



Queensland

Health Transparency Act 2019

Act No. 38 of 2019

An Act to facilitate the publication and collection of information about public facilities and private facilities that provide health services, and to amend this Act, the Corrective Services Act 2006, the Health Ombudsman Act 2013, the Health Practitioner Regulation National Law Act 2009, the Hospital and Health Boards Act 2011, the Police Powers and Responsibilities Act 2000, the Private Health Facilities Act 1999, the Public Health Act 2005, the Youth Justice Act 1992 and the Youth Justice Regulation 2016 for particular purposes

[Assented to 5 December 2019]



Queensland

Health Transparency Act 2019

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Transparency Act 2019*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) sections 3 to 6;
- (b) parts 2 to 5;
- (c) part 6, other than division 4, subdivisions 1 and 2;
- (d) schedules 1 and 2.

3 Purposes of Act

The purposes of this Act are—

- (a) to improve the transparency of the quality and safety of health services provided in Queensland; and
- (b) to help people make better-informed decisions about their health care.

4 How purposes are achieved

The purposes of this Act are achieved by enabling the publication and collection of particular types of information about public sector health service facilities, private health facilities, State aged care facilities and private residential aged care facilities.

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5 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) However, the State can not be prosecuted for an offence against this Act.

6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

Part 2 Information to which Act applies

7 Information to which Act applies

- (1) This Act applies to—
 - (a) general information about—
 - (i) public sector health service facilities; and
 - (ii) private health facilities; and
 - (iii) State aged care facilities; and
 - (iv) private residential aged care facilities; and
 - (b) quality and safety information about—
 - (i) public sector health service facilities; and
 - (ii) private health facilities; and
 - (c) residential care information about—
 - (i) State aged care facilities; and
 - (ii) private residential aged care facilities.
- (2) This Act applies to information mentioned in subsection (1) that is—
 - (a) publicly available; or

-
- (b) given to the chief executive under or in relation to the administration of this Act; or
- (c) held by the chief executive as a result of obtaining or having access to the information, or information from which the information was derived—
- (i) under a service agreement under the *Hospital and Health Boards Act 2011*, section 35; or
 - (ii) under the *Hospital and Health Boards Act 2011*, section 138F or 138M; or
 - (iii) because of a report given under the *Private Health Facilities Act 1999*, section 144; or
 - (iv) under the *Public Health Act 2005*, section 217 or 218.
- (3) Subsection (2)(c) applies to information held by the chief executive on or after the commencement.

8 What is *general information*

General information, about a public sector health service facility, private health facility, State aged care facility or private residential aged care facility, is—

- (a) information that identifies the facility, including, for example—
 - (i) the name, address, phone number and website of the facility; and
 - (ii) whether the facility is a public sector health service facility, day hospital, private hospital, State aged care facility or private residential aged care facility; or
- (b) details of the health services provided at or by the facility; or

Examples—

- types of clinical specialities provided at or by the facility
- maternity models of care provided at or by the facility

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- (c) information about other services available at or near the facility that may help people who are admitted at the facility, attending an appointment at the facility or visiting the facility.

Examples—

- information about any carpark at or near the facility
- information about public transport to the facility
- information about interpreter services available at the facility

9 What is *quality and safety information*

- (1) *Quality and safety information*, about a public sector health service facility or private health facility, is—

- (a) information about the facility's accreditation and performance against the National Safety and Quality Health Service Standards; or

Note—

The National Safety and Quality Health Service Standards are available on the Australian Commission on Safety and Quality in Health Care's website.

- (b) any of the following information prescribed by regulation—

- (i) access to care information;
- (ii) activity information;
- (iii) patient outcome information;
- (iv) process of care information;
- (v) other information relating to the quality and safety of health services provided at the facility.

- (2) In this section—

access to care information means information about the time frames in which health services are provided to patients at or by the facility, including, for example—

-
- (a) the percentage of patients treated within clinically recommended times at the facility; and
 - (b) the number of patients waiting for a health service at the facility.

activity information means—

- (a) information about patients admitted to a facility, including, for example—
 - (i) the number of patients admitted to and discharged from the facility; and
 - (ii) the reason for admission; and
 - (iii) the length of time spent in the facility; or
- (b) information about patients who are not admitted to a facility, but who receive a service at the facility, including, for example, the number of patients receiving care as an outpatient at the facility.

patient outcome information means information about—

- (a) the impact on patients of a health service provided at or by the facility, including, for example, the change in the health of a person, group of people or population that is wholly or partly attributable to the service; or
- (b) the effectiveness of a health service provided at or by the facility, including, for example, the extent to which a health service provided to a person at the facility achieved the best possible outcome for the person's health.

process of care information means information about processes that are in place to support quality and safety of health services at the facility, including, for example, infection management processes at the facility.

10 What is *residential care information*

- (1) ***Residential care information***, about a State aged care facility or private residential aged care facility, is—

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- (a) information prescribed by regulation about—
 - (i) the personal care or nursing care provided to residents at the facility; or
 - (ii) the staffing for the personal care and nursing care provided to residents at the facility; and
 - (b) information that explains, and helps in understanding, the information mentioned in paragraph (a).
- (2) In this section—
- resident***, at a State aged care facility or private residential aged care facility, means a person who is provided residential care at the facility.

Part 3 Publishing information

11 Chief executive may publish information

- (1) The chief executive may publish information to which this Act applies.
- (2) The chief executive may not publish personal information under this part, other than personal information—
 - (a) about an individual who takes part in the management of a public sector health service facility, private health facility, State aged care facility or private residential aged care facility; and
 - (b) that has been made publicly available by the facility.

12 How information may be published

The chief executive may publish information under this part in any way that allows the information to be accessed by members of the public.

Examples of ways of publication—

- information published on a website
- a report published on the department's website

- a printed report available from the department

Part 4 Collecting information

Division 1 Private residential aged care facilities

13 Chief executive may request information from approved provider

The chief executive may, by notice given to the approved provider who provides residential care at a private residential aged care facility, ask the approved provider to give the chief executive the following information about the facility—

- (a) general information;
- (b) residential care information.

14 Form of notice

A notice given under section 13 must state—

- (a) the purpose for which the information will be used if the information is given; and
- (b) that it is an offence for the person to whom the notice is given to fail to respond to the notice as mentioned in section 15.

15 Failure to respond to notice

A person who is given a notice by the chief executive under section 13 must, unless the person has a reasonable excuse, give the chief executive, within 15 business days after the notice is given—

- (a) all of the information requested; or

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- (b) some of the information requested and a notice informing the chief executive that the remaining information will not be given to the chief executive; or
- (c) if no information requested is to be given—a notice informing the chief executive that none of the information is to be given.

Maximum penalty—100 penalty units.

16 Chief executive may publish information about response to notice

- (1) This section applies if, under section 15(b) or (c), an approved provider informs the chief executive that information about a private residential aged care facility requested in a notice under section 13 will not be given.
- (2) The chief executive may publish—
 - (a) that fact; and
 - (b) the name of the private residential aged care facility about which the information was requested.
- (3) Sections 11(2) and 12 apply to the publication of the information.

Division 2 Other facilities

17 Chief executive may require information about public sector health service facilities and State aged care facilities

- (1) The chief executive may, by notice given to the health service chief executive of a Hospital and Health Service, require the health service chief executive to give the chief executive any of the following information—
 - (a) general information about a public sector health service facility or State aged care facility that is, or is part of, the Service's health service area;

- (b) quality and safety information about a public sector health service facility that is, or is part of, the Service's health service area;
- (c) residential care information about a State aged care facility that is, or is part of, the Service's health service area.

(2) In this section—

health service area, of a Hospital and Health Service, means a health service area declared for the Service under the *Hospital and Health Boards Act 2011*, section 17.

health service chief executive, of a Hospital and Health Service, means the health service chief executive appointed for the Service under the *Hospital and Health Boards Act 2011*, section 33.

18 Chief executive may require information about private health facilities

- (1) The chief executive may, by notice given to the licensee of a private health facility, require the licensee to give the chief executive the following information about the facility—
- (a) general information;
 - (b) quality and safety information.

(2) In this section—

licensee, of a private health facility, means the holder of the licence under the *Private Health Facilities Act 1999*, part 6 for the facility.

19 Form of notice

A notice given under section 17 or 18 must state—

- (a) the reasonable period within which the information must be given; and
- (b) the purpose for which the information will be used; and

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- (c) that it is an offence for the person to whom the notice is given to fail to comply with the notice.

