



Hospitals Foundations Act 1982

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Queensland

Hospitals Foundations Act 1982

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Hospitals Foundations Act 1982

An Act to provide for the establishment and incorporation of bodies to hold property for and apply property to a continuing object within or associated with hospitals, to make provision with respect to the administration of those bodies and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Hospitals Foundations Act 1982*.

2 Commencement

- (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.
- (2) Except as is prescribed in subsection (1) the provisions of this Act shall commence on a date appointed by proclamation.

4 Definitions

In this Act—

appointed member, in relation to a body corporate, means a member of the body corporate other than the member under section 18(3)(a).

associated hospital, for a body corporate, means a hospital within or in association with which the body corporate pursues its objects.

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associated Hospital and Health Service, for an associated hospital, means a Hospital and Health Service for the health service area in which the hospital is situated.

body corporate means a body corporate established under section 7.

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

hospital means a public sector hospital.

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

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

register means the register of bodies corporate kept in the Department of Health for the purposes of this Act.

the fund means the general fund established and maintained by a body corporate.

Part 2 Applications for establishment of bodies corporate

5 Class of applicant

Any person in whom is vested property, being—

- (a) money in an amount of \$10000, or such greater amount as may be prescribed, at the least; or
- (b) property of any other kind of a value of \$10000, or such greater value as may be prescribed, at the least;

and who desires or is required by law to apply that property to a continuing object of a description within the scope of objects specified in section 13 may apply to the Minister for

the establishment of a body corporate to hold, manage and apply the property.

6 Matter to be included in applications

- (1) An application under section 5—
 - (a) shall state the name in which it is sought to have a body corporate established under this Act, which name shall be consistent with the requirements of this Act; and
 - (b) shall state the object or objects to which it is proposed to apply the property held by the applicant; and
 - (c) must state the name of each hospital proposed to be an associated hospital for the body corporate; and
 - (d) shall include or be accompanied by such other information and documents as the Minister may require.
- (2) An application may be varied by the applicant at any time before the Minister makes a recommendation in relation to it.
- (3) If the Minister is satisfied that an application, as originally made or as varied, has been made in circumstances where a body corporate should be established the Minister may recommend to the Governor in Council that a body corporate be established pursuant to section 7 but otherwise the Minister shall refuse the application.

Part 3 Establishment and registration of bodies corporate

7 Establishment of bodies corporate

- (1) The Governor in Council may establish a body corporate by regulation.
- (2) The regulation must assign a name to the body.

- (3) The body's name must not be the same as the name of another body corporate.

8 Body to be incorporated

- (1) Every body established under section 7 shall be, under its registered name, a body corporate with perpetual succession and a common seal and, subject to this Act, shall be capable of—
 - (a) suing and being sued, submitting itself to arbitration and complying with awards made by any arbitrator; and
 - (b) compounding or proving in any court of competent jurisdiction all debts and sums of money due to it; and
 - (c) acquiring, holding, leasing, letting, alienating and charging property and any interest therein, whether the property is situated in Queensland or elsewhere; and
 - (d) doing and suffering all such other acts and things as bodies corporate may in law do and suffer.
- (2) All courts and persons acting judicially shall take judicial notice of the common seal of a body corporate and until the contrary is proved shall presume that it has been duly affixed to any document on which it appears.

9 Registration of bodies corporate

There shall be kept in the department a register of bodies corporate established under this Act in which shall be entered—

- (a) the name under which each body corporate is established; and
- (b) the date on which each body corporate was or is to become established; and
- (c) a copy of the current object or objects of each body corporate.

10 Name of bodies corporate

Each body corporate shall have included in its name the term 'Foundation' or the term 'Trust'.

11 Restriction on change of objects

- (1) If a body corporate desires to alter in any way the object or objects registered in respect of it in the register it shall first make application to the Minister for his or her approval to the alteration.
- (2) Where a body corporate, subsequently to its establishment, acquires property that is to be applied to uses or objects which under this Act are permitted to a body corporate, being uses or objects not specified in the register in relation to that body corporate, it shall as soon as is practicable, notify the fact of the acquisition and particulars of such uses or objects to the Minister and shall apply to the Minister for alteration of the objects entered in the register in respect of that body corporate.
- (3) If the Minister approves of an alteration to the object or objects of a body corporate an appropriate alteration shall be made in the register in respect of that body.

Part 4 Function, objects and powers of bodies corporate

12 Function of body corporate

It is the function of each body corporate—

- (a) to pursue the object or objects from time to time registered in respect of it in the register; and
- (b) to manage and apply all property from time to time held by it, and the income arising therefrom, towards the attainment of that object or those objects and towards

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matters and things incidental thereto or calculated to assist therein; and

- (c) to properly govern and control the affairs of the body corporate.

13 Objects for which bodies corporate may apply property

The objects for which a body corporate may acquire, manage and apply property are the following—

- (a) to aid any health, hospital, ambulance or nursing service whether the service has been established or is proposed;
- (b) to supply aid to persons in respect of any matter concerning any aspect of the health or wellbeing of people or in respect of education or instruction in any such matter;
- (c) to provide money or travel grants, conference expenses, fellowships, allowances and prizes in relation to any matter concerning any aspect of the health or wellbeing of people;
- (d) to promote and provide improved facilities for education or instruction at undergraduate and postgraduate levels in medicine, preventive medicine and any other field concerning the health or wellbeing of people for persons engaged in studying or teaching medical or health sciences;
- (e) to seek to discover the nature, origins and causes of disease and bodily afflictions by the application of all or any of those branches of science that are relevant to the purpose and to make the best use of knowledge gained for improvement of the means of prevention or treatment of disease and bodily afflictions;
- (f) to research or arrange or promote research (including surveys relevant to health service or hospital functions) into and development of any branch of medical science, technological research, medical investigation or other

- matter concerning the health or wellbeing of people, with a view to general improvement in health services;
- (g) to provide money grants or loans for persons engaged in research at postgraduate level in medical or any other health science (including surveys relevant to any such science);
 - (h) to provide money grants or loans for research or surveys relative to the functions, duties, management and administration of hospitals and for any public health service other than a hospital;
 - (i) to arrange for research and development work in specific matters related to the health of people and to arrange for production and marketing of anything that results from such research or development work;
 - (j) to invite lecturers renowned for their knowledge or expertise in any aspect of health care or the wellbeing of people to deliver instruction on such aspect and to finance the appearance of such a lecturer;
 - (k) to do anything, relevant to the fields of medicine or health care, that is likely to be to the betterment of health services generally or of the administration of an associated hospital.

