



Hospital Foundations Act 2018

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Queensland

Hospital Foundations Act 2018

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Hospital Foundations Act 2018

An Act to provide for the establishment, administration and oversight of entities to hold and manage property for particular objects to benefit public health in Queensland

Part 1 Preliminary

1 Short title

This Act may be cited as the *Hospital Foundations Act 2018*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) part 10, division 2, subdivisions 1 and 2;
- (b) part 10, division 3, subdivisions 1 and 2;
- (c) part 10, divisions 5 to 8.

3 Main purpose of Act

The main purpose of this Act is to establish a legislative framework under which entities may support and improve public health in Queensland.

4 How main purpose is primarily achieved

The main purpose is primarily achieved by providing for—

- (a) the objects for which a foundation may hold and manage property; and

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- (b) the establishment of foundations and boards for foundations; and
- (c) matters relating to the administration and oversight of foundations and boards.

5 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

6 Definitions

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

Part 2 Foundations generally

Division 1 Objects

7 Objects for which foundation may hold and manage property

The objects for which a foundation may hold and manage property are as follows—

- (a) to support, improve or promote an existing public sector hospital, public sector health service facility or public sector health service;

Examples—

- 1 buying medical equipment
 - 2 funding the improvement of a building from which public sector health services are provided
- (b) to support or promote a proposed public sector hospital, public sector health service facility or public sector health service;

-
- (c) to give financial support for the education, training or development of the employees of a Hospital and Health Service or persons working as volunteers for a Hospital and Health Service;

Example—

funding educational or professional development courses

- (d) to give financial support for persons studying or teaching medical or health science, allied health or health administration;
- (e) to give financial support for research in medical or health science or to promote the results of that research;

Example—

funding research centres or research projects

- (f) to support or promote the objectives of preventing illness and improving the health and wellbeing of the Queensland population;
- (g) to do anything else that is likely to support, improve or promote public health.

Examples—

- 1 funding a preventative health program
- 2 providing a patient transport service
- 3 subsidising the provision of car parking for patients of a public sector hospital and their support persons

Division 2 Establishment

8 Applying for establishment of foundation

A person may apply to the Minister for approval to establish a foundation under this Act for an object mentioned in section 7.

9 Requirements for application

- (1) The application must state—

- (a) the proposed name of the foundation; and
 - (b) the objects for which the foundation will hold and manage property; and
 - (c) either—
 - (i) if the foundation is proposed to perform its functions in association with Health and Wellbeing Queensland—that fact; or
 - (ii) otherwise—the name of the Hospital and Health Service proposed to be the associated Hospital and Health Service for the foundation.
- (2) Subsection (3) applies if the foundation is to be established for an existing or proposed public sector hospital, public sector health service facility or public sector health service.
- (3) The application must also state the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service.

10 Minister may ask for additional information or documents

The Minister may, by notice given to the applicant, ask the applicant to give the Minister within a stated reasonable period information or documents the Minister considers necessary to decide the application.

11 Deciding application

- (1) The Minister must consider the application and decide to approve or not approve the application.
- (2) In considering the application, the Minister may have regard to—
 - (a) the financial standing of the applicant; and
 - (b) whether the stated objects of the proposed foundation are consistent with the objects mentioned in section 7; and

- (c) whether the applicant has a sufficient understanding of legislation applying to foundations; and
 - (d) other matters the Minister considers appropriate.
- (3) The Minister must recommend to the Governor in Council the making of a regulation under section 12 to establish the foundation if the Minister is satisfied—
- (a) the foundation is likely to support or improve public health; and
 - (b) it is in the public interest to establish the foundation.
- (4) The Minister must as soon as practicable give the applicant notice of the Minister's decision.

12 Establishment of foundations

- (1) A regulation may establish a foundation.
- (2) The regulation must state the name of the foundation.

13 Legal status of foundations

A foundation—

- (a) is a body corporate; and
- (b) may sue and be sued in its corporate name.

Division 3 Functions and powers

14 Functions

The functions of a foundation are as follows—

- (a) to pursue the registered objects of the foundation;
- (b) to manage property held by the foundation, including income generated by the holding of property—
 - (i) to achieve the foundation's registered objects; and

- (ii) to cover costs or expenses associated with the administration of the foundation;
- (c) another function given to the foundation under this Act or another Act.