20 Failure to provide information

A person who is given a notice by the chief executive under section 17 or 18 must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Part 5 Other provisions

21 False or misleading information

- (1) A person must not, in relation to the administration of this Act, give the chief executive information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under an Act.
- (3) Subsection (1) does not apply to a person if the person, when giving the information in a document—
 - (a) tells the chief executive, to the best of the person's ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

22 Confidentiality

- (1) This section applies to a person who—
 - (a) is, or has been, any of the following persons administering, or performing functions or exercising powers under, this Act—

- (i) the chief executive;
 - (ii) an employee of the department;
 - (iii) a contractor of the department; and
- (b) in that capacity, obtains personal information or has access to, or custody of, personal information.
- (2) The person must not use or disclose the personal information.
Maximum penalty—50 penalty units.
- (3) However, the person may use or disclose the personal information—
- (a) to the extent necessary to administer, or perform functions or exercise powers under, this Act; or
 - (b) to, or with the consent of, the individual to whom the information relates; or
 - (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
 - (d) as otherwise required or permitted under another law.

23 Delegation

The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified employee of the department.

24 Regulation-making power

The Governor in Council may make regulations under this Act.

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Part 6 **Amendments of Acts relating to health matters**

Division 1 **Amendment of this Act**

25 **Act amended**

This division amends this Act.

26 **Amendment of long title**

Long title, from ‘, and to amend’—
omit.

Division 2 **Amendment of Health Ombudsman Act 2013**

27 **Act amended**

This division and schedule 2 amend the *Health Ombudsman Act 2013*.

28 **Amendment of s 14 (Dealing with health service complaints and other matters)**

(1) Section 14—

insert—

(4A) The health ombudsman may make an order prohibiting a health practitioner other than a registered health practitioner from practising, or imposing restrictions on the practitioner’s practice.

(2) Section 14(5)—

omit, insert—

-
- (5) The health ombudsman may refer a matter concerning a registered health practitioner to the director of proceedings for decision about whether proceedings should be taken against the practitioner before QCAT.
- (3) Section 14(6), ‘professional misconduct and certain other’—
omit, insert—
certain
- (4) Section 14(4A) to (9)—
renumber as section 14(5) to (10).

29 Amendment of s 16 (Disciplinary orders)

- (1) Section 16, heading, after ‘orders’—
insert—
of QCAT and other jurisdictions
- (2) Section 16(2)—
omit, insert—
(2) Orders of other jurisdictions that prohibit a health practitioner other than a registered health practitioner from practising, or impose restrictions on the practitioner’s practice, also apply in Queensland.

30 Amendment of s 33 (How to make a complaint)

- Section 33(2)—
omit, insert—
(2) If a complaint is made orally—
(a) the health ombudsman must make a record of the complaint; and
(b) if the health ombudsman decides not to accept the complaint at the time it is made

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and gives notice of the decision as mentioned in section 278(2), the health ombudsman must include details of the decision in the record made under paragraph (a).

31 Amendment of s 35 (Deciding how to proceed)

(1) Section 35, heading, after ‘proceed’—

insert—

generally

(2) Section 35(1), before ‘days’—

insert—

business

(3) Section 35(1)(a)(ii)—

omit, insert—

(ii) to accept the complaint and take no further action in relation to it; or

Note—

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.

(iii) not to accept the complaint; and

(4) Section 35(2)—

omit, insert—

(2) For deciding the number of business days for subsection (1), the following days are not counted—

(a) any business days on which there is an outstanding requirement under section 34;

(b) any business days necessary to comply with division 2A for the complaint.

32 Insertion of new s 35A and pt 3, divs 2A and 2B

After section 35—

insert—

35A Non-acceptance of complaint

The health ombudsman may decide not to accept a complaint if the health ombudsman is satisfied—

- (a) the complaint would be more appropriately dealt with by an entity other than the health ombudsman or an entity to whom the health ombudsman may refer the complaint under this Act; or
- (b) the complainant has not sought a resolution of the complaint with the relevant health service provider and it is reasonable in the circumstances for the complainant to first seek the resolution.

Division 2A Dealing with complaint concerning registered health practitioner

35B Application of division

- (1) This division applies if the health ombudsman accepts a complaint concerning the health, conduct or performance of a registered health practitioner.
- (2) Nothing in this division prevents the health ombudsman deciding to take immediate action under part 7 in relation to the complaint.

35C Notifying National Agency of complaint

- (1) The health ombudsman must, as soon as practicable after accepting the complaint—
 - (a) notify the National Agency that the health ombudsman has accepted the complaint; and
 - (b) give to the National Agency—
 - (i) a copy of the complaint or, if the complaint was not made in writing, a copy of the health ombudsman’s record of the details of the complaint; and
 - (ii) any other information the health ombudsman has that is relevant to the complaint.
- (2) The National Agency may give the health ombudsman the Agency’s preliminary view about how the complaint should be dealt with within 5 business days after the Agency is notified of the complaint.

35D Dealing with complaint if no preliminary view

- (1) This section applies if the National Agency does not provide a preliminary view about how the complaint should be dealt with within the period stated in section 35C(2).
- (2) The health ombudsman may deal with the complaint under this Act without further consulting the National Agency, other than to the extent required under division 2B.

35E Dealing with complaint if agreement on preliminary view

- (1) This section applies if the National Agency provides a preliminary view about how the

complaint should be dealt with within the period stated in section 35C(2) and the health ombudsman agrees with the preliminary view.

- (2) The health ombudsman must ensure the way the complaint is dealt with under this Act is consistent with the agreed view.

35F Further negotiation if disagreement on preliminary view

- (1) This section applies if the National Agency provides a preliminary view about how the complaint should be dealt with within the period stated in section 35C(2) and the health ombudsman does not agree with the preliminary view.
- (2) The health ombudsman must attempt to reach agreement with the National Agency about how the complaint is to be dealt with within 15 business days after the Agency gives its preliminary view.

35G Dealing with complaint if no agreement after further negotiation or no further negotiation

- (1) This section applies if the health ombudsman and National Agency do not reach an agreement about how the complaint should be dealt with under section 35F.
- (2) The health ombudsman must deal with the complaint as follows—
 - (a) if the health ombudsman believes the complaint indicates a serious matter within the meaning of section 91C—
 - (i) the health ombudsman must not refer the serious matter to the National

[s 32]

Agency and must deal with the serious matter under this Act; and

- (ii) the health ombudsman must deal with any other matter arising from the complaint as mentioned in paragraph (b) to (d) as if the other matter were the subject of a separate complaint;
- (b) if the health ombudsman believes the complaint should be the subject of an assessment under part 5, an investigation under part 8 or a referral to the director of proceedings under part 10, division 2—the health ombudsman must not refer the complaint to the National Agency and must deal with the complaint under this Act;
- (c) if neither paragraph (a) nor (b) applies and the health ombudsman, or the National Agency, believes the complaint should be referred to the National Agency—the health ombudsman must refer the complaint to the National Agency to deal with under the National Law;
- (d) otherwise—the health ombudsman must deal with the complaint under this Act, whether or not in further consultation with the National Agency.

35H Dealing with complaint if agreement after further negotiation

- (1) This section applies if the health ombudsman and National Agency reach an agreement about how the complaint should be dealt with under section 35F.
- (2) The health ombudsman must ensure the way the complaint is dealt with under this Act is consistent with the agreement.

**Division 2B Proposal to take no further
action in relation to
registered health
practitioner**

35I Application of division

- (1) This division applies if—
 - (a) the health ombudsman—
 - (i) accepts a complaint concerning the health, conduct or performance of a registered health practitioner; and
 - (ii) proposes to take no further action in relation to the complaint; and
 - (b) the subject matter of the complaint has not been referred to the National Agency under another provision of this Act or the National Law.
- (2) However, this division does not apply if the proposal is consistent with the preliminary view, about how the complaint should be dealt with, provided by the National Agency under division 2A.

35J Notifying National Agency of proposal

The health ombudsman must, as soon as practicable after forming the proposal—

- (a) notify the National Agency that the health ombudsman proposes to take no further action in relation to the complaint, and include in the notification the health ombudsman's reasons for the proposal; and
- (b) give to the National Agency—

[s 33]

- (i) a copy of the complaint or, if the complaint was not made in writing, a copy of the health ombudsman's record of the details of the complaint; and
- (ii) any other information the health ombudsman has that is relevant to the complaint.