14 General powers of bodies corporate

- (1) A body corporate is authorised to do all lawful things necessary or convenient to be done in connection with or incidental to the proper discharge of its functions.
- (2) Where a body corporate agrees to any condition affecting property vested in it the body corporate is authorised to do all lawful things necessary or convenient to be done to enable it to honour its agreement.

15 Specific powers of bodies corporate

- (1) Without limiting the generality of section 14 or of any other provision of this Act that confers power on a body corporate the powers of a body corporate include the following—
 - (a) to raise money by way of public appeals for subscriptions or contributions, subject to the *Collections Act 1966*;
 - (b) subject to subsection (2), to make such contracts, agreements and arrangements and make and take such purchases, leases, sales and dispositions of property as it considers to be likely to assist the discharge of its function or the pursuit of any of its objects on such terms and conditions as it thinks fit;
 - (c) to act as consultant to any person or association of persons that seeks its assistance;
 - (d) to charge for work or investigations carried out by it or for anything produced on its behalf;
 - (e) to incur expenditure for work carried out at its request;
 - (f) to establish and conduct schools, courses, seminars, lectures and any other form of education or instruction, and in connection therewith to arrange the engagement or employment of lecturers or teachers and the payment of salaries, fees or honoraria;
 - (g) to teach, train and instruct persons and to promote education and research in fields concerning the health or wellbeing of people;
 - (h) to purchase, print, publish, circulate or make available on loan or hire text books, magazines and journals, reference works, circulars, pamphlets and instructional material of any kind (including microfilm reproductions and audiovisual teaching aids) and all equipment necessary or desirable for the use of such lecture aids and materials and ancillary storage or transport equipment;

- (i) to conduct or assist any other person or association of persons in connection with the conduct of any research or other work that the body corporate considers to be in its interests or conducive to the discharge of its own function by such means as it considers appropriate and to set up, equip and maintain laboratories, offices and other buildings (including animal facilities) as it considers to be necessary or desirable;
- (j) to promote or attain any of its objects by way of facilities available in or associated with any hospital (other than an associated hospital), the Mater Misericordiae Hospitals or any private hospital, any university, college of advanced education or other educational institution, any medical, scientific, administrative or research institute, council, faculty, school or like institution and to that end to make to any of the entities aforesaid donations of money or gifts of property of any other kind;
- (k) to cooperate with any other person or association of persons (either within or outside Australia) connected with or having objectives similar, in whole or in part, to its objects and to join any association having such similar objectives and to establish and support or join in establishing and supporting, and to subscribe, give or lend money to any such person or association for the purpose of discharging the function of the body corporate;
- (l) to carry on or join in carrying on any business or arrangement that it thinks may be conveniently carried on by it and that is calculated to assist it (directly or indirectly) to discharge its function or to enhance (directly or indirectly) the value of its property;
- (m) with the Minister's approval first had and obtained, to acquire the whole of or a share in the business of any person and to assume the whole of or a share in the liabilities of that person in relation to the business if that business is of such a nature that the body corporate is by this Act authorised to carry it on;

- (n) to apply for or acquire—
 - (i) any patent rights, copyrights, trademarks, formulas, licences, concessions and similar property rights conferring exclusive, non-exclusive or limited rights of user; or
 - (ii) any secret or other information as to any invention; that it considers may be used for any of its purposes or may directly or indirectly assist it to discharge its function; and to use, exercise or develop such property rights or information or to grant licences in respect thereof or otherwise to turn them or it to account;
- (o) with the Minister's approval first had and obtained, to enter into a partnership, an arrangement for sharing of profits, union of interest, cooperative joint venture, reciprocal concession or other similar arrangement with any person or persons carrying on or about to carry on any business or transaction that the body corporate is by this Act authorised to carry on, or any business or transaction capable of being so carried on as to assist it (directly or indirectly) to discharge its function;
- (p) with the approval of the Minister first had and obtained, to acquire, hold and dispose of shares, debentures or securities of any corporation;
- (q) with the approval of the Minister first had and obtained, to enter into arrangements with any government, authority, person or persons, being arrangements calculated to enable it (directly or indirectly) to discharge its function, and to carry out such arrangements, and to acquire from such government, authority, person or persons any right, privilege or concession that the body corporate considers desirable to acquire to assist it to discharge its function;
- (r) to make money or other awards to persons concerned in such inventions or discoveries accepted by it as likely to benefit the health or wellbeing of people and as approved by the Minister, having regard to the body corporate's recommendation;

- (s) with the Minister's approval first had and obtained, to sell or otherwise dispose of its land or buildings for such consideration as it determines and as the Minister approves or to exchange its property for shares, debentures or securities of a corporation that has objectives similar to the objects of the body corporate;
 - (t) to improve, develop, exchange, lease or turn to account its land or buildings in such manner as the Minister approves;
 - (u) to make known and further its objects by publishing and distributing papers, journals and other publications and by advertising;
 - (v) to pursue its objects and exercise its powers in any part of the world whether as principal, agent, trustee or otherwise and whether through trustees, agents or servants, either on its own account or in conjunction with any person or persons;
 - (w) to do all acts and things that are incidental or conducive to attaining its objects or to exercising its powers.
- (2) Where a contract, agreement or arrangement to be made by a body corporate relates to any matter or thing for which this section requires the Minister's approval, it is not competent to the body corporate to make that contract, agreement or arrangement until that approval has been obtained.

16 Application of Collections Act

- (1) Each of the purposes and objects to which a body corporate may lawfully apply property vested in it shall, without other authority than this section, be deemed to be sanctioned under the *Collections Act 1966* for the purposes of part 3 of that Act.
- (2) Subject to subsection (1), the provisions of the *Collections Act 1966*, other than section 31 of that Act, apply to a body corporate in the discharge of its function and the exercise of its powers.

