate the admission and discharge of persons to and from a public sector health service and the amount (if any) to be paid by those persons for that health service; or
 - (f) regulate the bringing of specified articles and things into any public sector health service and the possession by any person of specified articles or things in any public sector health service; or
 - (g) regulate the entry of persons into any public sector health service and regulate their conduct in that health service and prevent trespassing on any land vested in or held by the State; or
 - (h) make provision about any other matter affecting the operation, management, care, control and superintendence of any public sector health service or any other facility or service maintained, operated or provided by the chief executive or any land or buildings used in connection with any public sector health service; or
 - (i) provide for the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event.
- (3) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide, in respect of any such offence, for the imposition of a penalty not exceeding 10 penalty units and in the case of a continuing offence, a further penalty not exceeding 2 penalty units for each day during which the offence continues.

Part 9 **Repeals, savings, validating and transitional provisions**

Division 1 **Repeals**

69 **Repeal of certain by-laws**

(1) A by-law that was made under the repealed Act and is in force immediately before the commencement of this section is repealed on the commencement.

(2) In this section—

repealed Act means the *Hospitals Act 1936*.

Division 2 **Transitional provisions for Health Legislation Amendment Act (No. 2) 1996**

70 **Definition for pt 9, div 2**

In this division—

authority means a regional health authority in existence immediately before the commencement of this section.

71 **Authorities dissolved**

The authorities are dissolved on the commencement of this section.

72 **Assets and liabilities**

(1) On the dissolution of the authorities—

(a) the assets and liabilities of the authorities become assets and liabilities of the State; and

(b) any contracts and agreements entered into by or on behalf of an authority and all guarantees, undertakings and securities given by or on behalf of or to the

authority, in force immediately before the dissolution are taken to have been entered into or, as the case may be, given by or to the State and may be enforced against or by the State, accordingly.

- (2) Any property that, immediately before the dissolution was held in trust by an authority, vests in the State on the same trusts to which the property was subject immediately before the vesting.

73 Proceedings

- (1) A proceeding by or against an authority that is not finished before the commencement of this section may be continued or discontinued by or against the State.
- (2) In addition a proceeding that could have been started by or against an authority before the commencement may be started, continued and finished by or against the State after the commencement.

74 Non-contract employees

- (1) This section applies to a person who, immediately before the commencement of this section, was an employee of an authority (other than an employee under an individual contract of employment).
- (2) If, immediately before the commencement, the person was employed on conditions that most closely relate to—
 - (a) a tenured health service employee—the person becomes a tenured health service employee on the commencement; or
 - (b) a temporary health service employee—the person becomes a temporary health service employee on the commencement; or
 - (c) a casual health service employee—the person becomes a casual health service employee on the commencement.
- (3) If there is doubt about whether the person becomes a tenured, temporary or casual health service employee and the person asks the chief executive to make a declaration under this

subsection, the chief executive may declare that the person is a tenured, temporary or casual health service employee.

75 Contract employees

- (1) This section applies to a person who, immediately before the commencement of this section, was employed by an authority under an individual contract of employment.
- (2) On the commencement—
 - (a) the person becomes a contracted health service employee; and
 - (b) the contract of employment is taken to have been made under this Act between the person and the chief executive.
- (3) The contract is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.
- (4) Without limiting subsection (3), the contract is to be read as if a reference to the authority is a reference to the chief executive.

76 Employees' rights and entitlements

- (1) This section applies to a person who—
 - (a) immediately before the commencement of this section, was an employee of an authority; and
 - (b) on the commencement becomes a health service employee.
- (2) On the commencement, the person's employment is on the same conditions on which the person was employed by the authority.
- (3) In addition, the person—
 - (a) retains all rights accrued or accruing to the person as an employee of the authority; and
 - (b) is entitled to receive long service, recreation and sick leave and any similar entitlements accrued or accruing to the person as an employee of the authority.