35K National Agency may request referral

- (1) The National Agency may ask the health ombudsman to refer the subject matter of the complaint to the Agency, to be dealt with under the National Law, within 7 business days after the Agency is notified of the health ombudsman's proposal under section 35J.
- (2) The health ombudsman must comply with a request made under subsection (1).
- (3) If the health ombudsman refers a matter to the National Agency under this section, the health ombudsman must give notice of the referral to the complainant and the registered health practitioner.

35L Dealing with complaint if no referral

If the National Agency does not make a request under section 35K within the period stated in that section, the health ombudsman may deal with the complaint under this Act without further consulting the National Agency.

33 Amendment of s 38 (Meaning of *relevant action*)

- (1) Section 38(1)—

insert—

- (da) issuing a prohibition order under part 8A;

-
- (2) Section 38(1)(f), before ‘referring’—
insert—
for a health service complaint concerning a registered health practitioner,
- (3) Section 38(1)(da) to (h)—
renumber as section 38(1)(e) to (i).
- (4) Section 38(3)—
insert—
(ba) issuing a prohibition order under part 8A;
- (5) Section 38(3)(d), before ‘referring’—
insert—
for a matter relating to a registered health practitioner,
- (6) Section 38(3)(ba) to (e)—
renumber as section 38(3)(c) to (f).

34 Amendment of s 49 (Period for completing assessment)

- (1) Section 49, ‘30 days’—
omit, insert—
22 business days
- (2) Section 49—
insert—
- (3) Also, for deciding the number of business days for subsection (1), any business days on which the health ombudsman is awaiting the outcome of a notification given under section 35J in relation to the complaint are not counted.

[s 35]

35 Amendment of s 55 (Period for attempting resolution)

- (1) Section 55, ‘30 days’—
omit, insert—
22 business days
- (2) Section 55—
insert—
 - (3) Also, for deciding the number of business days for subsection (1), any business days on which the health ombudsman is awaiting the outcome of a notification given under section 35J in relation to the complaint are not counted.

36 Amendment of s 58B (Varying immediate registration action on application by registered health practitioner)

- (1) Section 58B(5)(a) and (7), ‘written’—
omit.
- (2) Section 58B(5)(b)—
renumber as section 58B(5)(c).
- (3) Section 58B(5)—
insert—
 - (b) the health ombudsman must give notice of the variation to—
 - (i) the relevant National Board; and
 - (ii) if the immediate registration action was taken in response to a complaint—the complainant; and
- (4) Section 58B(7)(b), ‘7 days’—
omit, insert—
5 business days

37 Replacement of s 64 (Health ombudsman must immediately take further relevant action)

Section 64—

omit, insert—

64 Further relevant action that may be taken after immediate registration action

- (1) The health ombudsman may only take the following relevant action in relation to the matter giving rise to immediate registration action taken in relation to a registered health practitioner—
 - (a) investigate the matter under part 8;
 - (b) refer the matter to the National Agency or an entity of the State, another State or the Commonwealth under part 9;
 - (c) refer the matter to the director of proceedings under part 10, division 2.
- (2) The health ombudsman must take the relevant action mentioned in subsection (1)(a), (b) or (c)—
 - (a) if the matter is the subject of a complaint to which part 3, division 2A applies—immediately after the process under that division is completed; or
 - (b) otherwise—immediately after the immediate registration action is taken.

38 Amendment of s 73 (Period of interim prohibition order)

Section 73(2)—

omit, insert—

- (2) The order continues to have effect until the earliest of the following happens—
 - (a) the order ends under section 90H;

[s 39]

Note—

Section 90H provides for the ending of an interim prohibition order issued to a health practitioner in relation to a health service complaint or other matter when a prohibition order issued to the practitioner for the complaint or matter takes effect.

- (b) QCAT sets aside the decision to issue the order on application by the practitioner for a review of the decision;
- (c) the health ombudsman revokes the order under section 76.

39 Amendment of s 90 (Notice of decision after investigating matter)

Section 90, after ‘a matter’—

insert—

under this part

40 Insertion of new pt 8A

After part 8—

insert—

Part 8A Prohibition orders

Division 1 Preliminary

90A Application of part

This part does not apply to a person in the person’s capacity as a registered health practitioner.

90B Prohibition order

A *prohibition order* is an order issued to a health practitioner—

- (a) prohibiting the practitioner, either permanently or for a stated period, from providing any health service or a stated health service; or
- (b) imposing stated restrictions on the provision of any health service, or a stated health service, by the practitioner.

Division 2 Issue of prohibition order

90C Power to issue order

- (1) The health ombudsman may issue a prohibition order to a health practitioner (other than in the person's capacity as a registered health practitioner) if the health ombudsman—
 - (a) has completed an investigation under part 8 relating to the practitioner; and
 - (b) is satisfied that, because of the practitioner's health, conduct or performance, the practitioner poses a serious risk to persons.
- (2) Without limiting subsection (1)(b), the serious risk posed to a person by a health practitioner may be a serious risk of harm caused by the practitioner—
 - (a) practising the practitioner's profession unsafely, incompetently or while intoxicated by alcohol or drugs; or
 - (b) financially exploiting the person; or
 - (c) engaging in a sexual or improper personal relationship with the person; or

[s 40]

- (d) discouraging the person from seeking clinically accepted care or treatment; or
 - (e) making false or misleading claims about the health benefits of a particular health service; or
 - (f) making false or misleading claims about the practitioner's qualifications, training, competence or professional affiliations.
- (3) In deciding under subsection (1)(b) whether, because of a health practitioner's health, conduct or performance, the practitioner poses a serious risk to persons, the health ombudsman may have regard to a prescribed conduct document under section 288.

90D Show cause process

- (1) If the health ombudsman proposes to issue a prohibition order to a health practitioner, the health ombudsman must give the practitioner a notice—
- (a) stating the proposed order; and
 - (b) inviting the practitioner to make a written submission to the health ombudsman, within a stated period of at least 20 business days, about the proposed order.
- (2) The health ombudsman must have regard to any written submissions made by the practitioner within the stated period before deciding whether to issue the prohibition order.

90E Content of order

A prohibition order—

- (a) must state the details of the order that apply to the health practitioner; and

- (b) must also state, or be accompanied by a notice that states, the following—
 - (i) the reasons for the decision to issue the order;
 - (ii) that the practitioner may apply to QCAT for a review of the decision to issue the order;
 - (iii) how, and the period within which, the practitioner may apply for the review of the decision.

90F Notice to complainant

If a prohibition order was issued in response to a complaint, the health ombudsman must give the complainant a notice stating the details of the order that apply to the health practitioner.

90G When order takes effect

A prohibition order takes effect on the day it is given to the health practitioner or, if a later day is stated in the order, the later day.

90H Prohibition order ends interim prohibition order

If the health ombudsman issues a prohibition order to a health practitioner in relation to a health service complaint or other matter, any interim prohibition order issued to the practitioner in relation to that complaint or matter ends when the prohibition order takes effect.

Division 3 Variation or revocation of prohibition order

90I Power to vary order on health ombudsman's own initiative

The health ombudsman may, at any time after issuing a prohibition order to a health practitioner, vary the order if—

- (a) there has been a material change in relation to the matter giving rise to the issue of the order; and
- (b) the health ombudsman reasonably believes the change justifies varying the order; and
- (c) the variation is on the grounds mentioned in section 90C.

90J Power to vary order on application by health practitioner

- (1) A health practitioner may apply to the health ombudsman to vary a prohibition order issued to the practitioner if there is a material change in relation to the matter giving rise to the issue of the order.
- (2) An application under subsection (1) must be—
 - (a) in the approved form; and
 - (b) accompanied by any other information reasonably required by the health ombudsman.
- (3) The health ombudsman must consider the application and decide—
 - (a) to vary the prohibition order in the way requested in the application; or
 - (b) to vary the prohibition order in a way different to the way requested in the application; or
 - (c) not to vary the prohibition order.

- (4) The health ombudsman may vary the prohibition order only if—
 - (a) there has been a material change in relation to the matter giving rise to the issue of the order; and
 - (b) the health ombudsman reasonably believes the change justifies varying the order; and
 - (c) the variation is on the grounds mentioned in section 90C.