17 Application of pt 14 Property Law Act

For the purposes of the application of part 14 of the *Property Law Act 1974* to any gift or devise to a body corporate it is declared that the purposes and objects of a body corporate are charitable purposes.

Part 5 Constitution of bodies corporate

18 Members of body corporate

- (1) A body corporate shall consist of 7 or more members as the Governor in Council may from time to time declare by gazette notice in respect of that body.
- (3) A body corporate is constituted by the following members—
 - (a) either of the following persons—
 - (i) if there is only one Hospital and Health Service for the hospitals that are, or are to be, the associated hospitals for the body corporate—the chairperson of the Hospital and Health Board for the Hospital and Health Service or the chairperson’s nominee;
 - (ii) if there is more than one Hospital and Health Service for the hospitals that are, or are to be, the associated hospitals for the body corporate—the chairperson of the Hospital and Health Board for the Hospital and Health Service prescribed under a regulation or the chairperson’s nominee;
 - (b) an employee of a university or other body providing education at tertiary level with which the body corporate has become associated, or a person who, in the Minister’s opinion, is knowledgeable and experienced in the field of knowledge or activity relevant to the purposes or objects of the body corporate, in any case

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- nominated by the Minister in accordance with subsection (4);
- (c) at least 2 officers or employees at an associated hospital or persons who, in the Minister's opinion, are knowledgeable and experienced in a field of knowledge or activity relevant to the purposes or objects of the body corporate, in any case nominated by the Minister in accordance with subsection (4);
 - (d) other persons nominated by the Minister under subsection (4) who, in the Minister's opinion, have an interest in, and are able to help in achieving, the body corporate's objects.
- (4) For nominating persons for appointment as members of a body corporate, the Minister must consult with entities the Minister considers have an interest in the body corporate's purposes or objects.

20 Appointment of members

- (1) The members of a body corporate (other than the member specified in section 18(3)(a)) are to be appointed by the Governor in Council by gazette notice.
- (2) A body corporate shall be first duly constituted on the date on which notification of appointment of the total number of the appointed members (being persons eligible for appointment) is published in the gazette or, if a later date is therein specified for the purpose, on such later date.

21 Term of appointment

An appointed member must be appointed for a term of not more than 5 years.

23 Casual vacancies

- (1) Where a vacancy occurs in the office of an appointed member during the currency of his or her term of office as such

member the Governor in Council may appoint another person to fill that vacancy.

- (2) A person appointed to fill a casual vacancy shall, subject to this Act, be appointed and hold office for the balance of his or her predecessor's term of office or until the person sooner vacates that office and shall, if otherwise qualified, be eligible for reappointment as a member.
- (3) If for any reason any member, other than the chairperson, is unable to carry out the duties of his or her office as member the Governor in Council may appoint some other person to act as a member during the period of such inability.

24 Vacation of office

The office of an appointed member shall become vacant if the member—

- (a) dies; or
- (b) declines to act or to act further as a member; or
- (c) resigns office by signed writing addressed to the Minister (such resignation to be complete and take effect from the time it is received by the Minister); or
- (d) is absent without prior leave granted by the body corporate from 3 consecutive meetings of the body corporate of which due notice has been given to the member personally or in the ordinary course of post; or
- (e) ceases to be qualified to be a member; or
- (f) is removed from office as a member by the Governor in Council.

25 Disclosure of interests

- (1) If—
 - (a) a member of a body corporate has a personal interest, or a direct or indirect pecuniary interest, in a matter being

considered, or about to be considered, by the body corporate; and

- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter;

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the body corporate.

- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the body corporate otherwise determines, the member must not—
 - (a) be present during any deliberation of the body corporate in relation to the matter; or
 - (b) take part in any decision of the body corporate in relation to the matter.
- (3) For the purpose of the making of a determination by the body corporate under subsection (2) in relation to the member, the member or another member who has a personal interest, or a direct or indirect pecuniary interest, in the matter to which the disclosure relates must not—
 - (a) be present during any deliberation of the body corporate for the purpose of making the determination; or
 - (b) take part in the making by the body corporate of the determination.

25A Members to act honestly and with propriety

- (1) A member of a body corporate must at all times act honestly in the exercise of the member's powers and the discharge of the member's functions under this Act.
- (2) A member of a body corporate must not make improper use of—
 - (a) the office of member; or
 - (b) information acquired by virtue of holding that office;

to gain, directly or indirectly, an advantage for the member or another person or to cause detriment to the body corporate.

26 Disqualification from office

A person is not eligible to be or to continue to be a member of a body corporate if—

- (a) the person is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy or insolvent debtors; or
- (b) the person has been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that if done or made by the person in Queensland would have constituted an indictable offence or has been convicted of an offence punishable on summary conviction for which the person is sentenced to imprisonment otherwise than in default of payment of a fine or has been convicted of an offence against this Act; or

(c) the person is an employee of the body corporate; unless, in the case referred to in paragraph (c), the person is nominated by the Minister as a person referred to in section 18(3)(c).

27 Removal from office

The Governor in Council may at any time remove an appointed member from office as member if—

- (a) the appointed member becomes incapable, in the opinion of the Governor in Council, of discharging the duties of his or her office; or
- (b) the appointed member is, in the opinion of the Governor in Council, incompetent or unfit to hold office.

