Health and Hospitals Network and Other Legislation Amendment Bill 2012

Explanatory Notes

General outline

Short Title

Health and Hospitals Network and Other Legislation Amendment Bill 2012

Policy Objectives

The main purpose of the Bill is to amend the *Health and Hospitals Network Act 2011* to:

- strengthen the decentralisation of healthcare delivery in Queensland, and
- implement the revised national health funding arrangements under the National Health Reform Agreement (NHRA).

The *Health and Hospitals Network Act 2011* is to be renamed the *Hospital and Health Boards Act 2011*.

The Bill also renames 'governing councils' to 'hospital and health boards' and 'local health and hospital networks' to 'hospital and health services'.

The decentralisation of healthcare will be strengthened by giving hospital and health boards greater control over key aspects of decision-making in their hospital and health services. In particular, the Bill will:

- remove the prohibition on hospital and health services owning land and buildings
- remove the prohibition on hospital and health services employing staff, other than health executives, once the Service is prescribed under regulation

- provide for the establishment of advisory boards, to be called 'hospital and health ancillary boards', for specific hospitals or areas of the State, and
- require each hospital and health board to establish an Executive Committee to support the board in its role of overseeing the hospital and health service.

The revised national health funding arrangements will enhance the accountability and transparency in the funding of public sector health services. Other States, the Territories and the Commonwealth will be enacting equivalent provisions. The provisions provide for:

- the establishment of a separate State Pool Account to receive all Commonwealth funding and State activity-based funding
- the establishment of a separate State-managed fund through which Commonwealth and State block funding for health and hospital services, teaching, training and research is to be paid, and
- the establishment of the position of Administrator to release funds out of the State Pool Account on the instructions of the State Health Minister, and to report on funding to hospital and health services.

In addition, the Bill amends the *Health and Hospitals Network Act 2011* to:

- enable the Minister to suspend a board member on the grounds of alleged misconduct or for a matter that may constitute grounds for removal from office
- enable the Minister to appoint an expert adviser to a board for a limited period of time to assist the board to improve its performance
- require Ministerial directions to be published by the departmental chief executive as soon as practicable after it is made, and for hospital and health boards to publish, in their annual reports, actions taken as a result of a direction
- state in the Act that the departmental Director-General is subject to the directions of the Minister, mirroring the equivalent provision in the *Public Service Act 2008*, and
- make a small number of minor amendments to the Act to address issues identified since the Act was passed.

Achievement of Policy Objectives

- **Decentralisation of healthcare delivery**

Under the *Health and Hospitals Network Act 2011*, local health and hospital networks (to be renamed to hospital and health services by this Bill) are prohibited from owning land and buildings, with land and buildings to be owned by the State.

To strengthen local healthcare delivery, the Bill will enable hospital and health services to own land and buildings. However, to safeguard State assets in the long-term, the approval of the Minister and the Treasurer will be required for a hospital and health service to buy or sell land or buildings. In addition, the approval of the Minister and the Treasurer will be required to lease land and buildings from another person, or to lease land and buildings owned by the Service, unless the lease is of a type prescribed under regulation. The regulation may, for example, require the approval of the Minister and Treasurer for leases beyond a specified period of time.

The actual transfer of land and buildings from the State to hospital and health services will be undertaken using the power for the Minister to make transfer notices under the Act.

Under the Act, hospital and health services have the power to employ chief executives and other health executives, but not other staff. The departmental chief executive is the employer of all other health service employees.

To strengthen local healthcare delivery, the Bill will enable hospital and health services that are prescribed by regulation to employ all staff. When a hospital and health services is prescribed by regulation, all departmental staff working for the service at that time will become employees of the hospital and health service on the same terms and conditions. The approach of prescribing hospital and health services by regulation will enable consultation and implementation arrangements to be undertaken prior to a Service taking on the responsibility of employing staff.