90K Show cause process

- (1) This section applies if the health ombudsman proposes to do any of the following (each a *show cause decision*)—
 - (a) vary a prohibition order under section 90I;
 - (b) vary a prohibition order under section 90J in a way different to the way requested in the application under that section;
 - (c) not to vary a prohibition order under section 90J in response to an application under that section.
- (2) Section 90D applies to the health ombudsman making the show cause decision—
 - (a) as if a reference in the section to the health ombudsman issuing a prohibition order were a reference to the health ombudsman making the show cause decision; and
 - (b) with any other necessary changes.

90L Effect of decision to vary and notice requirements

- (1) If the health ombudsman varies a prohibition order issued to a health practitioner under this

division—

- (a) the health ombudsman must—
 - (i) give the practitioner a replacement prohibition order that reflects the variation; and
 - (ii) if the prohibition order was issued in response to a complaint, give the complainant a notice stating the details of the order, as varied, that apply to the practitioner; and
 - (b) the variation takes effect when the replacement prohibition order is given to the practitioner, or on a later day stated in the order; and
 - (c) the prohibition order as in effect before the variation ends when the variation takes effect.
- (2) If the health ombudsman makes a decision mentioned in section 90K(1)(a), (b) or (c), the health ombudsman must give the health practitioner a notice stating the following—
- (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the practitioner may apply to QCAT for a review of the decision;
 - (d) how, and the period within which, the practitioner may apply for the review of the decision.

90M Revocation of order

- (1) This section applies if, at any time after issuing a prohibition order to a health practitioner, the health ombudsman is satisfied the order is no longer necessary on the grounds mentioned in

section 90C.

- (2) The health ombudsman must—
 - (a) revoke the order; and
 - (b) give notice of the revocation to the practitioner and, if the order was issued in response to a complaint, to the complainant.

Division 4 Other provisions

90N Application to QCAT for review

- (1) This section applies if the health ombudsman decides—
 - (a) to issue a prohibition order to a health practitioner; or
 - (b) to vary a prohibition order issued to a health practitioner under section 90I; or
 - (c) to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner under section 90J; or
 - (d) not to vary a prohibition order issued to a health practitioner under section 90J in response to an application under that section.
- (2) The health practitioner may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

90O Corresponding interstate orders

A regulation may prescribe an order to be a corresponding interstate order if the order—

- (a) is issued under a law of another State; and

- (b) corresponds, or substantially corresponds, to a prohibition order under this part.

90P Offence of contravening prohibition order

A person must not contravene a prohibition order or corresponding interstate order.

Maximum penalty—200 penalty units.

90Q Publication of prohibition orders

- (1) The health ombudsman must publish, on a publicly accessible website of the health ombudsman, the following information about each current prohibition order—
 - (a) the name of the health practitioner to whom the order was issued;
 - (b) the day the order took effect;
 - (c) the details of the order mentioned in section 90B(a) or (b) that apply to the practitioner;
 - (d) the details of any variation of the order under division 3.
- (2) The health ombudsman must also publish, on a publicly accessible website of the health ombudsman, information about corresponding interstate orders of which the health ombudsman is aware that corresponds to the information mentioned in subsection (1)(a) to (d).
- (3) The information may also be published to the public in another way the health ombudsman considers appropriate.
- (4) This section applies subject to any non-publication order under the QCAT Act or court order about publication of information.
- (5) The health ombudsman must not publish

information that the health ombudsman considers it would be inappropriate to publish.

41 Replacement of s 91 (Referral to National Agency)

Section 91—

omit, insert—

Division 1 Referral to National Agency

91 Application of division

This division applies to a health service complaint or other matter concerning a registered health practitioner.

91A General power to refer complaint or matter

The health ombudsman may refer the health service complaint or other matter to the National Agency.

91B Requirement to refer complaint or matter indicating impairment

The health ombudsman must refer the health service complaint or other matter to the National Agency if it indicates the health practitioner has or may have an impairment.

91C Complaint or matter indicating serious matter must not be referred

- (1) The health ombudsman must not refer the health service complaint or other matter to the National Agency if it relates to, or is, a matter (a *serious matter*)—

[s 41]

- (a) that indicates either or both of the following—
 - (i) the registered health practitioner may have behaved in a way that constitutes professional misconduct;
 - (ii) another ground may exist for the suspension or cancellation of the registered health practitioner's registration; and
- (b) that the health ombudsman is satisfied should be dealt with by the health ombudsman.

Note—

A health service complaint or other matter indicating a matter mentioned in subsection (1)(a) may be referred to the director of proceedings who may refer it to QCAT on the health ombudsman's behalf under section 103.

- (2) In deciding whether to be satisfied as mentioned in subsection (1)(b), the health ombudsman must have regard to—
 - (a) whether the registered health practitioner's behaviour is of such a serious nature that it may only be appropriately dealt with by the health ombudsman; and
 - (b) whether the matter involves a significant issue for the health and safety of the public.

91D Dealing with complaint indicating impairment matter and serious matter

- (1) This section applies if a health service complaint indicates both of the following—
 - (a) a matter that must be referred to the National Agency under section 91B (an *impairment matter*);

- (b) a matter that must not be referred to the National Agency under section 91C (a *serious matter*).
- (2) The health ombudsman—
 - (a) must deal with the impairment matter and serious matter separately under section 41; and
 - (b) must refer the impairment matter to the National Agency under section 91B; and
 - (c) must not refer the serious matter to the National Agency under section 91C.

91E Form of referral

- (1) If the health ombudsman refers a health service complaint or other matter to the National Agency under this division, the health ombudsman must give the National Agency all relevant information the health ombudsman has about the complaint or other matter, including, for a health service complaint—
 - (a) details of the complaint, the complainant and the relevant health service provider; and
 - (b) if the health ombudsman intends to start or continue conciliating the complaint while or after the National Agency or a National Board deals with it—notice of that intention.
- (2) In this section—
information includes a submission.

Division 2 Referral to other entities

[s 42]

42 Amendment of s 94 (QCAT's jurisdiction)

(1) Section 94(1)(a)(iv), 'and'—

omit, insert—

or

(2) Section 94(1)(a)—

insert—

(v) to issue a prohibition order to a health practitioner; or

(vi) to vary a prohibition order issued to a health practitioner on the health ombudsman's own initiative; or

(vii) to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner; or

(viii) not to vary a prohibition order issued to a health practitioner in response to an application by the practitioner; and

(3) Section 94(1)(b), after 'matter'—

insert—

concerning a registered health practitioner

43 Amendment of s 96 (Orders that QCAT may make)

(1) Section 96(2)—

omit.

(2) Section 96(3) and (4)—

renumber as section 96(2) and (3).

44 Amendment of s 97 (Constitution of QCAT)

(1) Section 97(2)—

renumber as section 97(3).

(2) Section 97—

insert—

- (2) Subsection (1) does not apply to a proceeding for—
- (a) the review of a decision by the health ombudsman mentioned in section 94(1)(a) relating to an interim prohibition order or prohibition order; or
 - (b) the review of an appealable decision under the National Law, section 199 relating to a decision made under the National Law, part 7.

45 Amendment of s 100 (No stay of decision to take immediate action)

(1) Section 100, heading, from ‘decision’—

omit, insert—

particular decisions

(2) Section 100(1)—

insert—

- (c) a decision of the health ombudsman to issue a prohibition order under part 8A.

46 Amendment of s 101 (Application of div 2)

Section 101, after ‘matter’—

insert—

concerning a registered health practitioner

[s 47]

47 Amendment of s 103 (How director must deal with referral)

(1) Section 103(2)—

omit, insert—

(2) If the director refers the matter back to the health ombudsman, the director may—

- (a) recommend that particular further action be taken by the health ombudsman; or
- (b) request that the health ombudsman obtain stated information or information of a stated kind under this Act.

Example—

The director may be unable to decide if a matter should be referred to QCAT or may consider that further evidence is needed to conduct a proceeding for the matter before QCAT. The director may refer the matter back to the health ombudsman with a recommendation that the health ombudsman further investigate the matter under part 8. Alternatively, the director may request that the health ombudsman obtain particular information.

(2) Section 103(4), from ‘to QCAT’ to ‘practitioner’—

omit, insert—

the matter to QCAT

48 Amendment of s 105 (Referral back to health ombudsman)

Section 105—

insert—

(2) However, if the referral requests that the health ombudsman obtain stated information or information of a stated kind, the health ombudsman must—

- (a) obtain the stated information or information of the stated kind; and

- (b) refer the matter back to the director to deal with under section 103 on the basis of the information.