28 Chairperson and deputy chairperson

- (1) The Governor in Council, by gazette notice, shall appoint a member of a body corporate, being a member referred to in section 18(3)(b) to (d) to be chairperson of the body corporate—
 - (a) upon the first appointment of members of the body corporate; or
 - (b) upon each subsequent appointment of members of the body corporate made at a time when there is no chairperson of the body corporate or the chairperson's term of office as a member is being renewed; or
 - (c) upon the filling of a casual vacancy in the office of the member of the body corporate who was chairperson immediately before the occurrence of the vacancy.
- (1A) The person so appointed shall be chairperson of the body corporate concerned.
- (2) The body corporate shall at its first meeting and thereafter as it becomes necessary appoint a member to be deputy chairperson of the body corporate.
- (3) A member appointed as the chairperson or deputy chairperson shall hold office as such until—
 - (a) the appointment of another member as the chairperson or, as the case may be, deputy chairperson; or
 - (b) the member ceases to hold office as a member;whichever first occurs.
- (4) The chairperson may, by signed writing addressed to the Minister resign office as chairperson and the deputy chairperson may by signed writing addressed to the chairperson resign office as deputy chairperson.
- (5) A person appointed to fill a vacancy in the office of a member who was chairperson or deputy chairperson shall not by reason only of his or her appointment as member be chairperson or, as the case may be deputy chairperson.

- (6) If the deputy chairperson resigns office as deputy chairperson or member, or his or her office otherwise becomes vacant, the body corporate shall, within 2 months of the office becoming vacant, appoint a member to be deputy chairperson and the member so appointed shall, subject to this Act, hold office as deputy chairperson in accordance with subsection (3).
- (7) When requested so to do by the chairperson, or at any time when the chairperson is unable to carry out his or her duties by reason of illness, absence or any other cause the deputy chairperson shall act as chairperson and while so acting shall have all the powers, functions, duties and immunities of the chairperson.
- (8) If the members fail to appoint a deputy chairperson when required so to do the Governor in Council may appoint a member to be deputy chairperson.

29 Fees and allowances

- (1) Subject to subsection (2), each member shall be paid such fees and allowances (if any) as the Governor in Council from time to time determines.
- (2) Allowances shall not be paid by a body corporate to a member who is an officer of the public service for attendance at any meeting of the body corporate held during ordinary office working hours of that officer.

30 Holder of office not affected by restrictive employment provisions

A provision of any enactment requiring the holder of an office to devote the whole of his or her time to the duties of his or her office or prohibiting the holder from engaging in employment outside the duties of his or her office shall not operate to hinder his or her holding that office and also an appointment as member, chairperson or deputy chairperson of a body corporate or, subject to section 29(2), his or her acceptance and retention of any allowances payable under this Act.

Part 6 **Meetings, proceedings and business of bodies corporate**

31 **Conduct of business**

Subject to this Act, a body corporate shall conduct its business and proceedings at meetings in such manner as it determines from time to time.

32 **Quorum**

- (1) The quorum of a body corporate shall consist of a majority of the total number of persons for the time being holding office as members.
- (2) A duly convened meeting of a body corporate at which a quorum is present shall be competent to transact any business of the body corporate and shall have and may exercise all the powers, authorities, functions and duties by this Act conferred or imposed upon the body corporate.

33 **Meetings**

- (1) The first meeting of a body corporate shall be convened by the Minister.
- (2) Meetings held after the first meeting shall be held at such times and places as the body corporate determines.
- (2A) The chairperson shall have power to convene special meetings of the body corporate.
- (3) Notice of every meeting or adjourned meeting, other than a meeting adjourned to a later hour of the same day on which it was appointed to be held, shall be in writing and shall be given to every member at least 7 days prior to the date appointed for that meeting.
- (3A) Where circumstances exist which in the opinion of the chairperson or 2 members constitute an emergency, the chairperson or, as the case may be, 2 members may call a

meeting of the body corporate and that meeting may be held without notice having been given as prescribed.

- (3B) A notice of a meeting or an adjourned meeting may be given to a member personally or by prepaid post letter addressed to his or her place of business or residence last known to the chairperson.
- (4) The members present at a meeting of the body corporate may from time to time adjourn the meeting.
- (4A) If a quorum is not present at a meeting of the body corporate within 15 minutes after the time appointed for the commencement of the meeting, the member or members present or the majority of them if more than 2 are present or the secretary of the body corporate if no member is present or if the members present are equally divided on the issue may adjourn the meeting to a time and date not later than 7 days from the date of the adjournment.
- (4B) The provisions of subsection (4) shall be construed, so as not to prevent the adjournment of a meeting to a later hour of the same day on which the meeting was appointed to be held.
- (5) The chairperson shall preside at each meeting of the body corporate at which the chairperson is present and in his or her absence the deputy chairperson, if present, shall preside.
- (6) If both the chairperson and deputy chairperson are absent from a meeting, a member elected at that meeting shall preside.
- (7) A member elected to preside at a meeting shall, while the member presides, have all the powers, functions, duties and immunities of the chairperson.

34 Conduct of affairs

- (1) A body corporate shall exercise or perform a power, authority, function or duty by a majority vote of its members present at the meeting and voting on the business in question.

- (2) A member who being present at a meeting and eligible to vote, abstains from voting shall be taken to have voted for the negative.
- (3) The chairperson shall have a deliberative vote and, in the event of an equality of votes, a casting vote.
- (4) The chairperson shall give effect to any resolution, minute or report that is passed or adopted by the body corporate.

35 Minutes

A body corporate shall keep a record of its proceedings at meetings.

36 Validity of transactions

- (1) No act or proceeding of a body corporate shall be invalid or prejudiced by reason only of the fact that at the time when the act or proceeding was done, taken or commenced—
 - (a) there was a vacancy in the office of any member or there was a defect in the appointment of any person as a member or a person not qualified so to act has acted as a member; or
 - (b) the body corporate was without capacity or power to do the act or take the proceeding.
- (2) Lack of capacity or power in a body corporate to do any act or take any proceeding may be asserted or relied upon only in—
 - (a) proceedings against the body corporate by a member thereof to restrain the doing of the act or the taking of the proceeding by the body corporate; or
 - (b) proceedings by the body corporate against former members of the body or by a member thereof against present or former members thereof.
- (3) If the unauthorised act or proceeding sought to be restrained in proceedings referred to in subsection (2) is being or ought to be performed or taken pursuant to a contract to which the body corporate is a party, the court having jurisdiction in the

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matter may, if all parties to the contract are parties to the proceedings and if the court deems it to be just and equitable, set aside and restrain performance of the contract and may allow to the body corporate or to other parties to the contract compensation for loss or damage sustained by reason of the action of the court in setting aside and restraining performance of the contract but anticipated profits to be derived from performance of the contract shall not be awarded by the court as a loss or damage sustained.