- (4) The person's period of employment with the authority is taken to be an equivalent period of employment with the department for any law about the rights or entitlements.
- (5) In addition, the person—
 - (a) retains all entitlements accrued or accruing to the person as a contributor to a fund or as a member of a superannuation scheme under a superannuation Act; and
 - (b) is taken to continue to be a contributor or member under the superannuation Act.
- (6) In this section—

superannuation Act means the *Public Service Superannuation Act 1958*, *State Service Superannuation Act 1972*, *Superannuation (Government and Other Employees) Act 1988* or *Superannuation (State Public Sector) Act 1990*.

77 Directions by the chief executive

- (1) A direction given by the chief executive under repealed section 58 and in force immediately before the commencement of this section is taken to be a determination made by the chief executive under section 28(2).
- (2) The direction is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.
- (3) Without limiting subsection (2), the direction is to be read as if a reference to an authority or a prescribed authority is a reference to the chief executive.
- (4) In this section—

repealed section 58 means section 58 as in force immediately before the commencement of this section.

78 Disciplinary action

- (1) If disciplinary action against an employee of an authority had been started by the authority, but not finished, before the commencement of this section, the action may be continued or discontinued by the chief executive as if this section had not commenced.

- (2) If, immediately before the commencement, an authority could have started disciplinary action against an employee of the authority, the chief executive can start the action.

79 Entries in registers

- (1) The registrar of titles and all persons who keep registers of dealings in property must, if asked by the chief executive, make in the registers all entries necessary to record the vesting of property in the State under this part.
- (2) A request under this section is not liable to fees or stamp duty.

Division 3 Transitional provision for Health Legislation Amendment Act 1999

80 Committees continue to be approved quality assurance committees

- (1) This section applies to a committee under part 4, division 2, in existence immediately before the commencement of this section if—
- (a) the committee was established by the holder of a licence to use a private hospital under the *Health Act 1937*, part 3, division 4; or
 - (b) the committee was established by a number of entities including the holder of a licence mentioned in paragraph (a).
- (2) After the commencement of this section the committee continues to be a committee under part 4, division 2.

Division 4 Validating provision for Health Legislation Amendment Act 2003

81 Validation

- (1) Subsection (2) applies if—

- (a) a council performed a function, or exercised a power, before the commencement of the *Health Legislation Amendment Act 2003*, section 55; and
 - (b) at the time of the performance of the function, or the exercise of the power, the council's membership was less than the minimum number required under section 10(1), as in force before the commencement of the *Health Legislation Amendment Act 2003*, section 55; and
 - (c) the performance of the function, or the exercise of the power would have been valid except for the council's membership being less than the minimum number required.
- (2) The performance of the function, or the exercise of the power, is taken to have been valid despite the council's membership being less than the minimum number required.

Division 5 Transitional provision for Public Health Act 2005

82 Chief health officer

- (1) This section applies to the person who, immediately before the commencement day, was the chief health officer under the *Health Act 1937*, section 7.
- (2) Subject to this Act, the person continues as the chief health officer under section 57B on the same terms of appointment that applied to the person immediately before the commencement day.
- (3) In this section—
commencement day means the day the omission of the *Health Act 1937*, section 7, under the *Public Health Act 2005*, schedule 1, commences.

Division 6 Transitional provisions for Health Services Amendment Act 2006

83 Definitions for div 6

In this division—

commencement means commencement of this section.

former council, for a district, means the district health council for the district in existence immediately before the commencement.

transition period means the period from the commencement to 30 June 2007.

84 Membership of councils

- (1) From the commencement, a council for a district consists of the existing members of the former council for the district.
- (2) An existing member holds office as a member of the council until the earlier of the following days—
 - (a) the last day of the transition period;
 - (b) if the existing member vacates office under this Act before the day mentioned in paragraph (a)—the day the existing member vacates office.
- (3) Subsection (2)(a) applies subject to the appointment of members of the council, under section 28N(1), during the transition period.
- (4) The Minister may, under this section, appoint a person to fill the office of a member of a first council if it is vacant.
- (5) Subject to subsection (3), this section has effect despite sections 28N and 28P.
- (6) In this section—

existing member, of a former council for a district, means a person who immediately before the commencement held office as a member of the former council for the district.

first council means a council as constituted under this section.