49 Replacement of pt 10, div 3, hdg (Matters relating to registered health practitioners)

Part 10, division 3, heading—

omit, insert—

Division 3 Action QCAT may take

50 Amendment of s 107 (Decision about registered health practitioner other than student)

- (1) Section 107(1), after ‘matter’—

insert—

concerning a registered health practitioner, other than a student,

- (2) Section 107(4), note—

omit, insert—

Notes—

- 1 Sections 21 and 22 provide for the application of this Act to a person as if the person were a registered health practitioner.
- 2 The National Law, section 205 provides for the relevant National Board to give effect to QCAT’s decision.

- (3) Section 107(5), and note after subsection (5)—

omit.

51 Amendment of s 108 (Decision about student)

- (1) Section 108(1)—

omit, insert—

[s 52]

(1) This section applies in relation to a matter concerning a registered health practitioner who is a student that is referred to QCAT by the director of proceedings under section 103.

(2) Section 108(2), ‘a matter about the student’—
omit, insert—
the matter

52 Omission of pt 10, div 4 (Matters relating to practitioners other than registered health practitioners)

Part 10, division 4—
omit.

53 Amendment of s 140 (When conciliation may happen if other relevant action is taken)

Section 140, heading and subsection (1), before ‘other’—
insert—
particular

54 Amendment of s 186 (Functions of authorised persons)

Section 186—
insert—

(c) to investigate or monitor the activities of a person the subject of immediate registration action taken, or an interim prohibition order issued, by the health ombudsman under part 7, while the action or order is in effect.

55 Amendment of s 203 (Issue of warrant)

Section 203(1)—
insert—

- (c) of a person carrying out an activity the person is not authorised to carry out because of immediate registration action taken, or an interim prohibition order issued, by the health ombudsman under part 7.

56 Amendment of s 228 (Power to require information or attendance)

- (1) Section 228(2), from ‘information’—

omit, insert—

information (the *relevant information*)—

- (a) about a matter being investigated by the health ombudsman; or
 - (b) about a health practitioner’s compliance with immediate action taken against the practitioner under part 7; or
 - (c) that is information, or information of a kind, requested by the director of proceedings in a referral under section 103(2)(b).
- (2) Section 228(3)(a), ‘matter being investigated’—

omit, insert—

that is or relates to the relevant information

- (3) Section 228(3)(b), ‘matter being investigated’—

omit, insert—

the relevant information

57 Amendment of s 259 (Functions)

- (1) Section 259(1)(a), after ‘matters’—

insert—

concerning registered health practitioners

- (2) Section 259(1)(b), ‘prosecute’—

[s 58]

omit, insert—

conduct proceedings for

58 Amendment of s 260 (Director not subject to direction)

Section 260, ‘to QCAT or about the prosecution’—

omit, insert—

concerning a registered health practitioner to
QCAT or about the conduct

59 Amendment of s 273 (Publication of information about immediate action and QCAT decisions)

(1) Section 273(1)(b)—

renumber as section 273(1)(c).

(2) Section 273(1)—

insert—

(b) a prohibition order issued under part 8A; or

60 Amendment of s 278 (Notice of decision relating to complaint)

(1) Section 278(1)(a)—

omit, insert—

(a) the decision;

(2) Section 278(2) and (3)—

renumber as section 278(3) and (4).

(3) Section 278—

insert—

(2) If the decision is a decision not to accept a health service complaint made orally, the requirement to give notice under subsection (1) applies as follows—

- (a) the notice to the complainant may be given orally at the time when the complaint is made;
- (b) if notice to the complainant is given as mentioned in paragraph (a), the health ombudsman is not required to give notice of the complaint, or the decision not to accept it, to the relevant health service provider.

61 Amendment of s 279 (Notice to employers about particular serious matters)

- (1) Section 279(1)(b)(iii), ‘for QCAT to make’—

omit.

- (2) Section 279(1)—

insert—

- (c) issues a prohibition order to a health practitioner under part 8A, division 2; or
- (d) varies a prohibition order issued to a health practitioner under part 8A, division 3.

- (3) Section 279(2) and (3), ‘or investigation’—

omit, insert—

, the investigation or the issue or variation of the prohibition order,

- (4) Section 279(5), from ‘any immediate’ to ‘matter’—

omit, insert—

the immediate action, take no further action in relation to the complaint or other matter the subject of the investigation, or revoke the prohibition order

62 Amendment of s 285 (Delegations)

- (1) Section 285(2)(b)—

[s 63]

renumber as section 285(2)(c).

(2) Section 285(2)—

insert—

(b) issuing a prohibition order under part 8A;

63 Insertion of new pt 21, div 3

Part 21—

insert—

Division 3 Transitional provisions for Health Transparency Act 2019

Subdivision 1 General provisions

320C Existing complaints or other matters

- (1) This section applies to a health service complaint or other matter that—
 - (a) the health ombudsman started, but has not finished, dealing with under this Act before the commencement; or
 - (b) the director of proceedings refers to the health ombudsman under section 320F.
- (2) The health ombudsman must deal with the complaint or matter under this Act as in force after the commencement to the greatest practicable extent.
- (3) Without limiting subsection (2)—
 - (a) section 35A applies in relation to a health service complaint made before the commencement if, on the commencement, the health ombudsman has not given notice

of a decision under section 35 in relation to the complaint; and

- (b) part 8A applies to a health practitioner (other than in the person's capacity as a registered health practitioner) the subject of an investigation under part 8—
 - (i) completed before the commencement; or
 - (ii) started before the commencement and completed after the commencement; and
- (c) part 9, division 1 applies in relation to the health ombudsman deciding whether or not to refer a health service complaint or other matter to the National Agency if, on the commencement, the health ombudsman has not referred the complaint or matter to the National Agency.

320D Existing immediate action

- (1) Section 90H applies to an interim prohibition order made before the commencement that is still in effect on the commencement.
- (2) Sections 186, 203 and 228 as in force after the commencement apply to immediate action taken under part 7 before the commencement if the immediate action is still in effect on the commencement.

Subdivision 2 Additional provision about registered health practitioners

320E Dealing with existing complaint

- (1) This section applies to a health service complaint concerning the health, conduct or performance of a registered health practitioner if—
 - (a) it was made before the commencement; and
 - (b) on the commencement, the health ombudsman has not given notice of a decision under section 35 in relation to the complaint.
- (2) Part 3, divisions 2A and 2B apply in relation to the health service complaint.

Subdivision 3 Additional provisions about other health practitioners

320F Existing referrals to director of proceedings

- (1) This section applies to a health service complaint or other matter about a health practitioner, other than in the person's capacity as a registered health practitioner—
 - (a) that the health ombudsman referred to the director of proceedings under part 10, division 2 before the commencement; and
 - (b) that, on the commencement, the director has not started, or has started but not finished, dealing with under part 10, division 2.
- (2) The director must refer the complaint or matter to the health ombudsman to deal with under this Act as in force after the commencement.

320G Existing proceedings for prohibition orders

- (1) This section applies if—

- (a) before the commencement, a matter concerning a health practitioner other than a registered health practitioner was referred to QCAT by the director of proceedings on the health ombudsman's behalf under section 103; and
 - (b) on the commencement, QCAT has not finally dealt with the matter.
- (2) QCAT may deal, or continue to deal, with the matter under this Act as in force before the commencement as if the *Health Transparency Act 2019*, part 6, division 2 had not been enacted.
 - (3) If QCAT makes a prohibition order under subsection (2), this Act as in force before the commencement continues to apply to any appeal or other proceeding relating to the making of the prohibition order as if the *Health Transparency Act 2019*, part 6, division 2 had not been enacted.
 - (4) Sections 90P and 90Q apply to a prohibition order made under subsection (2) as if a reference to a prohibition order in the sections included a reference to a prohibition order made under subsection (2).

320H Existing prohibition orders

- (1) This section applies to a prohibition order made under this Act as in force before the commencement that is still in effect on the commencement.
- (2) The prohibition order continues in effect.
- (3) This Act as in force before the commencement applies, or continues to apply, to any appeal or other proceeding relating to the making of the prohibition order as if the *Health Transparency Act 2019*, part 6, division 2 had not been enacted.