37 Employees

- (1) The secretary of a body corporate shall be a suitably senior officer of an associated hospital who is nominated by the health service chief executive of the associated Hospital and Health Service.
- (2) A body corporate may appoint and employ such employees as it thinks necessary for attaining its objects.
- (2A) Employees appointed pursuant to subsection (2) shall, subject to any applicable award of any industrial court, commission, tribunal or authority, be employed on such terms and conditions as the body corporate thinks fit.
- (3) A body corporate may appoint honorary research workers to attain its objects or any of them.
- (3A) Any such worker, during the term of the worker's appointment, may be designated in such style as the body corporate thinks fit having regard to the qualifications and experience of individual workers.
- (4) While any honorary research worker is actively engaged in work on behalf of a body corporate or in anything incidental to the work, the worker is taken, for the *Workers' Compensation and Rehabilitation Act 2003*, to be employed by the body corporate.
- (5) The body corporate may enter into a contract of insurance with WorkCover Queensland or another insurer for insurance for honorary research workers.

38 Use of certain officers and premises

- (1) A body corporate may make use of employees in the associated Hospital and Health Service on the terms and conditions agreed upon by the body corporate and the health service chief executive of the Hospital and Health Service.
- (2) For the purpose of discharging its function, a body corporate may, with the agreement of the health service chief executive of an associated Hospital and Health Service—
 - (a) occupy land under the control of the Hospital and Health Service; and
 - (b) use premises, office furniture and equipment occupied, owned or used by the Hospital and Health Service.

39 Common seal

- (1) The common seal of a body corporate shall be kept in the custody of the secretary of the body corporate or, where there is a vacancy in that position, the chairperson.
- (2) The common seal shall not be affixed to a document except under the authority of a resolution of the body corporate and shall be affixed by the person who has custody of the seal in accordance with this Act.
- (3) A document made or issued by the body corporate for the purposes of this Act shall be sufficiently authenticated if it is made or, as the case may be, signed by the chairperson or otherwise as determined by the body corporate by resolution.

40 Protection of members

A person who is or has been a member of a body corporate is not personally liable for anything done or omitted in good faith, in, or in connection with the exercise of any power conferred or the carrying out of any duty imposed on the body corporate by this Act, or believed by that person on reasonable grounds to have been conferred or imposed by this Act.

41 Insurance

- (1) Subject to subsection (2), as soon as practicable after a body corporate is established under this Act it shall effect insurance in respect of damage to property death and bodily injury for which it may be held liable for an amount of cover prescribed by regulation or, if not prescribed, for an amount of \$100000 at the least and shall keep such insurance current at all times.
- (2) Subsection (1) does not apply to a body corporate that is exempted by the Minister from the requirement to effect the insurance referred to in the subsection, the Minister being hereby empowered to grant such an exemption if the Minister is satisfied that the functions of the body corporate are such as to make the effecting of the insurance unnecessary.

Part 7 Financial provisions

44 Bodies corporate are statutory bodies

A body corporate is a statutory body under the *Financial Accountability Act 2009*.

46 Estimates of receipts and disbursements

- (1) If it is required by the Minister so to do, a body corporate shall frame, adopt and present to the Minister, a statement in respect of the fund showing estimates of its receipts and disbursements in respect of the balance of the financial year in which the statement is presented and thereafter the body corporate shall before 31 August of each succeeding year or such later date as the Minister may on the application of the body corporate allow, frame, adopt and present to the Minister a statement in respect of the fund showing estimates of its receipts and disbursements in respect of the succeeding financial year.

- (2) In framing the statement the body corporate shall estimate in respect of the financial year for which the statement is being framed and shall therein show—
 - (a) the amounts to be disbursed upon the several functions, matters and things to which the fund is applicable; and
 - (b) the amounts expected to be received from the several sources of income and other moneys of the body corporate which income or moneys are required by this Act to be paid to the fund.
- (3) In any statement—
 - (a) the estimates of receipts shall be set out separately so as to indicate as nearly as possible opposite each other the several sources of receipts required by this section to be shown in the statement; and
 - (b) the estimates of disbursements required by this section to be shown in the statement shall be set out so as to indicate as nearly as possible opposite each other the power, authority, function, duty or obligation in respect of which the disbursement is to be made.
- (4) The body corporate may in any financial year make an ordinary disbursement prior to adopting the statement for that year but, if it does so, the item of disbursement shall be included in the statement for that year.
- (5) A statement framed pursuant to subsection (1) shall be of no force or effect until it is approved by the body corporate and when approved it shall be binding upon the body corporate except to the extent that it may be amended by the Minister.
- (6) The Minister may amend a statement framed pursuant to subsection (1) in such a way as the Minister thinks reasonable having regard to the purposes for which moneys forming the fund may be applied.
- (7) If at the close of any financial year there is a surplus or deficit the surplus or deficit shall be carried forward and taken into account in framing the statement for the next following year.

47 Observance of statement

- (1) Subject to subsection (2), a body corporate that is required to present a statement referred to in section 46 shall not in any financial year expend its finances other than for the items specified in the statement for the financial year in question and to the amount specified in the statement in respect of that item.
- (2) If during any financial year it appears to the body corporate that an unforeseen or extraordinary circumstance has arisen that requires the body corporate to make a disbursement in that financial year that was not provided for in the statement (as approved) for that financial year or that exceeds the amount estimated in respect of an item specified in the statement the body corporate shall before making the disbursement, by resolution, approve that the disbursement be made and obtain the approval of the Minister for such disbursement.
- (3) The body corporate shall ensure that the amount of any disbursement approved pursuant to subsection (2) is not exceeded.

48 Periodical statements of account

- (1) The secretary of a body corporate shall present to each ordinary meeting of the body corporate statements of account in relation to the receipts and disbursements for the period of the financial year from commencement to the close of the month last concluded.
- (2) The statements of account, in the case of a body corporate that is required to present a statement referred to in section 46, shall show estimated receipts and disbursements and actual receipts and disbursements with such explanations as will give a true indication of the progressive state of the headings provided in the estimates.
- (3) The statements submitted to the first meeting of the body corporate held after the last day of December and March shall

include an estimate of the anticipated position at the end of the financial year.

