

HEALTH LEGISLATION AMENDMENT BILL (No. 2) 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The primary objective of this Bill is to change the organisational arrangements for the delivery of public sector health services in Queensland. This entails the abolition of Regional Health Authorities and the incorporation of all health service delivery functions into the Department of Health under the Chief Executive of the Department. The Bill provides for the employment, by the Chief Executive, of employees in the Department to deliver public sector health services.

The Bill provides for community participation in the planning and delivery of public sector health services in the State, through the establishment of District Health Councils.

Other policy objectives of the Bill are:-

- to provide for the control of traffic and conduct on health service property,
- to allow specially appointed auditors to access patient records to verify data provided under funding arrangements such as the casemix funding system and the funding arrangements under the Medicare Agreement,
- to permit the passing of patient-identifying information to the Commonwealth or a State Government agency to meet reporting obligations under agreements such as the Medicare Agreement,
- to reconstitute the membership of the Queensland Institute of Medical Research Council,
- to make consequential amendments to other Acts that are affected by the abolition of Regional Health Authorities,

- to amend the *Hospitals Foundations Act 1982* to remove inconsistencies between that Act and the *Financial Administration and Audit Act 1977*, and
- to make minor amendments to other Acts.

How the Policy Objectives will be Achieved

The changed organisational arrangements for the delivery of public sector health services require substantial amendments to the *Health Services Act*. These changes include the repeal of Part 3 of the Act which provide for the constitution of health service regions, the establishment of Regional Health Authorities and the appointment of Regional Directors. The functions previously performed by Regional Health Authorities will be assumed by the Chief Executive of the Department of Health on the commencement of this Bill. Transitional arrangements in the Bill provide for the transfer of all assets and liabilities from Regional Health Authorities to the State.

As a consequence of the abolition of Regional Health Authorities, Part 4 of the Act dealing with Regional Health Authority personnel will also be repealed. On the commencement of the Act, existing staff employed by Regional Health Authorities will be employed by the Chief Executive under this Act on the same conditions as their employment as Regional Health Authority employees. A new Part in the Act will provide for the employment of health service employees on a tenured, contract, temporary or casual basis.

The Bill provides for the establishment of health service districts and District Health Councils and outlines the functions that the Councils are to perform. Councils will not be involved in day-to-day management of health services. but will have a monitoring role with respect to district health services.

The Council's functions include:

- identifying and assessing health service needs of people living in the council's district,
- participating in the development of strategic plans for the district,
- monitoring compliance with strategic plans, health services agreements and budgets by the Manager for the district, and the quality of public sector health services delivered in the district,

- deciding priorities for minor capital works, and monitoring programs for the works and asset management, for the district,
- advising and making recommendations to the Manager for the district about the above matters,
- advising the Manager in the development of health services agreements for the district, and
- reporting to the Minister on the performance of the Council's functions under the Act.

At the Council's discretion, the Chairperson or the Chairperson's nominee is to be a member of a selection panel for senior executives in the district, including the Manager for the district.

The Bill also outlines how Councils are to be appointed and how they are to perform their functions.

The Bill establishes the positions of Managers for districts and outlines their functions.

The Bill includes a comprehensive set of provisions dealing with the control of traffic and conduct on health services land. These provisions are modelled on the existing provisions of Part 7 of the *Sunshine Coast University College Act 1994*. The Bill provides for the appointment of authorised persons (to deal with traffic) and security officers (to deal with conduct) on health services land. The Bill allows penalties to be imposed for breaching speed limits or parking in restricted or prohibited places. The Bill also allows security officers to direct a person causing a public nuisance to leave health services land. These amendments will enable the Hospital By-laws, enacted under the repealed *Hospitals Act 1936*, to be repealed by this Bill.