[s 64]

- (4) Sections 90P and 90Q apply to the prohibition order as if a reference to a prohibition order in the sections included a reference to a prohibition order continued under subsection (2).

64 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definitions *appropriately qualified*, *corresponding interstate order* and *prohibition order*—

omit.

- (2) Schedule 1—

insert—

corresponding interstate order means an order prescribed to be a corresponding interstate order under section 90O.

prohibition order see section 90B.

Division 3 Amendment of Health Practitioner Regulation National Law Act 2009

65 Act amended

This division amends the *Health Practitioner Regulation National Law Act 2009*.

Editor's note—

For a consolidated reprint of the National Law as it applies in Queensland, see the *Health Practitioner Regulation National Law (Queensland)*.

66 Amendment of s 34 (Replacement of pt 8, div 5 (Preliminary assessment))

Section 34, inserted section 148, 'section 91'—

omit, insert—

part 9, division 1

67 Amendment of s 50 (Replacement of pt 8, div 12, hdg and ss 193–195)

Section 50, inserted section 193—

insert—

- (1A) Subsection (1)(a) does not apply if the National Board is satisfied the health ombudsman is aware of the matter mentioned in subsection (1)(a)(i) or (ii), including, for example, because it was the subject of—
- (a) a notification to the National Agency under the *Health Ombudsman Act 2013*, part 3, division 2A; or
 - (b) a referral to the National Agency under the *Health Ombudsman Act 2013*, part 9, division 1.

Division 4 Amendment of Hospital and Health Boards Act 2011

Subdivision 1 Preliminary

68 Act amended

This division amends the *Hospital and Health Boards Act 2011*.

[s 68A]

Subdivision 2 Amendments commencing on assent

68A Amendment of s 20 (Powers of Services)

Section 20—

insert—

- (6) To remove any doubt, it is declared that a regulation made under subsection (4) may be amended or repealed to revoke the prescription of a Service under that subsection.

Note—

See also section 282(7) and (8).

68B Insertion of new s 80D

After section 80C—

insert—

80D Division does not limit making of particular regulations

To remove any doubt, it is declared that this division does not prevent the revocation of the prescription of a Service under section 20(4).

69 Insertion of new pt 6, div 5

Part 6—

insert—

Division 5 State aged care facilities

138G Definitions for division

In this division—

enrolled nurse means a person registered under

the Health Practitioner Regulation National Law—

- (a) to practise in the nursing profession, other than as a student; and
- (b) in the enrolled nurses division of that profession.

nurse means a registered nurse or an enrolled nurse.

registered nurse means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing profession, other than as a student; and
- (b) in the registered nurses division of that profession.

resident, at a State aged care facility, means a person who is provided residential care at the facility.

residential care has the meaning given by the *Aged Care Act 1997* (Cwlth), section 41-3.

State aged care facility see the *Public Health Act 2005*, section 61A.

State aged care facility regulation means a regulation under section 138H or 138I.

State aged care facility workload management information includes information about compliance with a State aged care facility regulation.

support worker means a person, other than a nurse, who provides residential care, under the supervision of a registered nurse, at a State aged care facility.

[s 69]

Examples—

- a person employed in the role known as an assistant in nursing
- a person employed in the role known as a personal care assistant
- a person employed in the role known as an undergraduate student in nursing

138H Prescription of minimum nurse and registered nurse percentages

- (1) A regulation may prescribe a requirement about the minimum percentage of nurses or registered nurses providing residential care at a State aged care facility prescribed by regulation during each 24-hour period to the total number of nurses and support workers providing residential care at the facility during the period.
- (2) The regulation—
 - (a) may apply in relation to the delivery of residential care—
 - (i) by stated Services; and
 - (ii) at stated facilities or parts of facilities; and
 - (iii) at stated times; and
 - (iv) in stated circumstances; and
 - (b) may include a requirement about the skills or qualifications of the nurses or support workers.
- (3) For this section, a nurse or support worker is taken to be providing residential care at a State aged care facility only if the nurse or support worker is directly involved in providing residential care at the facility.
- (4) In this section—

24-hour period means the period starting at midnight on a day and ending immediately before midnight on the following day.

138I Prescription of minimum average daily resident care hours

- (1) A regulation may prescribe a requirement about the minimum average daily resident care hours at a State aged care facility prescribed by regulation.
- (2) The regulation may apply in relation to the delivery of residential care—
 - (a) by stated Services; and
 - (b) at stated facilities or parts of facilities; and
 - (c) at stated times; and
 - (d) in stated circumstances.
- (3) The average daily resident care hours at a State aged care facility is worked out by dividing the total number of hours of residential care that nurses and support workers provide at the facility on a day by the number of residents at the facility on the day.
- (4) For this section, a nurse or support worker is taken to provide residential care at a State aged care facility only if the nurse or support worker is directly involved in providing residential care at the facility.

138J Temporary exemptions

- (1) The Minister may, by written notice given to a Service and published on the department's website, grant a temporary exemption from compliance with a State aged care facility regulation.
- (2) A temporary exemption may—

[s 69]

- (a) exempt a Service from compliance with all or part of a State aged care facility regulation; or
 - (b) vary the application of a State aged care facility regulation to a Service so it imposes a lesser requirement.
- (3) A temporary exemption may be granted on conditions.
 - (4) A temporary exemption has effect for the period, of not more than 3 months, stated in the Minister's notice.
 - (5) The Minister may, under subsection (1), extend a temporary exemption for a further period of not more than 3 months.
 - (6) However, the Minister may not extend a temporary exemption, or grant a further temporary exemption to a Service, if as a result the Service would be the subject of a temporary exemption for a continuous period of more than 6 months.

138K Matters for Minister to consider

- (1) This section applies if the Minister proposes to—
 - (a) recommend to the Governor in Council the making of a State aged care facility regulation applying to a Service; or
 - (b) grant or extend a temporary exemption for a Service under section 138J.
- (2) The Minister must consider the Service's capability to comply with the regulation and the likely effects of compliance.
- (3) The matters that the Minister may consider include—
 - (a) the likely financial costs of compliance; and

- (b) any matter (including the nature, size and location of the Service) that may affect the Service's ability to recruit and retain staff; and
- (c) the infrastructure that the Service has, or can acquire, to support staff; and
- (d) the potential effects, on residential care delivered by the Service, of actions the Service may reasonably need to take to comply with the regulation.

138L Standards about State aged care facility workload management

- (1) The chief executive may make a standard about State aged care facility workload management by Services, including how a Service—
 - (a) calculates its requirements for nurses and support workers; or
 - (b) develops and implements strategies to manage supply and demand for nurses and support workers; or
 - (c) evaluates the performance of its nurses and support workers at its State aged care facility.
- (2) The standard applies only in relation to the delivery of residential care by a Service to the extent the residential care is the subject of a State aged care facility regulation.
- (3) The standard may include requirements about reporting State aged care facility workload management information to the chief executive.
- (4) Subsection (3) does not limit the ways a Service may be required to report State aged care facility workload management information to the chief executive.

[s 69]

Example—

A Service may be required to report particular information under its service agreement with the chief executive.

- (5) The Minister must notify the making of the standard.
- (6) The Minister's notice is subordinate legislation.
- (7) The standard takes effect on the day the Minister's notice commences or, if a later day of commencement is stated in the Minister's notice, on the later day.
- (8) The chief executive must publish the standard on the department's website.
- (9) The standard is binding on a Service to the extent it applies under subsection (2).
- (10) However, if it is not possible to comply with both the standard and a regulation in relation to a particular matter because of an inconsistency between them, the regulation prevails to the extent of the inconsistency.

138M Publication of information about State aged care facility workload management

- (1) The chief executive may require a Service to give the chief executive, by a stated reasonable time, stated State aged care facility workload management information relating to the Service.
- (2) The Service must comply with the requirement.
- (3) The chief executive may publish the information in a way that allows it to be accessed by members of the public, including, for example, on the department's website.

69A Amendment of s 282 (Regulation-making power)

(1) Section 282—

insert—

(6A) Without limiting subsections (2) to (5), and despite any other provision of this Act, a regulation may make provision about a matter if—

- (a) it is necessary or convenient to make provision for the matter to allow or facilitate the transition of a Service from a prescribed Service to a Service that is no longer prescribed under section 20(4); and
- (b) the following Acts do not make provision, or sufficient provision, for the matter—
 - (i) this Act;
 - (ii) the *Industrial Relations Act 2016*;
 - (iii) the *Public Service Act 2008*.