85 Chairpersons of councils

- (1) From the commencement, the existing chairperson of a former council for a district is taken to be the chairperson of the council for the district as constituted under section 84.
- (2) The existing chairperson holds office as the chairperson of the council until the earlier of the following days—
 - (a) the last day of the transition period;
 - (b) if the existing member vacates office under this Act before the day mentioned in paragraph (a)—the day the existing chairperson vacates office.
- (3) Subsection (2)(a) applies subject to the appointment of the chairperson of the council, under 28O(1), during the transition period.
- (4) Subject to subsection (3), this section has effect despite section 28O(1).
- (5) In this section—

existing chairperson, of a former council for a district, means the person who immediately before the commencement held office as the chairperson of the former council for the district.

86 Amalgamation of districts during transition period

- (1) This section applies if, during the transition period, the Governor in Council —
 - (a) revokes 1 or more declarations, under section 6 of the pre-amended Act, of adjoining areas of the State as health service districts (the *former districts*); and
 - (b) declares, under section 6, an area of the State comprising the areas mentioned in paragraph (a) as a health service district (the *new district*).
- (2) The council for a former district is taken to be a council for the new district.
- (3) In this section—

pre-amended Act means this Act as in force before the commencement of the *Health Services Amendment Act 2006*, section 12.

Endnotes

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| 2 Date to which amendments incorporated | 118 |
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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 November 2009. Future amendments of the Health Services Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| num | = numbered | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2002 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|-----------------|------------------|------------------|
| 1 | 1993 Act No. 70 | 26 March 1994 | 29 April 1994 |
| 2 | 1995 Act No. 58 | 28 November 1995 | 13 December 1995 |
| 2A | 1996 Act No. 61 | 20 December 1996 | 12 February 1997 |
| 3 | 1996 Act No. 61 | 1 July 1997 | 31 July 1997 |
| 3A | 1998 Act No. 41 | 21 December 1998 | 10 February 1999 |
| 3B | 1999 Act No. 33 | 1 July 1999 | 2 July 1999 |
| 3C | 1999 Act No. 61 | 1 December 1999 | 2 December 1999 |
| 3D | 1999 Act No. 61 | 7 February 2000 | 24 March 2000 |
| 3E | 2000 Act No. 46 | 25 October 2000 | 8 November 2000 |
| 3F | 2000 Act No. 46 | 30 November 2000 | 12 December 2000 |
| 4 | 2000 Act No. 46 | 30 November 2000 | 19 January 2001 |
| 4A | 2001 Act No. 20 | 1 January 2002 | 11 January 2002 |
| 4B | 2001 Act No. 20 | 1 February 2002 | 8 February 2002 |
| 4C | 2001 Act No. 20 | 1 March 2002 | 1 March 2002 |
| 4D | 2001 Act No. 20 | 1 May 2002 | 1 May 2002 |
| 4E | 2001 Act No. 20 | 12 May 2002 | 24 May 2002 |

| Reprint No. | Amendments to | Effective | Reprint date |
|-------------|---|------------------|--------------|
| 4F | 2001 Act No. 20 | 31 May 2002 | 14 June 2002 |
| Reprint No. | Amendments included | Effective | Notes |
| 4G | 2003 Act No. 9 | 28 March 2003 | |
| 4H | 2002 Act No. 74 | 1 April 2003 | |
| 4I | 2003 Act No. 68 | 22 October 2003 | |
| 5 | 2003 Act No. 13 | 1 December 2003 | |
| 5A | 2004 Act No. 13 | 1 August 2004 | |
| 5B | 2005 Act No. 10 | 29 April 2005 | |
| 5C | 2005 Act No. 58 | 28 November 2005 | |
| 5D | 2005 Act No. 48 | 1 December 2005 | |
| 5E | 2006 Act No. 25 | 1 July 2006 | |
| 5F | 2006 Act No. 46 | 10 November 2006 | |
| 5G | 2006 Act No. 52 | 15 December 2006 | |
| 5H rv | 2006 Act No. 52 (amd 2007 Act No. 54) 2007 Act No. 54 | 9 November 2007 | |
| 6 | 2007 Act No. 28 | 20 March 2008 | |
| 6A | 2008 Act No. 60 | 12 December 2008 | |
| 6B | 2009 Act No. 9 | 1 July 2009 | |
| 6C | 2009 Act No. 25 | 2 November 2009 | |