The Bill enables the appointment of auditors under the Act to verify patient and statistical data reported under a funding arrangement, such as the casemix funding system and the Medicare Agreement. These provisions are necessary to allow auditors to access patient identifying information, which would otherwise be prohibited under Section 62 of the Act. Confidentiality requirements are placed on auditors by the Bill. The provisions dealing with auditors have been combined with the existing provisions in the Act dealing with inspectors and authorised officers (renamed 'investigators') under the Bill.

The confidentiality provisions of the Act (Section 62) are amended under the Bill to allow information to be provided to the Commonwealth or a State under an agreement between Queensland and the Commonwealth or State concerned. For the information to be provided the agreement must be prescribed by regulation. This provision has been included to enable Queensland to meet its obligations under agreements such as the Medicare Agreement, the National Health Information Agreement and the Cross Border Agreement (under the Medicare arrangements), which require potentially identifying patient information to be provided to the Commonwealth or State. The Bill places confidentiality obligations on the Commonwealth or State Government agency receiving this information.

The constitution of the Queensland Institute of Medical Research Council under the *Queensland Institute of Medical Research Act 1945* is amended by this Bill. The amended provisions allow for a wider cross-section of membership on the Council to better enable the Council to perform its functions under the Act.

The amendments to the *Hospitals Foundations Act 1982* repeal various provisions which are redundant as a result of the *Financial Administration and Audit Act 1977*.

Estimated Cost for Government Implementation

The re-organisation of Queensland Health will result in annual savings of \$10M commencing in the 1996-97 financial year. This will enable a significant re-allocation of resources from administration to service delivery as a result of—

- dissolution of Regional Health Authorities and restructuring of Queensland Health Corporate Office
- rationalisation of administrative staffing levels
- reduction in accommodation rentals
- reduction in outlays on utilities, and
- redeployment of assets (eg from Regional Health Authorities to District Health Services).

Consistency with Fundamental Legislative Principles

The Bill does not breach any fundamental legislative principles as stated in the *Legislative Standards Act 1992*.

Consultation

The dissolution of Regional Health Authorities is consistent with announced Government policy.

Consultation has been undertaken with the Office of the Public Service, the Department of Training and Industrial Relations and the Crown Solicitor in relation to the amendments to the *Health Services Act 1991* concerning employment matters.

All other Departments and agencies administering those Acts to which minor and consequential amendments are necessary have been consulted.

Other stakeholders consulted include:

Queensland Institute of Medical Research Act 1945—Queensland Institute of Medical Research Council and all bodies which have nominees on the Council

Hospitals Foundations Act 1982—Treasury Department, Queensland Audit Office and all Hospital Foundations

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a day fixed by proclamation.

**PART 2—AMENDMENT OF HEALTH SERVICES
ACT 1991**

Clause 3 identifies this Part as amending the *Health Services Act 1991*.

Clause 4 repeals and amends a number of definitions consequential to other amendments to the Act, and incorporates a range of additional definitions.

Clause 5 inserts a revised definition of ‘health service’. This definition is a simplified wording of the existing definition of ‘health service’. The revised definition also amends “any administrative or other service related to a health service” to “any administrative or other support service *directly* related to a health service”. When read in conjunction with the definition of ‘public sector health service’, this clarifies that the ‘corporate office ‘support services of the Department (primarily the Division of Planning and Systems), are not a ‘public sector health service’. This has important implications, for example, for the employment provisions under this Bill.

Clause 6 replaces the existing objects of the Act with new objects, ie “to help prevent illness and provide for the treatment of the sick”.

Clause 6 also inserts a new section 3A, which clarifies that the Act binds the Crown. This is of relevance, for example, in relation to the confidentiality provisions of the Act.