Staff employed by hospital and health services will be subject to State-wide enterprise bargaining agreements and awards, and other standard State-wide employment terms and conditions as determined by the departmental chief executive. This will ensure parity of working conditions and pay throughout the State, prevent 'wage competition' between hospital and health services, and support employment mobility between hospital and health services. This requires amendments to the *Industrial Relations*

Act 1999 to modify the application of that Act to hospital and health services (as employers) and to their employees. The Industrial Relations Act will be amended to provide that:

- the departmental chief executive is to be the party to awards instead of the prescribed Services, but with the award being binding on the Services. This includes the departmental chief executive being party to proceedings related to awards and for the making, amending and repealing of awards;
- the departmental chief executive is to be the party to certified agreements instead of the prescribed Services, but with the agreement being binding on the Services. This includes the departmental chief executive being party to proceedings related to agreements and for negotiating, making, amending and terminating agreements; and
- the departmental chief executive is to be the party to any industrial disputes instead of the prescribed Services unless the departmental chief executive considers the matter does not affect employment terms and conditions in more than one hospital and health service.

It is essential that there are strong lines of communication between boards and the chief executive of each Service, and that clear accountability arrangements are in place. To achieve this, it is proposed that each board establish an Executive Committee as a committee of the board to work with the health service chief executive to progress strategic issues, including monitoring the Service's performance against the performance measures in service agreements, and overseeing the engagement strategies under the Act. The Executive Committee is to be chaired by the Board Chair or Deputy Chair, and include board member clinician/s.

A number of local communities have expressed a strong desire for boards to be established on a more local basis (e.g. for specific hospitals or groups of hospitals). To build capacity at the local level and to strengthen local input into hospital and health boards, it is proposed to amend the Act to enable ancillary boards to be established for a specific hospital, health service or geographic area. The primary role of an ancillary board is to provide advice to the relevant hospital and health board in relation to the hospital or other health services for which the ancillary board is established. Regulations under the Act may outline appointment processes and how the ancillary boards will work with the relevant hospital and heath board and the hospital and heath service.

- **National Health Funding Arrangements**

Under the NHRA, Commonwealth and State funding for public hospitals and other public sector health services are to flow through two separate accounts – a State Pool Account and a State-managed Fund. Funding in the State Pool Account is only to be paid to hospital and health services by the Administrator on the direction of the State Health Minister. The Administrator is an independent statutory position established under this Bill and the corresponding provisions of other State, Territory and Commonwealth legislation. As the Administrator has responsibilities under a national scheme, it is intended that all jurisdictions will appoint the same person to be Administrator.

A diagrammatic representation of the funding flows is provided in the Attachment.

The key provisions of the Bill are as follows:

- the establishment of the position of Administrator of the National Health Funding Pool (the National Health Funding Pool is the combination of all State and Territory State Pool Accounts)
- the requirement for the State Health Minister to appoint the person agreed unanimously by the Standing Council on Health to be the Administrator
- provisions requiring the Chair of the Standing Council on Health to suspend the Administrator if requested to do so by three State Health Ministers or the Commonwealth Health Minister
- a provision requiring the State Health Minister to remove the Administrator from office if agreed to by a majority of the members of the Standing Council on Health
- provisions outlining the functions of the Administrator as follows:
    - to calculate and advise the Commonwealth Treasurer of the amounts required to be paid by the Commonwealth under the NHRA
    - to monitor payments into each State Pool Account
    - to make payments from each State Pool Account in accordance with the directions of the State Minister
    - to prepare and publish monthly and annual reports, including reports on monies paid into, and out of, the State Pool Account

and the State-managed Fund, and services that are funded from these accounts, and

— to prepare financial statements for the State Pool Account

- the establishment of a separate State Pool Account in Queensland Health's financial accounts to receive all Commonwealth funding and all State activity-based funding under the NHRA
- the requirement that payments from the State Pool Account are only to be made by the Administrator on the direction of the State Minister in accordance with the NHRA
- provisions authorising the departmental chief executive to release funds from the State Pool Account at the direction of the State Minister if there is no Administrator available to make the payment
- the establishment of a separate State-managed Fund in Queensland Health's financial accounts through which block funding for hospital and health services, teaching, training and research are to be paid
- provisions authorising the departmental chief executive to release funds from the State-managed Fund in accordance with the NHRA, and
- provisions that apply the Commonwealth Information Privacy, Ombudsman, Right to Information and Public Records legislation to the Administrator's functions.

Estimated Cost for Government Implementation

Under the NHRA, the Commonwealth is to meet the costs of the Administrator.