15 Performance of functions

- (1) A foundation is to perform its functions in association with a Hospital and Health Service.
- (2) In performing its functions, a foundation must have regard to any needs or priorities the foundation has been advised about by its associated Hospital and Health Service.
- (3) Subsection (2) does not—
 - (a) limit the matters the foundation may have regard to in performing its functions; or
 - (b) require a foundation to hold or manage property for a particular need or priority of its associated Hospital and Health Service.

16 Powers

- (1) A foundation has all the powers of an individual, and may, for example—
 - (a) enter into contracts and agreements; and
 - (b) hold and manage property; and
 - (c) establish and administer trust funds; and
 - (d) appoint a person to manage all or part of its funds; and
 - (e) do anything else necessary or convenient to be done in performing its functions or exercising its powers.
- (2) A foundation also has the powers given to it under this Act or another Act.
- (3) However, a foundation's powers are subject to any limitations under this Act or another Act.

17 Particular powers

- (1) A foundation's banking powers are limited to the powers under the *Statutory Bodies Financial Arrangements Act 1982*, part 4.
- (2) A foundation's borrowing powers are limited to the powers under the *Statutory Bodies Financial Arrangements Act 1982*, part 5.

Note—

Under the *Statutory Bodies Financial Arrangements Act 1982*, a foundation may, with the approval of the Minister administering that Act, under part 9 of that Act, operate an account with an overdraft facility or borrow.

Division 4 Administration

18 Employment of staff

- (1) A foundation—
 - (a) must employ a managing executive officer; and
 - (b) may employ other staff it considers appropriate to perform its functions or exercise its powers.
- (2) A member of the staff of a foundation, other than a person made available to the foundation under section 19—
 - (a) is to be paid the remuneration and allowances decided by the foundation; and
 - (b) is employed under this Act and not the *Public Sector Act 2022*.

19 Alternative staffing arrangements

- (1) A foundation may arrange with the chief executive officer of the foundation's associated Hospital and Health Service for the services of employees of the Hospital and Health Service to be made available to the foundation.

- (2) An employee whose services are made available under subsection (1)—
 - (a) continues to be an employee of the associated Hospital and Health Service; and
 - (b) continues to be employed or otherwise engaged by the Hospital and Health Service on the same terms and conditions applying to the employee before the services were made available; and
 - (c) is, while the services are made available and for the carrying out of the foundation's functions, taken to be a member of the staff of the foundation.

20 Use of Hospital and Health Service premises

In performing its functions, a foundation may, with the agreement of the chief executive officer of the foundation's associated Hospital and Health Service use premises, office furniture and equipment occupied, owned or used by the Service.

21 Authentication of documents

A document made by a foundation, other than a document required to be sealed, is sufficiently made if it is made or signed by the chairperson of the board of the foundation, or the managing executive officer of the foundation.

22 Change of registered objects

- (1) If the board of a foundation wishes to change a registered object of the foundation, the board must apply in writing to the Minister for approval of the change.
- (2) The application must include the following information—
 - (a) details of the change;
 - (b) the reason for the change;

-
- (c) information to show the change is consistent with the objects mentioned in section 7.
 - (3) The Minister must consider the application and decide to approve or not approve the application.
 - (4) The Minister must, as soon as practicable, give the board notice of the Minister's decision.
 - (5) If the Minister approves the change to the foundation's registered objects, the chief executive must amend the current objects of the foundation contained in the register.

Division 5 Application of particular Acts

23 Foundation is statutory body

- (1) A foundation is a statutory body under—
 - (a) the *Financial Accountability Act 2009*; and
 - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) However, the *Financial Accountability Act 2009*, section 64 does not apply to a foundation.
- (3) Also, the *Statutory Bodies Financial Arrangements Act 1982* is subject to this Act and the following provisions of that Act do not apply to a foundation—
 - (a) sections 10 to 12 and 14;
 - (b) part 3, other than section 21;
 - (c) parts 6 to 8.
- (4) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B explains how that Act, to the extent it applies to a foundation, affects the foundation's powers.