Clause 6 also inserts a new Part in the Act—‘Health Service Districts and District Health Councils’ (sections 4 to 4Q)—

- section 4 allows the Governor in Council to declare an area of the State to be a health service district and to assign a name to that district. This provision also allows public sector hospitals and/or other public sector health facilities to be declared a district. This will allow, for example, metropolitan hospitals such as the Royal Brisbane Hospital (and associated facilities) to be declared a health service district under the Act.
- section 4A requires a District Health Council (“Council”) to be established for each district.
- section 4B specifies the functions of Councils (refer summary of functions in ‘General Outline’ section of this Explanatory Note). The Bill provides that a Council’s functions relate to the public sector health services delivered in the district as outlined in the health services agreement for the district. A health services agreement for a district is made between the Chief Executive and the Manager for the district and deals with the services to be delivered in the district and the funds for their delivery.

- section 4C entitles the chairperson of a Council, or another Council member nominated by the chairperson, to be on a selection panel for the appointment of the Manager, or other senior executive, in the district. Participation in such selection panels is at the discretion of the Council.
- section 4D outlines the membership structure of Councils.
- section 4E provides for the appointment of the chairperson of the Council.
- section 4F provides that the term of appointment of members is to be not more than four years.
- section 4G provides for the disqualification from membership of Councils. The section disqualifies a person employed in the delivery of a public sector health service in the Council's district from being a member of a Council. However, the Minister may waive this restriction if the Minister determines that it is not otherwise possible to get appropriate members for a Council.
- section 4H provides for the vacation of office of members.
- section 4I provides for the Governor in Council to determine remuneration for Council members, with the proviso that a member may waive payment in whole or part.
- sections 4J to 4N provide for the business and meetings of Councils, including the time and places of meetings, quorum and voting at meetings, the requirement for the Manager for the district to attend Council meetings, and the keeping of minutes of meetings.
- section 4O requires members to disclose interests in any matter to be considered by the Council which could conflict with the proper performance of the members' duties.

section 4P provides for the appointment of managers for each district and outlines the Manager's functions as managing the delivery of public sector health services in the district in accordance with the health services agreement and consulting and liaising with the district's Council. Under this section, the Manager is also required to provide the administrative support reasonably required by the Council to carry out its functions.

- section 4Q enables Councils to establish consultative committees to enable members of the public to express their views about public sector health services in the district. Members of such committees are not to be paid any fees or allowances.

Clause 6 also inserts sections 5 to 9 dealing with the employment of persons in the Department of Health for the delivery of public sector health services—

- section 5 allows the Chief Executive to appoint a person as a health service employee in the department *for the delivery of public sector health services*. Under the current organisational arrangements in the Department, this will allow the Chief Executive to appoint a health service employee in the Health Services Division of the Department. However, in addition to this requirement, the Bill provides that a regulation may prescribe parts of the department which are excluded for the purposes of this section. These parts of the department will continued to be staffed by public service employees. The purpose of these provisions is to clearly outline which parts of the Department are to be staffed by employees under this Act and which parts of the Department are to be staffed by employees under the *Public Service Act 1996*. These provisions, and a regulation under these provisions, will result in staff currently employed by Regional Health Authorities being employed under this Act. Section 5 also provides that health service employees are to be employed on tenure, on contract for a fixed term, on a temporary basis or on a casual basis.
- section 6 states that employees under this Act are not public service employees under the *Public Service Act 1996*.
- section 7 allows for full-time and part-time employment and requires a contract employee to enter into a written employment contract with the Chief Executive.
- section 8 empowers the Governor in Council to issue directives for health service employees. This provision complements section 34 of the *Public Service Act 1996* and is necessary as directives issued under that Act may not be suitable for application to health service employees.

- section 9 provides that an employee's conditions of employment are governed by any industrial agreement or directive (and if an employee is a contract employee, the employee's contract). The section also empowers the Chief Executive to determine conditions of employment for health service employees. However, such determinations are subject to any applied provisions of the *Public Service Act*, directives, relevant awards and industrial agreements.

Clauses 7 and 8 of the Bill omit Part 2, Division 1 and Parts 3 and 4 of the Act.

