

Health Services Amendment Bill 2006

Explanatory Notes

Title of the Bill

Health Services Amendment Bill 2006

Objectives of the Bill

The main objective of the Bill is to amend the *Health Services Act 1991* to support the continued implementation of the current health reform agenda.

Achievement of the Objectives

- The Bill amends the *Health Services Act 1991* to:
- expand the objects of the Act to include health promotion and protection;
- insert a set of guiding principles into the Act which reflect the key elements of the current health reform agenda;
- align the Act's organisational provisions to align with Queensland Health's new structure including clearly articulating the respective roles of the chief executive (state-wide strategic direction and leadership), area general managers (leadership within their respective health service areas) and district managers (managing public sector health services within their respective districts);
- authorise area general managers to employ health service employees in their health service areas, in addition to the Director-General as is currently the case;
- enable the creation of state-wide health services by Executive Council approval, to operate across districts and areas.
- Replace district health councils with health community councils. Health community councils will focus on community and consumer engagement, and monitoring quality and safety in hospitals; and
- create a health executive service, incorporating area general managers, district managers, and other senior health executives who are not a part of the public service.

Alternative Ways of Achieving Policy Objectives

Alternative ways of achieving the policy objects were considered. However, each of the policy objectives dealt with in the Bill is required to be effected by legislation.

Estimated Cost for Government Implementation

There will be no administrative or operational costs under the Bill for the State Government.

Consistency with Fundamental Legislative Principles

An aspect of the Bill which raises possible fundamental legislative principles issues is outlined below.

Clause 17 contains a new section 28H (Exclusion of certain matters from review under other Acts) which excludes a decision to appoint, or not to appoint, a person as a health executive or the contract of employment of a health executive from review under the *Industrial Relations Act 1999* and the *Judicial Review Act 1991*.

The inclusion of this new section 28I as part of clause 17 raises the issue whether this new section has sufficient regard to the rights and liberties of individuals by making individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4 (3)(a) of the *Legislative Standards Act 1992*).

The inclusion of this section is essential as it provides certainty in relation to appointment decisions concerning health executives and it makes clear that the terms and conditions of the health executives' contracts shall govern their employment arrangements. This section is defensible as it is the same standard that applies to senior executives under the *Public Service Act 1996*.

Consultation

Community

As this Bill focuses on the organisational arrangements for Queensland Health, there has been no consultation with the community in relation to the Bill.

However the guiding principles, demarcation of the respective role of the chief executive, area general managers and district managers, as well as the

new Health Community Council provisions in the Bill draw upon directions and structure set out in the Queensland Health Systems Review, which involved extensive community consultation.

Government

The following government agencies and statutory bodies have been consulted about, and support the introduction of, the Bill:

Department of the Premier and Cabinet

Office of the Public Service Commissioner

Health Quality and Complaints Commission

Notes On Provisions

Clause 1 sets out the short title of the Bill.

Clause 2 sets out the arrangements for the commencement of the Bill.

Clause 3 specifies that the Bill amends the *Health Services Act 1991*.

Clause 4 amends the long title of the Act to reflect the fact that district health councils are being replaced by health community councils.

Clause 5 amends and inserts definitions contained in the *Health Services Act 1991*.

Clause 6 expands the meaning of a health service to include a service dealing with the protection and promotion of health. The amendment is consistent with the inclusion of the protection and promotion of health in the objects of the Act.

Clause 7 inserts a new section 3A which defines the meaning of a “user”, which is a term used to describe the functions of community health councils and the function of district managers in relation to managing complaints from user. The definition with the definition in the *Health Quality and Complaints Commission Act 2006*.

Clause 8 amends section 4 to expand the objects of the Act to include the protection and promotion of health, and also to update the description of the means through which the Act achieves those objects, such as establishing health community councils and requiring the chief executive to

prepare and give the Minister reports about the performance of certain public sector hospitals

Clause 9 inserts a new section 4A that creates a set of principles intended to guide the achievement of the objects of the *Health Services Act 1991*. The guiding principles include:

- making the best interests of users of public sector health services the main consideration of for decision-making;
- a commitment to quality and safety;
- being responsive to the needs of users of public sector health services and service delivery;
- being open and transparent in the provision of information to the community in relation to public sector health services;
- a commitment to creating workplaces that are free from bullying, harassment and discrimination and in which staff are respected and diversity embraced;
- openness to complaints;
- collaborating with clinicians in the planning, developing and delivering public sector health services;
- promoting research and develop relevant to the delivery of public sector health services; and
- promoting opportunities for training and development relevant to the delivery of public sector health services.