Consistency with Fundamental Legislative Principles

Clause 26 inserts a new section 53Z into the Act that provides that the Commonwealth legislation in relation to Archives, the Information Commissioner, Freedom of Information, the Ombudsman and Privacy apply to the Administrator. This is one of the 'common national provisions' which are to be enacted in Commonwealth, State and Territory legislation in a similar way. Section 53Z(2) states that a regulation made under the Commonwealth *National Health Reform Act 2011*, with the agreement of all of the members of the Standing Council of Health, may modify the way in which those Acts apply to the Administrator. A provision of an Act

which enables the application of an Act to be modified by regulation raises fundamental legislative principle issues. In this instance, it is considered that the use of a regulation-making power is a reasonable way of taking part in a national legislative scheme to achieve uniformity.

Clause 46 inserts transitional provisions to facilitate the renaming of health and hospital networks to hospital and health services, and from governing councils to hospital and health boards. New section 319D is a transitional regulation-making power that enables a regulation to be made to amend an Act to facilitate this renaming if the Act does not give full effect to the renaming of networks and governing councils. A provision of an Act which enables an Act to be amended by regulation raises fundamental legislative principle issues. The Act makes extensive changes to the names under the *Health and Hospitals Network Act 2011* and other Acts. Given the very large number of these changes, this regulation would enable further name changes to be made by regulation if they were not adequately dealt with under the Bill. It is considered that this is a reasonable regulation-making power given its limited application to affect a transitional matter. As this is a transitional regulation, it expires on 30 June 2013.

Consultation

Stakeholders have been consulted on key elements of the reforms and their implementation in Queensland.

Health unions will be consulted on the implementation of the arrangements to transition staff from the department to hospital and health services.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title for the Act.

Clause 2 states that the provisions of the Act, other than those specified, are to commence on 1 July 2012 to coincide with the full commencement of

the Act. The stated provisions that are to commence on a day to be fixed by proclamation relate to the revised national health funding arrangements.

Part 2 Amendment of Health and Hospitals Network Act 2011

Clause 3 states that this Act amends the *Health and Hospitals Network Act 2011*.

Clause 4 amends the short title of the Act.

Clause 5 amends section 7 to explain that hospital and health boards will have responsibility for controlling the Service's financial management, management of land and buildings and, if prescribed under regulation, the management of the Service's staff.

Clause 6 amends section 8 to reflect the revised approach to the employment of staff and the ownership of land and buildings under the Bill.

Clause 7 inserts a new section (8A Funding of public sector health system) into Part 1, Division 3 – Overview of Act. This section summarises the provisions of the Bill that relate to the national health funding arrangements.

Clause 8 amends section 10 to reflect the revised approach to the employment of staff under the Bill.

Clause 9 amends the functions of hospital and health services to reflect the revised approach to the employment of staff and the ownership of land and buildings under the Bill.

Clause 10 removes the prohibition on hospital and health services owning land and buildings, with limitations being placed on dealings with land and buildings (see next section). This clause also removes the prohibition on hospital and health services employing staff, other than health executives, once the Service is prescribed by regulation. Staff employed by Services are employed as health service employees under the Act. The purpose of these amendments is to strengthen the decentralisation of healthcare delivery by enhancing decision-making at the hospital and health service level.

Clause 11 inserts a new section 20A into the Act which requires the approval of the Minister and the Treasurer for a Service to buy or sell land or buildings. In addition, the approval of the Minister and the Treasurer is required to lease land and buildings from another person, or to lease land and buildings owned by the Service, unless the lease is of a type prescribed under regulation.

Clause 12 requires one or more members of a board to be clinicians. This amendment is necessary, given the requirement for an Executive Committee to include at least one clinician board member.

Clause 13 inserts a new section giving the Minister the power to suspend a member of a hospital and health board in the circumstances stated in the provision, namely for a matter that is, or may be, grounds for removing a member, or for alleged misconduct. 'Misconduct' is defined in the dictionary, based on the equivalent concept in the *Public Service Act 2008*. This provision would enable a Minister to act promptly in the case of alleged misconduct, pending a more detailed investigation of the matter.

Clause 14 amends the grounds on which a member of a hospital and health board may be removed by the Governor-in-Council by adding an additional ground of 'misconduct'.

Clause 15 amends the board's power of delegation to include any employee of the hospital and health service to reflect the fact that Services, once prescribed by regulation, will be able to employ any employees. Under the amended provision, a board will also be able to delegate matters to its Executive Committee.