Clause 8 also inserts a new Part (sections 20 to 32) which provides for the control of traffic and conduct on health services land—

- section 20 enables the Chief Executive to appoint authorised officers and security officers under this Act—with authorised officers being responsible for traffic control and security officers for conduct on health services land.
- section 21 outlines the terms of appointment for authorised persons and security officers.
- section 22 requires the Chief Executive to issue identity cards to each authorised officer and security officer and outlines the form of the identity card.
- section 23 requires an authorised officer or security officer to produce or display the identity card.
- section 24 empowers an authorised officer to give directions to persons on health services land for the purpose of controlling traffic. It is an offence under the Act for a person to fail to comply with such a direction.
- section 25 enables the Chief Executive to display regulatory notices on health services land, regulating the driving, parking or standing of vehicles on the land. It is an offence for a person to not comply with such a notice. A regulatory notice under this section may state that a contravention of the notice is an offence against the Act.
- section 26 requires the Chief Executive to display an information notice near the entrance to the health services land if the regulatory

notice does not include a statement that a failure to comply with the notice constitutes an offence. The information notice must state a contravention of a requirement of a regulatory notice is an offence under the Act.

- section 27 authorises an authorised officer to seize a vehicle that is parked in contravention of a regulatory notice (under circumstances set out in the section), or is abandoned. The section outlines procedures to be followed to advise the owner of how the vehicle may be recovered.
- sections 28 and 29 enable an unclaimed vehicle to be disposed of if it is not claimed by the owner and outlines how the proceeds of sale of a seized vehicle are to be applied.
- section 30 establishes an offence for behaving disorderly or creating a disturbance on health services land. ('Health services land' is defined as land and buildings from which public sector health services are delivered).
- section 31 empowers a security officer to direct a person to leave health services land where a person is believed to be, or has been, creating a public nuisance; may pose a threat to the safety of anyone else on the land; or where the security officer believes a person is on the land without lawful excuse. It is an offence for a person to fail to comply with a direction given under this section.
- section 32 provides that a person is not to smoke on health services land, other than in a designated smoking area. The Act permits an authorised person or security person who finds a person smoking in contravention of this section to direct the person to stop smoking, leave health services land, or smoke only in a designated smoking area. It is an offence to fail to comply with such a direction.

Clause 8 also inserts sections 33 to 38 of the Act which deals with the appointment and functions of officials, who are defined as auditors and investigators—

- section 33 enables the Chief Executive to appoint a person as an auditor or investigator.
- section 34 outlines the terms of appointment for auditors or investigators.
- section 35 provides for the functions of an auditor under this Act.

- section 36 outlines the functions of investigators. These functions are a re-statement of the existing functions of ‘inspectors’ and ‘authorised officers’ appointed under section 8 of the *Health Services Act 1991*.
- section 37 empowers an auditor or investigator to require an officer or employee of the Department to give to the official any document relevant to the official’s functions. Such a document may include confidential information, which is any information about a person who is receiving or has received a public sector health service from which the person can be identified. These provisions re-state the existing provisions for ‘inspectors’ and ‘authorised officers’ (now combined as ‘investigators’), and extend their application to auditors to enable auditors to access health records if this is necessary to verify patient or statistical data reported under funding arrangements such as casemix or the Medicare Agreement.
- Section 38 places confidentiality requirements on the officials receiving such information.

Clause 8 also—

- inserts a new section 39 of the Act which enables the Minister to establish Ministerial Advisory Committees and pay members of such Committees fees and allowances;
- inserts a new section 40 of the Act which provides that 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; and
- relocates the heading of the Part of the Act dealing with the ‘Provision of Facilities For Food And Other Services’ (Amendment 12 to the Act in the Schedule to the Bill relocates the relevant sections in this Part).

Clause 9 makes minor and consequential amendments to section 62 of the Act, establishes additional exemptions from the confidentiality provisions of Section 62 of the Act, and places additional confidentiality obligations on persons who receive patient-identifying information—

- a new paragraph 62(2)(f) provides an exemption to the giving of information to an official (refer sections 33 to 38).