Examples of matters for which it may be necessary or convenient to make provision—

- the transfer of health service employees, other than health executives and senior health service employees, from the Service to the department
- the continuation of accrued rights, benefits and entitlements of a health service employee mentioned in the first dot point
- a proceeding related to the employment of a health service employee mentioned in the first dot point by the Service

(6B) Without limiting subsection (7), a regulation made under that subsection may state the way in which a provision of this Act, the *Industrial Relations Act 2016* or the *Public Service Act 2008* applies in relation to a matter to which the subsection applies.

(2) Section 282(6A) to (7)—

[s 70]

renumber as section 282(7) to (9).

70 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *nurse*—
omit.

(2) Schedule 2—
insert—

enrolled nurse, for part 6, division 5, see section 138G.

nurse—

(a) for part 6, division 4, see section 138A; or

(b) for part 6, division 5, see section 138G.

registered nurse, for part 6, division 5, see section 138G.

resident, at a State aged care facility, for part 6, division 5, see section 138G.

residential care, for part 6, division 5, see section 138G.

State aged care facility, for part 6, division 5, see the *Public Health Act 2005*, section 61A.

State aged care facility regulation, for part 6, division 5, see section 138G.

State aged care facility workload management information, for part 6, division 5, see section 138G.

support worker, for part 6, division 5, see section 138G.

[s 74]

147D Disclosure for purpose of Health Transparency Act 2019

Section 147 does not apply to the disclosure of information to any of the following persons who is performing a function under, or relating to the administration of, the *Health Transparency Act 2019*—

- (a) the chief executive;
- (b) an employee of the department;
- (c) a contractor who is contracted to provide information and communication technology or information management services to the department.

Division 6 Amendment of Public Health Act 2005

74 Act amended

This division amends the *Public Health Act 2005*.

75 Insertion of new s 228BA

After section 228B—

insert—

228BA Disclosure for purpose of Health Transparency Act 2019

Section 220(1) does not apply if the disclosure of the confidential information by a relevant person is to any of the following persons who is performing a function under, or relating to the administration of, the *Health Transparency Act 2019*—

- (a) the chief executive;

- (b) an employee of the department;
- (c) a contractor who is contracted to provide information and communication technology or information management services to the department.

Part 7 **Other amendments of legislation**

Division 1 **Amendment of Corrective Services Act 2006**

76 **Act amended**

This division amends the *Corrective Services Act 2006*.

77 **Amendment of s 308 (Powers of proper officer of a court)**

(1) Section 308(2)(a) and (b)—

omit, insert—

- (a) the chief executive to provide corrective services officers; or
- (b) the commissioner to provide police officers or, to the extent the commissioner considers it appropriate, watch-house officers.

(2) Section 308—

insert—

- (6) In helping the proper officer of the court, a watch-house officer—
 - (a) is subject to any directions of the commissioner; and
 - (b) may—

[s 78]

- (i) exercise a power of a watch-house officer under the *Police Powers and Responsibilities Act 2000*, section 648, 649 or 652 as if the prisoner of the court or person mentioned in subsection (1) were in custody at a watch-house; and
 - (ii) use reasonably necessary force under the *Police Powers and Responsibilities Act 2000*, section 653 for transferring or escorting the prisoner of the court or person mentioned in subsection (1) to or from a place mentioned in that section as if the prisoner or person were in custody and the transfer or escort were authorised by a watch-house manager.
- (7) Subsection (6)(b) does not limit the help the watch-house officer may give to the proper officer of the court to perform the proper officer's functions.
- (8) In this section—
watch-house officer see the *Police Service Administration Act 1990*, section 1.4.

Division 2

Amendment of Police Powers and Responsibilities Act 2000

78 Act amended

This division amends the *Police Powers and Responsibilities Act 2000*.

79 Amendment of s 640 (Transfer of persons in watch-houses)

Section 640(2)—

omit.

80 Amendment of s 653 (Power to use force—transfer etc. of person in custody to or from court cell or other place)

(1) Section 653, heading, ‘court cell or other place’—

omit, insert—

holding place

(2) Section 653(1)—

omit, insert—

(1) It is lawful for a watch-house officer who is authorised by a watch-house manager for the purpose of transferring a person in custody to use reasonably necessary force—

(a) to transfer a person in custody from a holding place to another holding place; or

(b) to ensure a person in custody at a court precinct appears before a court and is transferred to a holding place after the appearance, if the person is not otherwise released; or

(c) to ensure a person in custody does not escape from lawful custody while the person is—

(i) being transferred to a holding place under paragraph (a) or (b); or

(ii) being held in a holding place to which the person has been transferred under paragraph (a) or (b); or

(iii) in a court under paragraph (b).

[s 81]

(3) Section 653(2), ‘purpose to escort’—

omit, insert—

purpose of escorting

(4) Section 653—

insert—

(4) In this section—

court precinct means any land or building, or the part of any land or building, used for the purposes of a court of the State, including, for example, a court cell.

holding place means a watch-house, court precinct or corrective services facility.

81 Amendment of s 659 (Custody continues while person in custody is being transferred or escorted by watch-house officer)

Section 659(a), ‘court cell’—

omit, insert—

holding place under section 653(1)

82 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

court cell means a place attached to or near a court that is used for detaining prisoners of the court and other persons.

Division 3 Amendment of Youth Justice Act 1992

83 Act amended

This division amends the *Youth Justice Act 1992*.

84 Amendment of s 56 (Custody of child if not released by court)

Section 56(1)—

insert—

Note—

See also part 5A in relation to a child who remains a prisoner of a court.

85 Insertion of new pt 5A

After part 5—

insert—

Part 5A Children who are prisoners of a court or detained in court cells

59B Definitions for part

In this part—

corrective services officer see the *Corrective Services Act 2006*, schedule 4.

watch-house officer see the *Police Service Administration Act 1990*, section 1.4.

youth justice staff member means—

(a) a detention centre employee; or

- (b) another employee of the department in a capacity that involves supervising children in the chief executive's custody.

59C Child in custody of proper officer of a court

- (1) A child who is required by law to surrender himself or herself into the custody of a court must do so by surrendering himself or herself into the custody of the proper officer of the court.
- (2) A child who surrenders himself or herself into the custody of a court is in the custody of the proper officer of the court until the child is—
 - (a) released on bail or without bail; or
 - (b) discharged; or
 - (c) remanded into the custody of the chief executive; or
 - (d) otherwise dealt with as the court directs.

59D Powers of proper officer of a court

The proper officer of a court has, in relation to a child who is a prisoner of the court or mentioned in section 59H(1), all the powers of the chief executive under this Act, in relation to a detainee, that are necessary for the discharge of the proper officer's functions.

59E Proper officer of a court may ask for help to perform functions

- (1) To help the proper officer of a court perform the proper officer's functions, the proper officer may ask—
 - (a) the chief executive to provide youth justice staff members; or

-
- (b) the chief executive (corrective services) to provide corrective services officers; or
 - (c) the commissioner to provide police officers or, to the extent the commissioner considers it appropriate, watch-house officers.
- (2) Subsection (1)(a) applies only in relation to functions performed at, or in relation to, a place prescribed by regulation.
 - (3) The chief executive, chief executive (corrective services) or commissioner must comply with the request.
 - (4) In this section—

chief executive (corrective services) means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

59F Officers providing help to proper officer of a court

- (1) In helping the proper officer of a court under section 59E, a youth justice staff member, corrective services officer or watch-house officer may exercise powers—
 - (a) prescribed by regulation for this section; and
 - (b) as if—
 - (i) the child who is a prisoner of the court or mentioned in section 59H(1) were a detainee; and
 - (ii) for a corrective services officer or watch-house officer—the officer were a youth justice staff member; and
 - (c) as otherwise prescribed by regulation.
- (2) Subsection (1) does not limit the help the youth justice staff member, corrective services officer or watch-house officer may give to the proper officer

of the court to perform the proper officer's functions.

59G Delegation of powers of proper officer of a court

The proper officer of a court may delegate the proper officer's functions or powers under this part, including functions or powers prescribed by regulation under section 59F or 59I, to an appropriately qualified person.

59H Detention of children in court cells

- (1) A child who is not a prisoner of a court may be detained in a court cell if the child is lawfully in custody to attend before a court or another entity.
- (2) While detained in the court cell, the child is in the custody of the proper officer of the court where the court cell is located.
- (3) The proper officer of the court is responsible for the management, security and good order of the court cell, despite anything in the *State Buildings Protective Security Act 1983*.