Clause 16 inserts sections 32A to 32E into the Act in relation to Executive Committees.

Section 32A requires each hospital and health board to establish an Executive Committee.

Section 32B states the functions of the Executive Committees, namely:

- working with the health service chief executive to progress strategic issues identified by the board, and
- strengthening the relationship between the board and the health service chief executive in ensuring accountability in the delivery of services by the hospital and health service.

An inclusive list of more detailed functions is stated in this section, namely:

- overseeing the performance of the Service against the performance measures stated in the service agreement
- supporting the board in the development of engagement strategies and protocols with primary healthcare organisations, monitoring their implementation, and addressing issues that arise in their implementation
- supporting the board in the development of service plans and other plans for the Service, and monitoring their implementation
- working with the health service chief executive in responding to critical emergent issues in the Service, and
- performing other functions given to the Executive Committee by the board.

Section 32C outlines the membership of Executive Committees, namely, the Board Chair or Deputy Chair (who is to chair the committee), a board member clinician, and at least one other board member.

Section 32D outlines the way in which Executive Committees are to conduct their business. The health service chief executive is to attend all meetings of the Executive Committee.

Clause 17 replaces section 33 to reflect the revised approach to the employment of staff under the Bill. This is achieved by amending various names used in this section. This clause also replaces section 34 to amend the health service chief executive's power of delegation to include any employee of the hospital and health service to reflect the fact that Services, once prescribed by regulation, will be able to employ any employees.

Clause 18 inserts section 39A into the Act, which requires the departmental chief executive to provide a copy of all service agreements, and amendments to service agreements, to the Administrator of the National Health Funding Pool (established under this Bill) and to make the service agreements publicly available. This is consistent with the objective of the Bill to strengthen accountability and transparency in the funding of the public sector health system.

Clause 19 inserts a new division that enables the Minister to establish ancillary boards for specific hospitals, public sector health facilities, public sector health services or parts of the State. The Minister is to assign a name

to the ancillary board. Regulations may outline the way in which ancillary boards are to exercise their functions, consultation arrangements with hospital and health boards, and hospital and health services, and appointment processes.

Clause 20 amends the heading of Part 2, Division 5 to reflect the provisions inserted by the Bill.

Clause 21 amends section 44 to require Ministerial directions to be published by the departmental chief executive as soon as practicable after it is made, and for the hospital and health board to publish, in the annual reports, actions taken as a result of any direction.

Clause 22 inserts sections 44A to 44E into the Act that relate to the appointment by the Minister of advisers to hospital and health boards.

Section 44A provides that the Minister may appoint an adviser to hospital and health board if the Minister considers that the adviser may assist the board to improve its performance or the performance of the hospital and health service for which it is responsible. For example, the Minister may appoint a financial expert to a board if the board was having difficulty meeting its budgetary obligations. The appointment must be in writing for a period not exceeding one year.

Section 44B states the matters which the Minister may have regard to in deciding whether to appoint an adviser to a board, including the safety and quality of the health services being provided, the way in which the hospital and health service is complying with its service agreement, and the financial management of the Service.

Section 44C states the functions of an adviser, namely to attend board meetings, to provide information and advice to the board, and to advise the Minister and the departmental chief executive on matters related to the performance of the board or the hospital and health service.

Section 44D states that the adviser is not a member of the board but has the same duty of disclosure as board members, as stated in section 9 of Schedule 2 of the Act.

Section 44E states the obligations of the board in relation to an adviser, including to provide the adviser with all notices of board meetings and other documents provided to board members.

Clause 23 inserts a new section stating in the Act that the departmental Director-General is subject to the directions of the Minister, mirroring the equivalent provision in the *Public Service Act 2008*.

Clause 24 amends the functions of the departmental chief executive to reflect the revised approach to the employment of staff and the ownership of land and buildings under the Bill.

Clause 25 removes the references to 'network health executive' and 'network employee' as these terms are no longer required in the Act.

Clause 26 inserts a new Part 3A into the Act (including new sections 53A to 53ZB) which provides for the revised national health funding arrangements.

Section 53A states the main purpose of this Part, namely to enhance the accountability and transparency of the funding of public sector hospitals, other public sector health services, and teaching, training and research related to the provision of health services.