- a new paragraph 62(2)(g) enables patient-identifying information to be given to the Commonwealth or a State, or an agency of the Commonwealth or a State, where the information is required, or may be given, under an agreement between Queensland and the Commonwealth or State. For the information to be given, the agreement must be prescribed by regulation and the Chief Executive must determine the giving of the information is in the public interest.
- paragraph 62(2)(h) allows a person within the Department to provide patient-identifying information to another person in the Department where such information is to be given to the Commonwealth or a State under Section 62(2)(g). This allows such information to be collated at a single point in the department before being forwarded on. This provision also allows patient-identifying information to be provided to a single point in the Department where such information is required under a funding system such as the current casemix arrangements.
- sub-section 62(2A) places confidentiality obligations on the Commonwealth or State Government agency who receives information under this section.
- the amendments also place an on-going obligation on Departmental employees to maintain the confidentiality of information received while Regional Health Authority employees.

Clause 10 of the Bill requires that the provisions of the Act be numbered and renumbered as permitted by the *Reprints Act 1992*. This will enable the sections in this Bill to be numbered sequentially when reprinted.

Clause 10 also inserts a new Part in the Act dealing with repeals, savings and transitional matters—

- section 79 of the Bill repeals 24 sets of Hospital Board By-laws which were made under the *Hospitals Act 1936*. These by-laws can now be repealed, as the control of traffic and conduct on health services land will be dealt with under the Act.
- sections 80 to 89 provide for the savings and transitional provisions relating to Regional Health Authorities. These provisions provide for—
 - the dissolution of all Regional Health Authorities;

- the transfer to all assets, liabilities, contracts, agreements, undertakings and property held in trust from Regional Health Authorities to the State;
- the continuation of any proceedings by or against an Authority in the name of the State;
- the transfer of employees from being Regional Health Authority employees to health service employees under this Act on the same basis (ie tenured, temporary, contract, casual) and on the same conditions, which that person was previously employed;
- -the retention of all accrued rights, leave entitlements and superannuation entitlements that such employees had at the time of the dissolution of the Regional Health Authorities;
- the saving of directions issued by the Chief Executive under section 58 of the Act as determinations under the new section 9 of the Act;
- -the continuation of any disciplinary action; and
- -the requirement for the Registrar of Titles to record the vesting of. property in the State under this Part.

PART 3—AMENDMENT OF QUEENSLAND INSTITUTE OF MEDICAL RESEARCH ACT 1945

Clause 11. identifies this Part as amending the *Queensland Institute of Medical Research Act 1945*.

Clause 12 omits Section 5 of the Act and inserts new Sections 5 to 5C—

- section 5 outlines the new membership structure for the Council of the Queensland Institute of Medical Research. These amendments were necessary due to the abolition of Regional Health Authorities and to expand the membership of the Council. The members. under paragraphs (e), (k) and (l) were not previously provided for in the Act.
- section 5A outlines the procedures for the nomination of Council members.

- section 5B provides for the term of appointment of Council members.
- section 5C provides for the appointment of a chairperson and deputy chairperson of the Council.

Clause 13 inserts a new section 6A in the Act requiring casual vacancies to be filled using the applicable nomination procedures.

Clause 14 provides for the appointment of the chairperson of the Queensland Institute of Medical Research *Trust*. This amendment is necessary as the Act currently provides that the Trust chair is one of the specified members of the *Council*—a provision which is to be repealed and replaced by this Act.

PART 4—MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 15, through a Schedule to the Bill, makes a range of minor and consequential amendments to Acts, including further amendments to the *Health Services Act 1991*. These amendments are primarily necessary as a result of the dissolution of Regional Health Authorities, but also make minor amendments to Acts unrelated to the changed organisational arrangements.