5 Tables in earlier reprints

| Name of table | Reprint No. |
|-----------------------------------|-------------|
| Changed citations and remade laws | 1 |
| Changed names and titles | 1 |
| Corrected minor errors | 1, 6 |
| Obsolete and redundant provisions | 1 |
| Renumbered provisions | 1, 2, 3 |

6 List of legislation

Health Services Act 1991 No. 24

date of assent 5 June 1991

ss 1–1.2 commenced on date of assent

remaining provisions commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2

date of assent 17 December 1991

commenced on date of assent

Local Government Act 1993 No. 70 ss 1–2, 804 sch

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2

date of assent 1 December 1994

commenced on date of assent

Health Services Amendment Act 1995 No. 29

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 18 August 1995 (1995 SL No. 234)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, pt 2, s 15 sch

date of assent 9 December 1996

ss 1–2 commenced on date of assent

s 8 (to the extent that it ins new pt 3), s 10 (to the extent that it ins new pt 6 div 1)
commenced 1 July 1997 (1997 SL No. 175)

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(2) sch 2

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

Health Practitioners (Professional Standards) Act 1999 No. 58 ss 1–2, pt 14 div 6

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 7 February 2000 (1999 SL No. 327)

Health Legislation Amendment Act 1999 No. 61 ss 1, 2(1), pt 2

date of assent 29 November 1999

pt 2 div 3 commenced 30 November 2000 (automatic commencement under AIA s 15DA(2)) (see s 2(1) and 1999 No. 60)

remaining provisions commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date of assent 25 October 2000

commenced on date of assent

Chiropractors Registration Act 2001 No. 3 ss 1–2, 241 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 73)

Dental Practitioners Registration Act 2001 No. 4 ss 1–2, 267 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 258)

Dental Technicians and Dental Prosthetists Registration Act 2001 No. 5 ss 1–2, 247 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 74)

Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

Medical Radiation Technologists Registration Act 2001 No. 8 ss 1–2, 237 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 12 May 2002 (automatic commencement under AIA s 15DA(2))

Occupational Therapists Registration Act 2001 No. 9 ss 1–2, 239 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 259)

Optometrists Registration Act 2001 No. 10 ss 1–2, 237 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 260)

Pharmacists Registration Act 2001 No. 12 ss 1–2, 245 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 261)

Physiotherapists Registration Act 2001 No. 13 ss 1–2, 242 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 262)

Podiatrists Registration Act 2001 No. 14 ss 1–2, 238 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 76)

Psychologists Registration Act 2001 No. 15 ss 1–2, 255 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 77)

Speech Pathologists Registration Act 2001 No. 16 ss 1–2, 236 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 263)

**Tobacco and Other Smoking Products (Prevention of Supply to Children)
Amendment Act 2001 No. 20 ss 1, 2(2), pt 3**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 31 May 2002 (see s 2(2))

Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

Health and Other Legislation Amendment Act 2003 No. 9 s 1, pt 6

date of assent 28 March 2003

commenced on date of assent

Coroners Act 2003 No. 13 ss 1, 2(2), 106 sch 1

date of assent 9 April 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2003 (2003 SL No. 296)

Health Legislation Amendment Act 2003 No. 68 s 1, pt 8

date of assent 22 October 2003

commenced on date of assent

Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), pt 7

date of assent 24 June 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2004 (2004 SL No. 141)

Health Legislation Amendment Act 2005 No. 10 pts 1–2, s 50 sch

date of assent 1 April 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 29 April 2005 (2005 SL No. 72)

Public Health Act 2005 No. 48 ss 1–2, 492 sch 1

date of assent 2 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2005 (2005 SL No. 280)