Section 53B states that the departmental chief executive is to establish an account with the Reserve Bank of Australia to be called the State Pool Account.

Section 53C outlines the funds that must, or may, be paid into the State Pool Account. All State activity-based funding and all Commonwealth funding is to be paid into this account.

Section 53D outlines the arrangements for funds to be paid out of the State Pool Account. Funds may only be paid by the Administrator at the direction of the State Minister. The section states that the direction made by the Minister must be consistent with the purpose for which the funding was paid into the account, the National Health Reform Agreement and a service agreement between the departmental chief executive and a hospital and health service.

Section 53E provides that the departmental chief executive may pay funds from the State Pool Account at the direction of the Minister if there is no Administrator or Acting Administrator appointed or if the Administrator is not available to make the payment. This provision ensures that, in exceptional circumstances, funding can still be paid to hospitals and other public sector health services.

Section 53F states that the departmental chief executive is to establish an account with a financial institution to be called the State-managed Fund.

Section 53G outlines the funds that must, or may, be paid into the State-managed Fund. Monies to flow through the State-managed Fund include block funding for the provision of hospital and other health services, and funding for teaching, training and research.

Section 53H provides that the departmental chief executive must pay funds from the State-managed Fund in a way that is consistent with the purpose for which the funding was paid into the fund, the National Health Reform Agreement and any relevant service agreement.

Part 3A, division 4 (sections 53I to 53ZB) are the 'common national provisions' which are to be enacted in Commonwealth, State and Territory legislation in a similar way.

Section 53I states the definitions used in this division. The section also clarifies that each jurisdiction only has one 'vote' on the Standing Council on Health for matters related to these provisions. For this division to be interpreted in a nationally consistent way, this section also states that this division is to be interpreted in accordance with Schedule 7 of the *Health Practitioner Regulation National Law* rather than the *Acts Interpretation Act 1954*. Schedule 7 has been adopted consistently across the jurisdictions.

Section 53J establishes the position of the Administrator of the National Health Funding Pool. (The National Health Funding Pool is the combined State Pool Accounts for each State). The provision states that it is the intention of Parliament that the same individual is to be appointed as the Administrator under the corresponding provisions of Commonwealth, State and Territory legislation. This is a necessary part of the Administrator overseeing a national scheme.

Section 53K outlines the arrangements to appoint the Administrator. All members of the Standing Council on Health are to agree on the individual to be appointed as Administrator, the date that the appointment will take effect and the period of appointment. The State Minister is to appoint the person agreed to by the Standing Council.

Section 53L outlines the arrangements for the suspension of the Administrator from office. The provisions state that the Chair of the Standing Council on Health is to suspend the Administrator if requested to do so by three State Ministers or by the Commonwealth Minister. The suspension is to be for a period of 60 days.

Section 53M requires the State Minister to remove the Administrator from office if a majority of the members of the Standing Council agreed to the Administrator's removal. This section also enables the Administrator to resign by written notice given to the Chair of the Standing Council.

Section 53N enables the Chair of the Standing Council to appoint an individual to act as Administrator from a panel of persons, and in accordance with the procedure, agreed to by the Standing Council.

Section 53O provides that the Administrator is to be supported by an entity called the 'National Health Funding Body', which is an administrative entity to be constituted under the Commonwealth's *National Health Reform Act 2011*. This provision also states that the Administrator must not delegate his or her powers to a staff member of that body or to any other person. This does not, however, prevent persons from acting under the authority of the Administrator, for example, by using a financial management system to make specific payments to hospital and health services authorised by the Administrator under the Act.

Section 53P outlines the functions of the Administrator of the National Health Funding Pool, namely:

- to calculate and advise the Commonwealth Treasurer of the amounts required to be paid by the Commonwealth under the National Health Reform Agreement
- to monitor payments into each State Pool Account
- to make payments from each State Pool Account in accordance with the directions of the State Minister
- to prepare and publish monthly and annual reports, and
- to prepare financial statements for the State Pool Account.

This section also empowers the Council of Australian Governments (COAG) to issue directions to the Administrator in relation to how the Administrator exercises his or her functions, including for the preparation of reports and financial statements.

Section 53Q requires the Administrator to develop and apply appropriate financial management policies and procedures, to keep proper records in relation to the administration of the State Pool Accounts, and to prepare financial statements in accordance with the Act.