These principles are derived from the *Queensland Health Systems Review*, the *Queensland Public Hospitals Commission of Inquiry* and the *Action Plan – Building a better health service for Queensland*.

Clause 10 amends the heading of Part 2 *Health Services Act 1991* by omitting the reference to district health councils.

Clause 11 omits the heading of Division 1 in Part 2 of the *Health Services Act 1991*.

Clause 12 inserts a new Part 2A (Chief executive's responsibility and functions) and a new heading of Part 2B (General managers).

Part 2A outlines a range of functions for the chief executive including:

- providing strategic leadership and direction in relation to the delivery of public sector health services so as to promote, protect and maintain the health of Queensland residents,

- ensuring the development of a State-wide health services plan,
- ensuring available resources for the delivery of public sector health services are used effectively and efficiently, and
- entering into performance agreements with general managers and members of the health executive service.

The description of the chief executive functions includes any other functions given to the chief executive under the Act. The description of the chief executive's functions is not intended to displace the description of the chief executive's functions under another Act, such as the *Public Service Act 1996*.

The Bill also provides that in performing the functions the chief executive must have regard to the objects and guiding principles for the Act.

Clause 13 includes the amendment of the heading for section 21A.

Clause 14 inserts a new section 21B (General manager's functions) and a new heading for Part 2C.

Section 21B outlines a range of functions for the general manager including:

- leading the delivery of public sector health services in their health service area to ensure the provision of quality, safe and cost-effective public sector health services,
- leading the delivery of particular public sector health services, within and outside the health service area, as directed by the chief executive,
- developing a health service area plan that complements the State-wide health services plan,
- allocating available resources to public sector health services within the health service area in accordance with the health service area plan and any funding arrangement for public sector health services,
- developing health service agreements for each district within the health service area,
- entering into performance agreements with district managers, and
- performing other functions as directed by the chief executive.

In performing the functions the general manager is subject to the chief executive and must have regard to the objects and guiding principles for the Act.

Clause 15 amends section 22.

Clause 16 replaces sections 23 and 23A with a new section 23 which outlines the functions of a manager for a district.

These functions include:

- managing the delivery of public sector health services in the district in accordance with the health service agreement,
- implementing the health service area plan,
- effectively and efficiently applying available resources for the performance of the manager's functions,
- ensuring there is a system to deal with any complaints from users of public sector health services delivered in the district,
- ensuring health community councils for the district have administrative support services reasonably required to carry out the councils' functions effectively and efficiently,
- giving each health community council for a district written reports about the quality and safety of, and access to, public sector health services delivered in the district, and
- performing other functions as directed by the chief executive or relevant general manager.

In performing the functions the manager for a district is subject to the chief executive and must have regard to the objects and guiding principles for the Act.

Clause 17 amends section 24 by enabling general managers, as well as the chief executive, to appoint a person as a health service employee. This devolution of responsibility through legislation is consistent with the *Queensland Health Systems Review* and the *Action Plan – Building a better health service for Queensland*.

Clause 18 amends section 26 so that a contracted health service employee may enter into a contract with the chief executive or a general manager.

Clause 19 amends section 27 to provide the directives issued by the governor in council about health services employees do not apply to a health executive.

Clause 20 amends section 28 to provide that the matters which govern a health service employee's condition of employment do not apply to a health executive.

Clause 21 inserts three new parts into the *Health Services Act 1991*, namely Part 3A Health Executive Service, Part 3B Health community councils, and Part 3C State-wide health services.

Part 3A Health Executive Service

The new sections within this part have been modelled on relevant sections within the *Public Service Act 1996*. The new sections include:

- section 28A which establishes the health executive service;
- section 28C which outlines the purpose of the health executive service;
- section 28C which outlines the principles of health executive service employment;
- section 28D which describes the composition of the health executive service;
- section 28E which provides for appointment of persons to the health executive service;
- section 28F which outlines the basis of employment for health executives, namely a contract of employment with the chief executive;
- section 28G which requires the undertaking of an annual performance review of members of the health executive service;
- section 28H which excludes certain matters from review under the *Industrial Relations Act 1999*, the *Judicial Review Act 1991* and awards and industrial agreements,
- section 28I which enables the chief executive to fix the remuneration packages and classification levels for health executives. In exercising these powers, the chief executive must have regard to a number of considerations including any relevant directives issued by the Governor in council under section 27,
- section 28J which enables the chief executive to transfer health executives, and
- section 28K which provides for the health executive to refuse transfer on reasonable grounds.