The amendment to the *Ambulance Services Act 1991* is necessary due to the abolition of Regional Health Authorities.

The amendment to section 7 of the *Dental Technicians and Dental Prosthetists Act 1991* replaces a reference to a Board member who is to be an Regional Health Authority employed dentist, to a dentist who is an employee of the Department. The amendments provide that this does not affect the current membership of the Board.

The amendments to section 43A of the *Drugs Misuse Act 1986* are necessary due to the abolition of Regional Health Authorities.

The amendments to the *Food Act 1981* are necessary due to the abolition of Regional Health Authorities. Provisions requiring delegations to be made, to ‘appropriately qualified’ officers or employees (as defined) have been included.

The amendments to the *Health Act 1937* are necessary due to the abolition of Regional Health Authorities.

The amendments to the *Health Rights Commission Act 1991* are necessary due to the abolition of Regional Health Authorities.

Amendment 1 to the *Health Services Act 1991* replaces the reference to Regional Health Authorities in the long title with 'District Health Councils'. Amendment 2 inserts a new heading for Part 2 of the Act. Amendments 3 to 6, and 15 to 18 are necessary due to the abolition of Regional Health Authorities. Amendment 7 inserts a new heading in Part 5 of the Act. Amendment 12 relocates the sections of the Act dealing with provision of facilities for food and other services to Part 4A of the Act. All other amendments to this Act are to repeal provisions which are now redundant.

Amendment 1 to the *Hospitals Foundations Act 1982* repeals redundant definitions. Amendment 2 inserts definitions of 'associated district health council' and 'district health council'. These terms are used in lieu of 'regional health authorities' in sections 18 and 19 of the Act, which deal with the membership of Hospital Foundations and the method of nomination for membership—refer amendments 4, 8 to 10 and 12 to 15. (Amendment 23 provides that this does not affect the current membership of persons holding office under section 18(3)(c)). Amendment 11 removes the requirement to nominate six persons to be members of a Foundation which has proved to be administratively unnecessary. Amendments 16 to 19 are necessary due to the abolition of Regional Health Authorities. Amendments 20 to 22 repeal provisions in the Act which duplicate provisions in the *Financial Administration and Audit Act 1977*. A cross referencing provision has also been included to state that a body corporate (ie a Hospital Foundation) established under the Act is a statutory body for the purposes of the *Financial Administration and Audit Act 1977*.

The amendments to the *Medical Act 1939* require the Medical Board, as well as a Committee of Assessors appointed by the Board, to give the relevant practitioner 14 days notice of an Inquiry.

Amendments 1 and 4 to 7 to the *Mental Health Act 1974* replace references to the Director-General, Health and Medical Services with the Chief Health Officer of the Department. (Note—the Director-General of Health and Medical Services was the former title for the Chief Health Officer). Amendment 13 repeals provisions redundant due to the *Trusts Act 1973*. All other amendments are necessary due to the abolition of Regional Health Authorities. (These amendments also simplify the provisions dealing with administrative responsibility for hospitals under the Act).

The amendments to the *Penalties and Sentences Act 1992* are necessary due to the abolition of Regional Health Authorities.

The amendment to the *Public Service Superannuation Act 1958* is necessary. due to the abolition of Regional Health Authorities.

The amendment to the *Public Trustee Act 1978* is necessary due to the abolition of Regional Health Authorities.

The further amendments to the *Queensland Institute of Medical Research Act 1945* are necessary due to the abolition of Regional Health Authorities. and to amend definitions in the Act. Amendment 11 provides that the current members of the Council cease to hold office on the commencement of the section.

The amendment to the *State Service Superannuation Act 1972* is necessary due to the abolition of Regional Health Authorities.

The amendment to the *Whistleblowers Protection Act 1990* is necessary due to the abolition of Regional Health Authorities.

The amendments to the *Workers 'Compensation Act 1990* are necessary due to the abolition of Regional Health Authorities.