49 Members liable

If a body corporate that is required to present a statement referred to in section 46 makes a disbursement that has not been provided for in an approved statement or that has not been approved pursuant to section 47(2) the members who, after having had the facts fully explained to them in relation to the disbursement, voted for such disbursement shall be jointly and severally liable to repay to the body corporate the amount of the disbursement and that amount may be recovered by the Minister in a court of competent jurisdiction as a debt due and owing to the body corporate.

50 General fund

- (1) A body corporate shall establish and maintain a general fund in accordance with this Act at a financial institution and the account for the fund shall be kept separate and distinct from any other financial institution accounts of the body corporate.
- (2) There shall be paid into the fund—
 - (a) all moneys received by the body corporate for its purposes or objects other than moneys rightly appropriated to any trust fund established by the body corporate; and
 - (b) all moneys received by the body corporate by way of income from investments of the body corporate other than income from investment of moneys in a trust fund established by the body corporate and rightly accruing to that trust fund; and
 - (c) all moneys received by the body corporate in the discharge of its functions and the pursuit of its objects.
- (3) Moneys from time to time forming the fund shall be applied—

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- (a) to any use or object which for the time being is specified in the register as a use or object for which the body corporate is established; and
- (b) to payment of fees and allowances payable to members of the body corporate; and
- (c) to payment of salaries and wages of employees of the body corporate; and
- (d) to payment of any other expenditure necessarily incurred by the body corporate in the discharge of its functions, the pursuit of its objects and the exercise of its powers.

51 Bodies corporate are statutory bodies

- (1) Under the *Statutory Bodies Financial Arrangements Act 1982*, a body corporate is a statutory body.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which a body corporate's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

52 Power to establish trust funds and to accept gifts and the like subject to conditions

- (1) A body corporate may establish and administer trust funds for any purpose in connection with the exercise and performance of its function, powers, and duties and, if it does so, shall establish at a financial institution 1 or more financial institution accounts in respect of the trust funds.
- (2) A body corporate, with the approval of the Minister first had and obtained, may agree to and carry out conditions to which a gift, grant, bequest, devise, purchase, lease or other means whereby it acquires or holds property is subject.

54 Illegal borrowing

- (2) If a body corporate borrows money other than under the *Statutory Bodies Financial Arrangements Act 1982*, the members who consented to the borrowing of the money shall be jointly and severally liable to repay it and to pay interest thereon to the person from whom it was borrowed and that money and interest may be recovered from those members or any of them as money lent by that person to those members or, as the case may be, that member by action in a court of competent jurisdiction.
- (3) If moneys are appropriated from any fund kept by a body corporate for the purpose of repaying money borrowed other than under the *Statutory Bodies Financial Arrangements Act 1982* or paying interest thereon, the members who consented to the appropriation shall be jointly and severally liable to refund the moneys with interest thereon at a rate determined by the Treasurer and the moneys and interest may be recovered from those members or any of them by action in a court of competent jurisdiction at the suit of the Minister.
- (4) In any action brought under this section, the Minister shall be entitled to costs as between solicitor and client and any amount recovered as a result of that action shall be paid into the fund of the body corporate concerned.

Part 8 General provisions

55 Sale or disposal of certain property

- (1) Where a body corporate is satisfied that any property for the time being vested in it and held by it subject to any condition or trust is unfit or not required for its purposes, it may, subject to the approval of the Governor in Council and notwithstanding the terms of any trust affecting the property or any arrangement or condition made or agreed to by it at the time of its acquisition of the property—

- (a) sell the property or exchange it for any other property;
or
 - (b) dispose of the property without consideration or, in the case of personal property, destroy the property if the body corporate adjudges it to be of no saleable value.
- (2) The proceeds of any sale made by a body corporate in exercise of the power conferred on it by subsection (1) shall after deduction therefrom of the costs of and incidental to the sale be held for the objects of the body corporate.
- (3) Any property sold or disposed of by way of exchange or otherwise by a body corporate purporting to exercise any of the powers conferred on it by subsection (1) shall vest in the person acquiring the property by virtue of the sale or disposal freed and discharged from any trust, arrangement or condition relating to any sale or disposal of the property or to the use of the property to which the property was subject in the hands of the body corporate.
- (4) A person acquiring any property from a body corporate purporting to exercise any of the powers conferred on it by subsection (1) shall not be concerned to enquire whether a case has arisen to authorise the sale or other disposal of the property or whether the power was otherwise properly and regularly exercised or to see to the application of any purchase money paid to the body corporate.

56 Removal from register

- (1) A body corporate may at any time make application to the Minister that the entry in the register in respect of it be removed.
- (2) The Governor in Council may, by gazette notice, order that the entry in the register in respect of a body corporate be removed—
- (a) in consequence of an application made by the body corporate under subsection (1); or

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- (b) where the Governor in Council is satisfied that the body corporate should be terminated.

57 Winding-up of bodies corporate

- (1) If an entry in the register about a body corporate is removed on application by the body corporate, the provisions of the Corporations Law about the voluntary winding-up of companies apply, with all necessary changes and any changes prescribed by regulation, to the winding-up of the body corporate.

Editor's note—

Now see the *Acts Interpretation Act 1954*, section 14H and the *Corporations Act 2001* (Cwlth).

- (2) If an entry in the register about a body corporate is removed other than on application by the body corporate, the body corporate may be wound-up by the Supreme Court.
- (3) A body corporate, a member of the body corporate, a creditor or the chief executive of the department may apply to the Court for the body corporate to be wound-up.
- (4) In the application of part 5.7 of the Corporations Law to the winding-up of a body corporate, a reference—
- (a) to a part 5.7 body—is a reference to the body corporate; and
 - (b) to a director of a part 5.7 body—is a reference to a member of the body corporate; and
 - (c) to the secretary of a part 5.7 body—is a reference to the secretary of the body corporate; and
 - (d) to the principal place of business of a part 5.7 body—is a reference to—
 - (i) if there is 1 associated hospital of the body corporate—the principal office of the associated hospital; or
 - (ii) if there is more than 1 associated hospital of the body corporate—the principal office of the

associated hospital prescribed under a regulation for this subparagraph.