Part 3B Health community councils

- The new sections within this part include:
- section 28L which empowers the Minister to establish as many health community councils for a district as the Minister considers appropriate for the administration of the Act. Each district must have at least 1 health community council,
- section 28M which sets out the functions of a council, including that it is an advisory body with a range of functions including:
 - undertaking community engagement activities;
 - monitoring the quality, safety and effectiveness of public sector health services;
 - considering and evaluating reports about the delivery of public sector health services;
 - enhancing community education about the delivery of public sector health services;
 - advising and making recommendations to the manager of the relevant district about the above matters;
 - providing the Minister, within 3 months after the end of each year, a written report on the performance of its functions during the year; and
 - performing other functions as directed by the Minister;
- section 28N which provides for the appointment of a council of not more than 8 members by the Minister. The Minister may only appoint persons nominated as suitable by the Health Quality and Complaints Commission. If practicable, a council should include at least 1 general practitioner as a member. A council must not include more than 1 member who is engaged in the delivery of public sector health services;
- section 28O which provides for the appointment of a chairperson;
- section 28P which provides that a member's term of appointment shall not be more than 4 years;
- section 28Q which outlines the conditions for disqualification from membership. It also provides for the Minister to ask the commissioner of the police service for written report about a person's criminal history;

- section 28R which deals with vacation of office by members;
- section 28S which provides for when notice of resignation takes effect;
- section 28T which concerns the remuneration of members;
- section 28U which enables councils to conduct their business in the way it considers appropriate;
- section 28V which provides for the times and places of meetings,
- section 28W which requires the manager of a district to attend community health council meetings;
- section 28X which requires councils to keep minutes of its meetings;
- section 28Y which provides for disclosure of interests;
- section 28Z which provides for the issuance of Ministerial Guidelines about a matter relating to a function of the health community council; and
- section 28ZA provides for the tabling of a council's report for a year in the Legislative Assembly within one month of receipt of the report by the Minister.

Part 3C State-wide health services

The new sections within this part enable the creation of a State-wide health service. The sections include:

- section 28ZB which defines the meaning of a State-wide health service;
- section 28ZC which provides for the establishment of a state-wide health service by Governor in Council by gazette notice;
- section 28ZD which provides for the appointment of a manager for each state-wide health service. The manager's functions include:
 - managing the delivery of the State-wide health service in accordance with the State-wide health service agreement,
 - implementing the State-wide health services plan in relation to the delivery of the State-wide health service,
 - ensuring available resources for the delivery of the State-wide health service are used effectively and efficiently, and

- performing other functions as directed by the chief executive.

In performing the functions the manager for a district is subject to the chief executive and must have regard to the objects and guiding principles for the Act.

Clause 22 amends section 57C to remove mental health from the responsibilities of the Chief Health Officer in pursuance of machinery of government changes announced following the 2006 State Government Election. Section 57C is also amended to insert a range of areas that are now the responsibility of the chief health officer due to structural changes as a result of the *Queensland Health Systems Review* and the *Action Plan – Building a better health service for Queensland*.

Clause 23 relocates and renumbers section 59 which concerns the responsibility of the chief executive to Part 2A as inserted by the Bill.

Clause 24 inserts a new Part 9, Division 6 that outlines the transitional arrangements for the transition of district health councils to community health councils.

To effect the transition immediately following commencement of the amending Act, the clause continues the district health councils immediately in existence before commencement of this Bill as health community councils for the transition period, which continues from the commencement of the amending Act to 30 June 2007. The transition period has been established to enable the Health Quality and Complaints Commission sufficient time to perform its function of nominating to the Minister persons it considers suitable for appointment as members of health community councils.

Additionally, section 86 has been included in the Bill to cater for the situation where the Governor in Council revokes the declaration of a district. Such a revocation may arise when the publicly announced consolidation of 37 districts which existed at the time that the amending Act commenced into 20 new districts occurs. If that situation arises, the council for a former district is taken to also be a council for the new district which includes the area of the old district.

Clause 25 inserts a schedule to make consequential amendments to the *Health Quality and Complaints Commission Act 2006* and the *Hospital Foundations Act 1982* in relation to health community councils.

The *Health Quality and Complaints Commission Act 2006* removes the reference to district health councils in the Act and replaces them with

references to health community councils. The Commission retains responsibility for recruiting membership for councils and making suggested nominations to the minister.

The *Hospital Foundations Act 1982* provides that the chair of the district health council is an exofficio member of the associated hospital foundation. Section 4 of the Act is amended to reflect health community councils.

As there may be more than one council in the district, a new section 18(3)(a) is inserted in the Act to enable the minister to proclaim which council is to be the associated council for the purposes of the Act.