Section 53R requires the Administrator to prepare monthly reports, including on the funds paid into, and out of, the State Pool Account and the State-managed Fund. Monthly reports are also to include details of the public hospital services funded from the accounts. The reports are to be provided to the Minister and made publicly available.

Section 53S requires the Administrator to prepare annual reports on the same matters provided in the monthly reports. The annual report is to be accompanied by the audited financial statements of the State Pool Account and is to be provided to the Minister for tabling in the Parliament.

Section 53T requires the Administrator to prepare a financial statement for each State Pool Account and a combined financial statement for the State Pool Accounts.

Section 53U provides that the Auditor–General must audit the financial statements of the State Pool Account. The *Auditor–General Act 2009* applies to the audit.

Section 53V empowers the Auditor-General to conduct performance audits of the Administrator's activities that relate to Queensland. Before conducting such a performance audit, the Auditor-General must notify the Auditors–General of the other jurisdictions. Where audits are conducted at the same time, the Auditors–General are to co-ordinate the audits.

Section 53W requires the State Minister to provide information to the Administrator about monies paid into, and out of, the State-managed Fund to enable the Administrator to prepare the monthly and annual reports.

Section 53X provides for the provision of information by the Administrator to the State Minister, including an obligation to provide this information if requested by the Minister.

Section 53Y provides that State legislation in relation to Information Privacy, the Ombudsman, Right to Information and Public Records do not apply to the Administrator. As this is a national scheme, the equivalent Commonwealth Acts are to apply (see following section). In addition, this section clarifies that the Administrator is not a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*. As the State Pool Account and the State-managed Fund are departmental accounts, the departmental chief executive is the accountable officer for these funds.

Section 53Z provides that the Commonwealth legislation in relation to Archives, the Information Commissioner, Freedom of Information, the Ombudsman and Privacy apply to the Administrator. This enable the Administrator to operate under a single set of laws, rather than comply with multiple laws in different jurisdictions.

Section 53ZA states that the operation of this division may have extra-territorial effect.

Section 53ZB provides for transitional and validation provisions to support the timely establishment of the national arrangements.

Clause 27 amends section 54 of the Act to clarify that a Commonwealth entity (such as the National Health Performance Authority), as well as a Commonwealth department, can agree with the State on the data to be provided to the Commonwealth entity.

Clause 28 makes consequential amendments to section 60 to reflect the revised approach to the employment of staff under the Bill by removing reference to 'network health executives' and 'network employees', as these terms are no longer required in the Act.

Clause 29 amends the power to employ health service employees under the Act. Under the amended Act, the departmental chief executive will have the authority to employ staff in the department, including to work in a hospital and health service, other than a prescribed Service. A hospital and health service may employ health executives, while a prescribed hospital and health service will be able to employ any health service employee in the Service.

Clause 30 makes consequential amendments to section 68 to reflect the revised approach to the employment of staff under the Bill, as hospital and health services will be able to enter into employment contracts with employees other than health executives.

Clause 31 cross-references new schedule 4A of the *Industrial Relations Act 1999* which modifies the way in which that Act applies to prescribed hospital and health services and their employees.

Clause 32 makes consequential amendments to section 74 to change the names used in the section.

Clause 33 makes consequential amendments to section 78 to reflect the revised approach to the employment of staff under the Bill by removing reference to 'network health executives'.

Clause 34 inserts provisions that apply where a hospital and health service is prescribed under regulation to have the power to employ all staff. In these circumstances, the staff that were previously departmental employees and working for the hospital and health service become employees of the hospital and health service on the same terms and conditions on the prescribed day. The term 'working for a Service' is defined in the dictionary to clarify that the departmental employees who are reporting, directly or indirectly, to the health service chief executive are the

employees who will transition to being employees of the Service. In addition, any appointments under the Act (e.g. to undertake a clinical review) and other matters related to the employees (e.g. recreation leave approved before the prescribed day) will continue unaffected.

Clause 35 amends section 87 of the Act to clarify that the reference to proceedings in relation to the statutory protections for documents emanating from quality assurance committee processes includes compliance with a requirement under an Act or legal process.