58 Disposal of assets used by body corporate

- (1) Land granted by the Crown in trust to a body corporate or reserved and set apart for the purposes of a body corporate, in either case under the *Land Act 1962*, shall not form part of the assets of the body corporate for the purposes of its winding-up.

Editor's note—

Now see the *Acts Interpretation Act 1954*, section 14H and the *Land Act 1994*.

- (2) Subject to subsection (3), the Governor in Council may in relation to property held in trust by a body corporate or, being land, reserved and set apart and placed under the control of a body corporate as trustee, constitute or nominate any other person as trustee, nominate any other use to which the property should be held or applied, terminate a trust or make such other order as the Governor in Council thinks fit.
- (2A) Every order made under subsection (2) shall be given effect.
- (3) It is not competent to the Governor in Council under subsection (2) to override the provisions of any instrument creating a trust on which a body corporate holds property where the instrument provides for variation of the trust or substitution of a new trust upon the termination of the body corporate.

59 Dissolution of bodies corporate

Where an entry in the register in respect of a body corporate has been removed and the Governor in Council is satisfied that the affairs of the body corporate are such that there is no need for it to be wound-up (voluntarily or by the Court), the Governor in Council may dissolve the body corporate by regulation.

60 Distribution of residual property

If upon the winding-up of a body corporate there remains property of the body corporate that would have been available for but is not required to satisfy claims against the body corporate or expenses of the winding-up or if upon the dissolution of a body corporate there is property that would have been available for but is not required to satisfy liabilities of the body corporate, that property shall not be distributed among the members of the body corporate but shall be transferred to such body as in the opinion of the Governor in Council has objects similar to those of the body corporate that is wound-up or dissolved or if in the opinion of the Governor in Council there is no such body reasonably available, that property shall be disposed of in such manner or held on such trusts as the Governor in Council orders.

61 Effect of winding-up etc. on offices

Where a body corporate has been wound-up, voluntarily or by the Court, or has been dissolved under section 59 the members of the body corporate shall be taken to have vacated their offices as such members.

62 Form of contract etc.

- (1) The authority of a body corporate to enter into contracts and agreements may be exercised in the following manner—
 - (a) any agreement or contract that, if made between private persons, would by law be required to be in writing under seal may be made on behalf of the body corporate in writing under its common seal;
 - (b) any agreement or contract that, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the body corporate in writing signed by a person acting under the express or an implied authority of the body corporate;

- (c) any agreement or contract that, if made between private persons, would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the body corporate by a person acting under the express or an implied authority of the body corporate.
- (2) A contract or agreement entered into by a body corporate may be varied or discharged by agreement in the manner in which it is by this section authorised to be made.
- (3) Authentication by a body corporate of any document or proceeding may be given by the signature of any person authorised by the body corporate so to do.

63 Delegation by Minister

The Minister may delegate the Minister's powers under this Act (other than the power under section 46(1)) to an officer of the department.

64 Delegation by body corporate

A body corporate may delegate its powers under this Act (other than the power to make rules) to a member or employee of the body.

65 Liability for damage to property

- (1) A person shall not—
 - (a) unlawfully take from the possession of a body corporate anything; or
 - (b) unlawfully damage, mutilate or destroy anything in the possession of a body corporate.
- (2) A person who contravenes subsection (1) shall be liable to pay to the body corporate the full value of the thing taken, damaged, mutilated or destroyed, which value may be recovered in a summary way under the *Justices Act 1886* or by

action for a debt due and owing to the body corporate in a court of competent jurisdiction.

- (3) The liability imposed by subsection (2) is in addition to any other liability incurred by reason of a contravention of subsection (1).
- (4) Proceedings under the *Justices Act 1886* to enforce the liability imposed by subsection (2) may be taken by the secretary of the body corporate or by a person authorised in that behalf, either generally or in a particular case, by the body corporate.

66 Reward for information

- (1) A body corporate may, subject to the approval of the Minister, offer and pay a reward to any person who gives information to a body corporate or to any of its members or employees concerning the taking, damaging, mutilation or destruction of anything in contravention of section 65(1) or concerning the commission of any other offence against this Act.
- (2) The amount of any reward paid or required to be paid by a body corporate to any person pursuant to subsection (1) may be recovered from any person convicted of the taking, damaging, mutilation or destruction to which relates the information in consideration of which the reward is or is to be paid in a summary way under the *Justices Act 1886* or by action for a debt due and owing to the body corporate in a court of competent jurisdiction.
- (3) Proceedings under the *Justices Act 1886* to recover an amount of any reward may be taken by the secretary of the body corporate or by a person authorised in that behalf, either generally or in a particular case, by the body corporate.

67 Orders to enforce additional liability

- (1) Where a person is convicted of an offence that consists in—
 - (a) unlawfully taking anything from the possession of a body corporate, with or without a further element; or

- (b) unlawfully damaging, mutilating or destroying anything in the possession of a body corporate;
whether or not the person's conviction relates to an offence defined in section 65(1) or defined in some other provision of law, the court by which the person is convicted may, in addition to imposing a penalty on the person—
 - (c) order that the person discharge to the body corporate the liability imposed on the person by section 65(2); and
 - (d) order that the person pay to the body corporate the amount of any reward paid by it or required to be paid by it to any person for information concerning the taking, damaging, mutilation or destruction of which the person has been convicted.
- (2) An order, for payment of money made pursuant to subsection (1) may be enforced in the same manner as if it were an order for payment of a penalty but the existence of such an order shall not prejudice the taking by or on behalf of the body corporate of any other proceeding in law for the recovery of the sum ordered to be paid.

68 Averment as to ownership

In any proceeding in which it is material to prove ownership of anything that at a time relevant to the proceeding is or was in the possession of a body corporate it shall be sufficient to aver ownership of the thing to be in the body corporate.