Health Services Amendment Act 2005 No. 58

date of assent 28 November 2005

commenced on date of assent

Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2, ch 16, s 241(2) sch 4 (this Act is amended, see amending legislation below)

date of assent 29 May 2006

ss 1–2 commenced on date of assent

s 240 never proclaimed into force and om 2006 No. 52 s 25 sch

remaining provisions commenced 1 July 2006 (see s 2(1))

amending legislation—

Health Services Amendment Act 2006 No. 52 ss 1–2, 25 sch (amends 2006 No. 25 above)

date of assent 4 December 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 2006 (2006 SL No. 310)

Health Legislation Amendment Act 2006 No. 46 s 1, pt 5

date of assent 10 November 2006

commenced on date of assent

Health Services Amendment Act 2006 No. 52 ss 1–24 (this Act is amended, see amending legislation below)

date of assent 4 December 2006

ss 1–2 commenced on date of assent

s 22 never proclaimed into force and om 2007 No. 52 s 50

remaining provisions commenced 15 December 2006 (2006 SL No. 310)

amending legislation—

Mental Health and Other Legislation Amendment Act 2007 No. 54 s 1, pt 7 (amends 2006 No. 52 above)

date of assent 9 November 2007

commenced on date of assent

Health and Other Legislation Amendment Act 2007 No. 28 pts 1–2

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 20 March 2008 (2008 SL No. 68)

Mental Health and Other Legislation Amendment Act 2007 No. 54 s 1, pt 6

date of assent 9 November 2007

commenced on date of assent

Mater Public Health Services Act 2008 No. 60 ss 1–2, pt 6

date of assent 25 November 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 2008 (2008 SL No. 447)

Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1

date of assent 28 May 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2009 (2009 SL No. 80)

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 8.

Title amd 1996 No. 61 s 15 sch; 2006 No. 52 s 4

Commencement

s 1.2 om R2 (see RA s 37)

Repeals

s 1.3 om R1 (see RA s 40)

Dissolution of Boards

s 1.4 om 1995 No. 57 s 4 sch 1

Administration of Act

s 1.7 om 1995 No. 57 s 4 sch 1

Definitions

prov hdg sub 1995 No. 57 s 4 sch 1

s 2 amd R1 (see RA s 39); 1995 No. 57 s 4 sch 1

def “**applicable provisions**” ins 2007 No. 28 s 4

def “**applied law**” ins 1996 No. 61 s 4(3)

amd 2009 No. 25 s 83 sch

def “**appoint**” ins 1996 No. 61 s 4(3)