Clause 36 amends section 119 of the Act to clarify that the reference to proceedings in relation to the statutory protections for documents emanating from root cause analyses includes compliance with a requirement under an Act or legal process.

Clause 37 makes consequential amendments to section 129 to reflect the revised approach to the employment of staff under the Bill by removing reference to 'network health executives' and 'network employees', as these terms are no longer required in the Act.

Clause 38 amends section 138 of the Act to clarify that the reference to proceedings in relation to the statutory protections for documents emanating from clinical reviews includes compliance with a requirement under an Act or legal process.

Clause 39 expressly states that information provided to the Administrator is authorised for the purposes of the confidentiality provisions of the Act.

Clause 40 makes consequential amendments to section 194 to reflect the revised approach to the employment of staff under the Bill by removing reference to 'network health executives' and 'network employees', as these terms are no longer required in the Act.

Clause 41 modifies the Minister's delegation powers under the Act, including that the Minister may not delegate powers related to the appointment, suspension or removal of the Administrator of the National Health Funding Pool.

Clause 42 extends the protection provisions in the Act to the Administrator of the National Health Funding Pool.

Clause 43 amends the regulation-making power in the Act so that regulations may be made in relation to the movement of all health service employees between hospital and health services, or between a hospital and health service and the department.

Clause 44 amends the heading of Part 3, Division 2

Clause 45 enables a transfer notice to be made to correct an error in an earlier transfer notice.

Clause 46 inserts transitional provisions to facilitate the renaming of health and hospital networks to hospital and health services, and from governing councils to hospital and health boards. New section 319D is a transitional regulation-making power that enables a regulation to be made to amend an Act to facilitate this renaming if the Act does not give full effect to the renaming of networks and governing councils. The transitional regulation-making power expires on 30 June 2013.

Clause 47 replaces Schedule 1, part 2 of the Act which made consequential amendments to other Acts to reflect the enactment of the *Health and Hospitals Network Act 2011*. This schedule has been replaced as a result of the changed name of the Act, and to change 'health and hospital networks' to 'hospital and health services', 'governing councils' to 'hospital and health boards', and related name changes.

Clause 48 amends the dictionary to the Act.

Part 3 Amendment of Industrial Relations Act 1999

Clause 49 states that this Part amends the *Industrial Relations Act 1999*.

Clause 50 inserts a section in the Industrial Relations Act which states that Schedule 4A of that Act modifies the Act for prescribed hospital and health services and their employees.

Clause 51 inserts Schedule 4A (Application of this Act to prescribed Hospital and Health Services and their employees) into the Industrial Relations Act.

Amendment 1 inserts definitions into the schedule.

Amendment 2 enables the Industrial Relations Commission to consider an employee's conduct, capacity or performance at another health system employer (i.e. a hospital and health service or the department) when considering whether a dismissal by a health system employer was harsh, unjust or unreasonable. This situation may arise where a health service

employee works in two hospital and health services and is dismissed by one of the services for serious misconduct. In these circumstances, the other hospital and health service may take this into account in deciding whether to also dismiss the employee.

Amendment 3 provides that the departmental chief executive is to be a party to any award applying to health service employees instead of hospital and health services. This provision also states that these awards are binding on hospital and health services and their employees.

Amendment 4 provides that the departmental chief executive is to be a party to any proceeding under chapter 5 of the Act (Awards), instead of hospital and health services, for proceedings related to health service employees.

Amendment 5 provides that the departmental chief executive, instead of hospital and health services, may make applications under section 125 of the Act to make, amend or repeal awards in relation to health service employees.

Amendment 6 clarifies that provisions based on a certified agreement that are included in an award are to apply to hospital and health services, even though they are not a party to the certified agreement.

Amendment 7 provides that the departmental chief executive is to be a party to any certified agreement applying to health service employees instead of hospital and health services.

Amendment 8 provides that the departmental chief executive is to be a party to any proceeding under chapter 6 of the Act (Agreements), instead of hospital and health services, for proceedings related to health service employees.

Amendment 9 provides that the departmental chief executive is taken to be the employer instead of hospital and health services for the purpose of making certified agreements for health service employees.

Amendment 10 provides that the departmental chief executive is taken to be the employer instead of hospital and health services for the purpose of proposing to make certified agreements for health service employees.