59I Regulation about exercise of powers

- (1) This section applies in relation to—
 - (a) the exercise of the chief executive's powers by the proper officer of a court under section 59D; and
 - (b) the exercise of powers by a youth justice staff member, corrective services officer or watch-house officer under section 59F.
- (2) A regulation may state matters about the exercise of the powers, including, for example—

-
- (a) conditions or requirements about the exercise of the powers and how the conditions or requirements may be satisfied or complied with; or
 - (b) requirements about keeping records, or giving information, about the exercise of the powers.
- (3) In this section—
condition includes a limitation or restriction.

86 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

corrective services officer, for part 5A, see section 59B.

court cell means a place attached to or near a court that—

- (a) is not a detention centre; and
- (b) is used for detaining prisoners of the court and other persons.

prisoner of a court or *prisoner of the court* means a person who is in the custody of a court.

watch-house officer, for part 5A, see section 59B.

youth justice staff member, for part 5A, see section 59B.

Division 4

**Amendment of Youth Justice
Regulation 2016**

87 Regulation amended

This division amends the *Youth Justice Regulation 2016*.

[s 88]

88 Insertion of new pt 4A

After part 4—

insert—

**Part 4A Children who are
prisoners of a court**

**Division 1 General matters about
helping proper officer of a
court**

**43A Places where youth justice staff member may
help proper officer of a court—Act, s 59E**

For section 59E(2) of the Act, the following
places are prescribed—

- (a) the Brisbane Magistrates Court building;
- (b) QEII Courts of Law.

**43B Powers for helping proper officer of a court—
Act s 59F**

For section 59F of the Act—

- (a) the following powers are prescribed—
 - (i) the power of a detention centre employee to give an instruction under section 16(1) or use reasonable force under section 16(5);
 - (ii) the power of a staff member to use approved restraints under section 19;
 - (iii) the power of a detention centre employee to conduct a search under part 4, division 6, subdivision 1;

- (iv) the power of a detention centre employee to help a doctor to conduct a search under part 4, division 6, subdivision 2; and
- (b) the powers may be exercised only as provided under division 2.

Division 2 Exercise of powers by persons helping proper officer of a court

43C Application of division

This division prescribes matters about a youth justice staff member, corrective services officer or watch-house officer (each a *relevant officer*) exercising a power under section 59F of the Act.

43D Definitions for division

In this division—

condition includes a limitation or restriction.

proper officer of a court, in relation to the exercise of a relevant power by a relevant officer, means the proper officer of a court for whom the relevant power is exercised under part 5A of the Act.

relevant officer see section 43C.

relevant power means a power mentioned in section 43B(a).

43E General conditions and requirements

- (1) A relevant officer may exercise a relevant power only if—

- (a) any condition under this regulation about the circumstances in which the power may be exercised is satisfied; and

Example—

A relevant officer may use reasonable force under section 16(5) only if the conditions mentioned in section 16(5)(a) and (b) are satisfied.

- (b) the relevant officer complies with any requirements under this regulation about the way the power may be exercised.

Example—

A relevant officer conducting a search of a child under section 24 must comply with section 24(3).

- (2) Also, a relevant officer may help a doctor to conduct a search under part 4, division 6, subdivision 2 only if the proper officer of a court has authorised the doctor to conduct the search.

Note—

See section 59D of the Act in relation to the proper officer exercising powers of the chief executive under the Act.

43F Authorisation of exercise of power

- (1) This section applies if a relevant power may be exercised only if the chief executive has authorised the exercise of the power.
- (2) A relevant officer may exercise the power only if the proper officer of a court has authorised the relevant officer to exercise the power.
- (3) Any condition under this regulation on the chief executive giving the authorisation applies in relation to the proper officer of a court authorising the relevant officer to exercise the power.

Example—

A relevant officer may be authorised to use approved restraints to restrain a child under section 19 only if the condition mentioned in section 18(2) is satisfied.

43G Supervision of exercise of power

- (1) This section applies if, under this regulation, the chief executive must ensure a thing in relation to the exercise of a relevant power.
- (2) The proper officer of a court must ensure the thing in relation to a relevant officer exercising the relevant power.

Example—

If a relevant officer is using approved restraints to restrain a child under section 19, the proper officer of a court must ensure the things mentioned in section 19(2).

Division 3 Other matters about exercise of powers

43H Information and record keeping requirements

- (1) This section applies to the proper officer of a court who exercises a power, or for whom a power is exercised, under part 5A of the Act.
- (2) The proper officer of the court must comply with each information or record keeping provision applying to the exercise of the power—
 - (a) as if—
 - (i) a reference in the provision to the chief executive were a reference to the proper officer of the court; and
 - (ii) a reference in the provision to a detention centre employee or staff member were a reference to a person

[s 89]

exercising a power under section 59F of the Act; and

(iii) a reference in the provision to a detention centre were a reference to the place at which the child is detained or otherwise in custody under part 5A of the Act; and

(b) with any other necessary changes.

(3) In this section—

information or record keeping provision means the following—

- (a) section 16(6);
- (b) section 17;
- (c) section 20;
- (d) section 27.

43I Property found during search

Section 28 applies in relation to a search of a child by a person under part 5A of the Act as if—

- (a) a reference in the section to a detention centre were a reference to the place at which the child is detained or otherwise in custody under part 5A of the Act; and
- (b) a reference in the section to the chief executive were a reference to the proper officer of a court conducting the search or for whom the search is conducted.

89 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

condition, for part 4A, division 2, see section 43D.

proper officer of a court, for part 4A, division 2, see section 43D.

relevant officer, for part 4A, division 2, see section 43C.

relevant power, for part 4A, division 2, see section 43D.

Schedule 1 Dictionary

section 6

approved provider means an entity for which an approval is in force under the *Aged Care Act 1997* (Cwlth).

day hospital see the *Private Health Facilities Act 1999*, section 10.

general information see section 8.

health service see the *Hospital and Health Boards Act 2011*, section 15.

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

information includes a document.

notice means written notice.

personal information, about an individual, means information from which the individual's identity is apparent or can reasonably be ascertained.

private health facility means a day hospital or a private hospital.

private hospital see the *Private Health Facilities Act 1999*, section 9.

private residential aged care facility means a residential aged care facility other than a State aged care facility.

public sector health service facility means a facility at which health services, other than residential care, are provided by a Hospital and Health Service.

quality and safety information see section 9.

residential aged care facility means a facility at which an approved provider provides residential care under the *Aged Care Act 1997* (Cwlth).

residential care has the meaning given by the *Aged Care Act 1997* (Cwlth), section 41-3.

residential care information see section 10.

State aged care facility means a residential aged care facility at which the State provides residential care.

Schedule 2 Other amendments of Health Ombudsman Act 2013

section 27

1 Particular references to days—

Each of the provisions in column 1 is amended by omitting the words in column 2 and inserting the words in column 3—

| Column 1 | Column 2 | Column 3 |
|-------------------|----------------------|-----------------------|
| Provision | Words omitted | Words inserted |
| section 47(2) | 14 days | 10 business days |
| section 48(2) | 14 days | 10 business days |
| section 53(2) | 14 days | 10 business days |
| section 54(2) | 14 days | 10 business days |
| section 59(1)(b) | 7 days | 5 business days |
| section 61(2) | 7 days | 5 business days |
| section 68B(7)(b) | 7 days | 5 business days |
| section 69(1)(b) | 7 days | 5 business days |
| section 72(2) | 7 days | 5 business days |
| section 86(3) | 28 days | 22 business days |
| section 89(3) | 14 days | 10 business days |
| section 93(3) | 28 days | 22 business days |
| section 155(1) | 14 days | 10 business days |
| section 168(2) | 28 days | 22 business days |
| section 169(2) | 14 days | 10 business days |
| section 194 | 21 days | 15 business days |

| Column 1 | Column 2 | Column 3 |
|------------------|----------------------|-----------------------|
| Provision | Words omitted | Words inserted |
| section 278(1) | 7 days | 5 business days |

2 Section 43A(a), ‘section 91’—

omit, insert—

part 9, division 1

3 Section 68B(5)(a) and (7), ‘written’—

omit.

4 Section 280(1), before ‘health practitioner’—

insert—

registered

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