def “**appointed day**” sub 1995 No. 58 s 4 sch 2

def “**Area of Local Authority**” om 1993 No. 70 s 804 sch

- def “**auditor**” ins 1996 No. 61 s 4(3)
- def “**Australian Health Care Agreement**” ins 1999 No. 19 s 3 sch
amd 2005 No. 10 s 50 sch
- def “**authorised officer**” om 1996 No. 61 s 4(1)
- def “**authorised person**” ins 1996 No. 61 s 4(3)
- def “**authority**” om 1996 No. 61 s 4(1)
- def “**award**” ins 1996 No. 61 s 4(3)
sub 1999 No. 33 s 747 sch 3
- def “**blameworthy act**” ins 2007 No. 28 s 4
- def “**case mix funding arrangement**” ins 1996 No. 61 s 4(3)
- def “**casual health service employee**” ins 1996 No. 61 s 4(3)
- def “**chain of events document**” ins 2007 No. 28 s 4
- def “**chairperson**” ins 1996 No. 61 s 4(3)
- def “**chief executive**” sub 1991 No. 97 s 3 sch 2
om 1995 No. 29 s 4(1)
- def “**chief health officer**” ins 2005 No. 48 s 492 sch 1
- def “**commencement**” ins 2006 No. 52 s 5(2)
- def “**commissioning authority**” ins 2007 No. 28 s 4
- def “**committee**” ins 2003 No. 9 s 30
- def “**confidential information**” ins 2005 No. 10 s 4
- def “**contracted health service employee**” ins 1996 No. 61 s 4(3)
- def “**coroner**” ins 2007 No. 28 s 4
- def “**council**” ins 1996 No. 61 s 4(3)
sub 2006 No. 52 s 5(1)–(2)
- def “**designated person**” ins 2005 No. 10 s 4
- def “**designated smoking area**” ins 1996 No. 61 s 4(3)
om 2007 No. 54 s 44
- def “**directive**” ins 1996 No. 61 s 4(3)
amd 2009 No. 25 s 83 sch
- def “**dissolved authority**” ins 1996 No. 61 s 4(3)
- def “**district**” ins 1996 No. 61 s 4(3)
- def “**elective surgery**” ins 2005 No. 58 s 3(1)
- def “**elective surgery waiting list**” ins 2005 No. 58 s 3(1)
- def “**former council**” ins 2006 No. 52 s 5(2)
- def “**former designated person**” ins 2005 No. 10 s 4
- def “**funding arrangement**” ins 1996 No. 61 s 4(3)
amd 1999 No. 19 s 3 sch; 2006 No. 52 s 5(3)
- def “**guardian**” ins 2005 No. 10 s 4
- def “**health executive**” ins 2006 No. 52 s 5(2)
- def “**health executive service**” ins 2006 No. 52 s 5(2)
- def “**health practitioner registration Act**” ins 2005 No. 10 s 4
- def “**health professional**” ins 2005 No. 10 s 4
- def “**Health Quality and Complaints Commission**” ins 2006 No. 25 s
233(1)
- def “**health service**” sub 1996 No. 61 s 4(1), (3)
- def “**health service area**” ins 2005 No. 58 s 3(1)
- def “**health service area plan**” ins 2006 No. 52 s 5(2)
- def “**health service employee**” ins 1996 No. 61 s 4(3)
- def “**health service facility**” ins 2007 No. 28 s 4

- def **“health services agreement”** ins 1996 No. 61 s 4(3)
 amd 2006 No. 25 s 233(2)
- def **“health services land”** ins 1996 No. 61 s 4(3)
- def **“higher classification level”** ins 1996 No. 61 s 4(3)
- def **“industrial agreement”** ins 1996 No. 61 s 4(3)
 amd 1999 No. 33 s 747 sch 3
- def **“information”** ins 2007 No. 28 s 4
- def **“inspector”** om 1996 No. 61 s 4(1)
 ins 2005 No. 10 s 4
- def **“investigator”** ins 1996 No. 61 s 4(3)
- def **“lower classification level”** ins 1996 No. 61 s 4(3)
- def **“manager”** ins 1996 No. 61 s 4(3)
- def **“medical practitioner”** om 1995 No. 29 s 4(1)
- def **“Medicare Agreement”** ins 1996 No. 61 s 4(3)
 om 1999 No. 19 s 3 sch
- def **“member”** ins 1996 No. 61 s 4(3)
- def **“Minister”** om 1991 No. 97 s 3 sch 2
- def **“notice”** ins 2007 No. 28 s 4
- def **“official”** ins 1996 No. 61 s 4(3)
- def **“official traffic sign”** ins 1996 No. 61 s 4(3)
 amd 1999 No. 42 s 54(3) sch pt 3
- def **“owner”** ins 1996 No. 61 s 4(3)
 amd 1999 No. 42 s 54(3) sch pt 3
- def **“parent”** ins 2005 No. 10 s 4
- def **“performance agreement”** ins 2006 No. 52 s 5(2)
- def **“personal details requirement”** ins 2005 No. 10 s 4
- def **“prescribed public hospital”** ins 2005 No. 58 s 3(1)
- def **“private health facility”** ins 2007 No. 28 s 4
- def **“private sector health service”** om 1996 No. 61 s 4(1)
- def **“professional association”** om 1996 No. 61 s 4(1)
- def **“promote”** ins 1996 No. 61 s 4(3)
- def **“public hospitals performance report”** ins 2005 No. 58 s 3(1)
- def **“public sector”** om 1996 No. 61 s 4(1)
- def **“public sector health service”** sub 1995 No. 57 s 4 sch 1
 amd 1996 No. 61 s 4(2)
- def **“public sector health service facility”** ins 2005 No. 10 s 4
 amd 2005 No. 58 s 3(2)
- def **“public sector hospital”** amd 1995 No. 29 s 4(2)
 sub 1996 No. 61 s 4(1), (3)
- def **“public service officer”** ins 1996 No. 61 s 4(3)
- def **“RCA report”** ins 2007 No. 28 s 4
- def **“RCA team”** ins 2007 No. 28 s 4
- def **“redeploy”** ins 1996 No. 61 s 4(3)
- def **“region”** om 1996 No. 61 s 4(1)
- def **“regional director”** om 1996 No. 61 s 4(1)
- def **“regulatory notice”** ins 1996 No. 61 s 4(3)
- def **“relevant person”**, for pt 4, div 2, ins 2003 No. 9 s 30
- def **“relevant person”**, for pt 4B, ins 2007 No. 28 s 4
- def **“reportable event”** ins 2007 No. 28 s 4
- def **“reprisal”** ins 2007 No. 28 s 4