Amendment 11 provides that references to 'negotiating with the employer' in section 144 of the Act is taken to refer to the departmental chief executive instead of hospital and health services.

Amendment 12 places the same obligations on hospital and health services during a peace obligation period, notwithstanding that they are not parties to the negotiation.

Amendment 13 provides that references to 'parties' in section 148 of the Act also apply to hospital and health services in relation to their conduct during the negotiation of a certified agreement.

Amendment 14 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to the revocation of a determination made under section 149 of the Act.

Amendment 15 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to an application to the registrar about not negotiating a proposed agreement with an employee organisation because the employee organisation no longer represents the employee or the employee stops being a relevant employee for the purposes of the certified agreement.

Amendment 16 states that a certified agreement between the departmental chief executive and the health service employees of the hospital and health services, or an employee organisation representing these employees, is binding on the hospital and health services.

Amendment 17 clarifies that this section applies subject to the modifications contained in this Schedule, particularly in that certified agreements are binding on hospital and health services.

Amendment 18 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission to extend a certified agreement's normal expiry date.

Amendment 19 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission to amend a certified agreement.

Amendment 20 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission to amend a certified agreement where employees ask the employer to amend the agreement so that their employment is subject to the agreement.

Amendment 21 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to

applying to the commission to terminate a certified agreement before its nominal expiry date.

Amendment 22 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission to terminate a certified agreement after its nominal expiry date.

Amendment 23 provides that the departmental chief executive has the same obligations not to coerce, or attempt to coerce, health service employees employed in hospital and health services.

Amendment 24 provides that the departmental chief executive is the default party for proceedings for industrial disputes involving a hospital and health service. Where a hospital and health service becomes aware of a dispute, the Service must give notice of this dispute to the departmental chief executive. The departmental chief executive is taken to be the employer party to the dispute unless the departmental chief executive gives written notice to the hospital and health service that the Service is to be the party instead of the departmental chief executive. In deciding whether to give a written notice, the departmental chief executive is to consider whether the dispute may affect the terms and conditions of employment of health service employees in more than one health system employer (i.e. hospital and health services or the department).

Amendment 25 provides that the departmental chief executive may intervene in proceedings in relation to health service employees in a hospital and health service. In these circumstances, the departmental chief executive becomes a party to the dispute in addition to the hospital and health service. This power may be used when the departmental chief executive becomes aware that a dispute may have State-wide implications.

Amendment 26 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission to conduct a secret ballot.

Amendment 27 provides that the departmental chief executive is taken to be the employer, instead of a hospital and health service, in relation to applying to the commission for an order in relation to a contravention of section 238 (Payment for strikes can not be compelled).

Amendment 28 applies to applications made under the Act, other than applications made under Chapter 5 (Awards), Chapter 6 (Agreements) or Chapter 7 (Industrial Disputes). For these applications, the departmental

chief executive is taken to be the employer instead of a hospital and health service, unless the departmental chief executive gives written notice to the hospital and health service.

Amendment 29 applies to proceedings under the Act, other than proceedings under Chapter 5 (Awards), Chapter 6 (Agreements) or Chapter 7 (Industrial Disputes). For these proceedings, the departmental chief executive is taken to be the employer instead of a hospital and health service, unless the departmental chief executive gives written notice to the service. The term 'proceedings' has a wide meaning under the *Acts Interpretation Act 1954* and would include conciliation and arbitration proceedings under the *Industrial Relations Act 1999.*

Amendment 30 provides that the commission may make orders, give directions or do anything else it may do under this Act in relation to a hospital and health service even though a service is not party to a proceeding before the commission.

Amendment 31 provides that the departmental chief executive is taken to be the employer instead of a hospital and health service in relation to applying to the commission to regulate a calling by an award or to consolidate an award.

Clause 52 amends the dictionary in the Industrial Relations Act.

Part 4 Amendment of Private Health Facilities Act 1999

Clause 53 amends the *Private Health Facilities Act 1999* to enable the State to provide data to the Commonwealth, including data related to public patients treated in private hospitals.

Part 5 Minor and consequential amendments

Clause 54 refers to the schedule to the Bill which makes minor and consequential amendments to the Act, particularly to rename 'health and hospital networks' to 'hospital and health services', 'governing councils' to 'hospital and health boards', and related name changes.

Attachment : National Health Funding Flows