69 General penalty

- (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act and, except where a specific penalty is otherwise provided, is liable to a penalty of 10 penalty units.
- (2) Every penalty recovered in respect of an offence against this Act shall be paid to the body corporate on whose behalf prosecution proceedings were brought.

70 Proceedings for offences

- (1) Proceedings in respect of an offence against this Act may be taken in a summary way under the *Justices Act 1886* upon the complaint of the secretary of the body corporate concerned or by any other person authorised in that behalf, either generally or in a particular case, by the body corporate.
- (2) Proceedings in respect of an offence against this Act may be commenced at any time within 1 year from the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever period is the later to expire.

71 Evidentiary provisions

- (1) A document that purports to be a copy of or an extract from an entry in the register and that purports to be certified as a true copy or extract by the person who, at the time of the production of the document in evidence, is charged with keeping the register shall be evidence of the state of the register, as shown by such document, at the date of the certification.
- (2) The authority of a person to lay a complaint relating to an offence against this Act, who describes himself or herself in the complaint as secretary of a body corporate or as a person authorised by a body corporate to lay the complaint, shall be presumed until the contrary is proved.
- (3) A statement in a complaint that commences a proceeding in respect of an offence against this Act as to the date on which the matter of complaint came to the knowledge of the complainant shall be evidence of the matter.

71A Amalgamation of bodies corporate

- (1) Two or more bodies corporate may apply to the Minister to be amalgamated as a single body corporate.
- (2) The application must—

- (a) state the names of the bodies corporate applying to be amalgamated; and
 - (b) state whether—
 - (i) all the bodies corporate are to be dissolved and a new body corporate established; or
 - (ii) 1 of the bodies corporate is to continue and the others are to be dissolved and subsumed into the body corporate that is to continue; and
 - (c) for an application to which paragraph (b)(i) applies, state the name proposed for the proposed new body corporate; and
 - (d) for an application to which paragraph (b)(ii) applies, state which body corporate is to continue; and
 - (e) state the object or objects to which it is intended the proposed new or continuing body corporate will apply its property; and
 - (f) state the name of each hospital proposed to be an associated hospital for the proposed new or continuing body corporate; and
 - (g) include or be accompanied by the other information or documents the Minister reasonably requires.
- (3) If the Minister is satisfied the bodies corporate should be amalgamated, the Minister may recommend the Governor in Council make a regulation for the purpose of amalgamating the bodies corporate.
- (4) A regulation under subsection (3)—
- (a) must amalgamate the bodies corporate by—
 - (i) dissolving each body corporate (the *discontinued body corporate*) and establishing a new body corporate (the *new body corporate*); or
 - (ii) identifying the body corporate that is to continue (the *continuing body corporate*), dissolving each of the other bodies corporate (the *discontinued*

body corporate) and subsuming it into the continuing body corporate; and

- (b) may do any of the following—
- (i) provide for the assets and liabilities of a discontinued body corporate, without any conveyance, transfer or assignment, to become the assets and liabilities of the new body corporate or continuing body corporate;
 - (ii) provide that the rights and obligations of a discontinued body corporate become the rights and obligations of the new body corporate or continuing body corporate;
 - (iii) provide that if a legal proceeding might have been continued or started by or against a discontinued body corporate, it may be continued or started by or against the new body corporate or continuing body corporate;
 - (iv) provide that in an instrument (other than a statutory instrument) in existence at the amalgamation, a reference to a discontinued body corporate is a reference to the new body corporate or continuing body corporate;
 - (v) provide that the general fund established by a discontinued body corporate becomes part of the general fund of the new body corporate or continuing body corporate;
 - (vi) provide that any trust fund of a discontinued body corporate becomes a trust fund of the new body corporate or continuing body corporate;
 - (vii) provide that a bequest to a discontinued body corporate, whether made before or after the amalgamation, is a bequest to the new body corporate or continuing body corporate;
 - (viii) make provision to facilitate anything else for, or relating to, the amalgamation.

- (5) On the dissolution of a body corporate under this section, its members go out of office.
- (6) A new body corporate is taken to have been established under section 7.
- (7) To remove any doubt, it is declared sections 56 to 61 do not apply to an amalgamation under this section.
- (8) In this section—
bequest of property includes devise, gift and grant of property.

72 Regulations

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) A regulation may create offences and prescribe penalties for the offences of not more than 4 penalty units.

73 Rules

- (1) A body corporate may make rules under this Act.
- (1A) A rule may be made for or about the following—
 - (a) the management of the affairs of the body corporate;
 - (b) the application of the property of the body corporate to its objects;
 - (c) the general management and control of property of or occupied by the body corporate;
 - (d) the investment of money, both capital and income, from time to time under the control of the body corporate;
 - (e) the protection of property of or occupied by the body corporate from trespass, damage or misuse;
 - (f) the conduct of research or other activities relevant to the objects of the body corporate;

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- (g) the functions, powers and duties of employees of the body corporate and of other persons engaged in pursuit of its objects;
 - (h) the fees to be paid for use of the facilities of the body corporate;
 - (i) the admission or exclusion or removal of the public or any person to or from property occupied by the body corporate or of which it has control;
 - (j) the conduct of proceedings at meetings of the body corporate and the times and places of its meetings.
- (2) A rule may create offences and prescribe penalties for the offences of not more than 4 penalty units.
- (3) As soon as practicable after its establishment as prescribed by this Act a body corporate shall make rules with respect to—
- (a) the management of the affairs of the body corporate;
 - (b) the application of property of the body corporate to its objects;
 - (c) the general management and control of property of or occupied by the body corporate;
 - (d) the investment of money, both capital and income, from time to time under the control of the body corporate.
- (4) A rule is subordinate legislation.

Part 9 **Transitional provisions for Hospital and Health Boards Act 2011**

74 **Definition for pt 9**

In this part—

commencement means the commencement of this part.

75 Members of body corporate continue to hold office after commencement

- (1) This section applies to a person who is a member of a body corporate under section 18(3)(a) immediately before the commencement.
- (2) The person continues to hold office after the commencement until—
 - (a) the end of the person's term of office; or
 - (b) the person earlier vacates office.