- def “**resource allocation funding model**” ins 2006 No. 52 s 5(2)
- def “**root cause analysis**” or “**RCA**” ins 2007 No. 28 s 4
- def “**security officer**” ins 1996 No. 61 s 4(3)
- def “**stated public hospital**” ins 2005 No. 58 s 3(1)
- def “**State-wide health service**” ins 2006 No. 52 s 5(2)
- def “**State-wide health services plan**” ins 2006 No. 52 s 5(2)
- def “**surgical outpatient waiting list**” ins 2005 No. 58 s 3(1)
- def “**takes a reprisal**” ins 2007 No. 28 s 4
- def “**temporarily**” ins 1996 No. 61 s 4(3)
- def “**temporary health service employee**” ins 1996 No. 61 s 4(3)
- def “**tenured health service employee**” ins 1996 No. 61 s 4(3)
- def “**transition period**” ins 2006 No. 52 s 5(2)
- def “**user**” ins 2006 No. 52 s 5(2)
- def “**vehicle**” ins 1996 No. 61 s 4(3)
 - amd 1999 No. 42 s 54(3) sch pt 3

Meaning of “health service”

- s 3 ins 1996 No. 61 s 5
- amd 2006 No. 52 s 6

Meaning of “user”

- s 3A ins 2006 No. 52 s 7

Objects of Act

- s 4 sub 1996 No. 61 s 6
- amd 2006 No. 52 s 8

Guiding principles

- s 4A ins 2006 No. 52 s 9

Act binds Crown

- s 5 ins 1996 No. 61 s 6

PART 2—HEALTH SERVICE DISTRICTS AND AREAS

- pt hdg ins 1996 No. 61 s 6
- amd 2005 No. 58 s 4; 2006 No. 52 s 10

Division 1—Declaration of districts and areas and establishment of councils

- div hdg prev div 1 hdg om 1996 No. 61 s 7
- pres div 1 hdg ins 1996 No. 61 s 6
- amd 2005 No. 58 s 5
- om 2006 No. 52 s 11

Health service districts

- s 6 prev s 6 om 1996 No. 61 s 7
- pres s 6 ins 1996 No. 61 s 6

Health service areas

- s 6A ins 2005 No. 58 s 6

PART 2A—CHIEF EXECUTIVE’S RESPONSIBILITY AND FUNCTIONS

- pt hdg ins 2006 No. 52 s 12

Responsibility

- prov hdg** amd 2006 No. 52 s 23(1)
s 6B orig s 6 om 1996 No. 61 s 8
 prev s 6 amd 1995 No. 29 s 13; 1995 No. 57 s 4 sch 1; 1996 No. 37 s 147 sch 2
 pres s 6 sub 1996 No. 61 s 8
 (prev s 59) renum and reloc 2006 No. 52 s 23(2)

Functions

- s 7** ins 1996 No. 61 s 6
 sub 2006 No. 52 s 12

Division 2—Functions and membership of councils

- div hdg** ins 1996 No. 61 s 6
 om 2006 No. 52 s 12

Functions

- s 8** ins 1996 No. 61 s 6
 amd 2000 No. 46 s 3 sch
 om 2006 No. 52 s 12

Participation in selection of senior executives

- s 9** ins 1996 No. 61 s 6
 om 2006 No. 52 s 12

Appointment of members

- s 10** ins 1996 No. 61 s 6
 amd 2003 No. 68 s 55; 2006 No. 25 s 234
 om 2006 No. 52 s 12

Chairperson of council

- s 11** ins 1996 No. 61 s 6
 om 2006 No. 52 s 12

Term of appointment

- s 12** ins 1996 No. 61 s 6
 om 2006 No. 52 s 12

Disqualification from membership

- s 13** ins 1996 No. 61 s 6
 amd 2006 No. 25 s 241(2) sch 4
 om 2006 No. 52 s 12

Vacation of office

- s 14** ins 1996 No. 61 s 6
 amd 2003 No. 68 s 56
 om 2006 No. 52 s 12

When notice of resignation takes effect

- s 14A** ins 2003 No. 68 s 57
 om 2006 No. 52 s 12

Effect of vacancy in membership of council

- s 14B** amd 2003 No. 68 s 57
 om 2006 No. 52 s 12

Remuneration of members

s 15 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Division 3—Business and meetings of councils

div hdg ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Conduct of business

s 16 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Times and places of meetings

s 17 ins 1996 No. 61 s 6
amd 2006 No. 25 s 235
om 2006 No. 52 s 12

Quorum and voting at meetings

s 18 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Attendance by manager

s 19 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Minutes

s 20 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Disclosure of interests

s 21 ins 1996 No. 61 s 6
om 2006 No. 52 s 12

Division 4—Miscellaneous

div hdg ins 1996 No. 61 s 6
om 2006 No. 52 s 12

PART 2B—GENERAL MANAGERS

pt hdg ins 2006 No. 52 s 12

Appointment of general managers

prov hdg sub 2006 No. 52 s 13(1)
s 21A ins 2005 No. 58 s 7
amd 2006 No. 52 s 13(2)–(3)

General manager's functions

s 21B ins 2006 No. 52 s 14

PART 2C—MANAGERS FOR DISTRICTS

pt hdg ins 2006 No. 52 s 14

Appointment of managers for districts

prov hdg sub 2006 No. 52 s 15(1)
s 22 ins 1996 No. 61 s 6
amd 2005 No. 58 s 8; 2006 No. 25 s 236; 2006 No. 52 s 15(2)–(3)

Functions of manager for a district

s 23 ins 1996 No. 61 s 6
sub 2006 No. 52 s 16

Tabling of council reports

s 23A ins 2006 No. 25 s 237
om 2006 No. 52 s 16

PART 3—HEALTH SERVICE EMPLOYEES

pt hdg ins 1996 No. 61 s 6

Appointment of health service employees

s 24 prev s 24 om 1996 No. 37 s 147 sch 2
pres s 24 ins 1996 No. 61 s 6
amd 2006 No. 25 s 238; 2006 No. 52 s 17

Health service employees not public service employees

s 25 prev s 25 amd 1995 No. 57 s 4 sch 1
om 1996 No. 61 s 7
pres s 25 ins 1996 No. 61 s 6

Basis of employment

s 26 prev s 26 om 1996 No. 61 s 7
pres s 26 ins 1996 No. 61 s 6
amd 2006 No. 52 s 18

Directives issued by Governor in Council

s 27 prev s 27 om 1996 No. 61 s 7
pres s 27 ins 1996 No. 61 s 6
amd 2006 No. 52 s 19

Conditions of employment

s 28 prev s 28 om 1996 No. 61 s 7
pres s 28 ins 1996 No. 61 s 6
amd 2006 No. 52 s 20

PART 3A—HEALTH EXECUTIVE SERVICE

pt 3A (ss 28A–28K) ins 2006 No. 52 s 21

PART 3B—HEALTH COMMUNITY COUNCILS

pt hdg ins 2006 No. 52 s 21

Division 1—Establishment of health community councils

div 1 (s 28L) ins 2006 No. 52 s 21

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