24 Application of Crime and Corruption Act 2001

A foundation is a unit of public administration under the *Crime and Corruption Act 2001*.

25 Application of Collections Act 1966

- (1) For the *Collections Act 1966*, part 3, a registered object of a foundation is taken to be a purpose that is sanctioned for that Act.
- (2) The *Collections Act 1966*, other than sections 32 and 33A(2)(a), applies to a foundation in the performance of its functions and exercise of its powers.

26 Application of Property Law Act 1974, pt 14

For the application of the *Property Law Act 1974*, part 14 to a gift, devise or bequest to a foundation, a registered object of the foundation is taken to be a charitable purpose.

Part 3 Boards

Division 1 Establishment, functions, powers and membership of boards

27 Establishment

For each foundation, a board is established as the governing body of the foundation.

28 Functions

- (1) The board of a foundation has the following functions—
 - (a) to manage the foundation generally;
 - (b) to ensure the foundation pursues its registered objects effectively and efficiently;
 - (c) to set strategies and policies for the management of property held by the foundation.
- (2) The board also has the other functions given to the board under this Act or another Act.

29 Powers of board

- (1) The board of a foundation has the power to do anything necessary or convenient to be done in performing its functions.
- (2) Anything done in the name of, or for, the foundation by the board, or with the authority of the board, is taken to have been done by the foundation.

30 Membership

- (1) The board of a foundation consists of the following persons (each a *member*)—
 - (a) at least 6 persons recommended by the Minister;
 - (b) 1 person who is—
 - (i) the chairperson of the relevant board; or
 - (ii) a member of the relevant board nominated by the chairperson of that board.
- (2) In recommending a person for appointment to the board under subsection (1)(a), the Minister may have regard to whether the person has—
 - (a) a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of legislation applying to the foundation; and
 - (b) the skills, experience or expertise in business or financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the board in performing its functions.
- (3) Before recommending a person for appointment to the board under subsection (1)(a), the Minister must consult the chairperson of the relevant board.
- (4) The members, other than the person mentioned in subsection (1)(b), are appointed by the Governor in Council.
- (5) In this section—

relevant board, for a foundation, means—

- (a) if the foundation performs its functions in association with Health and Wellbeing Queensland—the board of Health and Wellbeing Queensland; or
- (b) otherwise—the Hospital and Health Board for the foundation’s associated Hospital and Health Service.

31 Chairperson and deputy chairperson

- (1) The chairperson of the board is the member appointed by the Governor in Council as the chairperson.
- (2) A person may be appointed as the chairperson when the person is appointed as a member.
- (3) The members of a board must appoint another member, other than the chairperson, as the deputy chairperson.
- (4) The chairperson or deputy chairperson holds office for the term, ending no later than the person’s term of appointment as a member, stated in the person’s appointment as chairperson or deputy chairperson.
- (5) However, if a member who is a chairperson or deputy chairperson continues to hold office under section 32(2) the member continues to hold office as the chairperson or deputy chairperson.
- (6) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.
- (7) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding office—
 - (a) resigns from office by giving notice of the resignation to—
 - (i) for a chairperson—the Minister; or
 - (ii) for a deputy chairperson—the board; or

- (b) stops being a member.
- (8) However, a person may continue to be a member after resigning the office of chairperson or deputy chairperson.

32 Term of appointment

- (1) A member, other than a member mentioned in section 30(1)(b), holds office for the term, not longer than 5 years, stated in the member's instrument of appointment.
- (2) If a successor has not been appointed by the end of the member's term, the member continues to hold office until a successor is appointed.
- (3) Subsection (1) does not prevent a member being reappointed.

33 Disqualification from becoming member

- (1) A person is disqualified from becoming a member if the person—
 - (a) has a conviction, other than a spent conviction, for an indictable offence; or
 - (b) does not consent to the chief executive requesting a report about the person's criminal history under section 36; or
 - (c) is an insolvent under administration; or
 - (d) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
 - (e) is employed by the foundation.
- (2) In this section—
insolvent under administration see the Corporations Act, section 9.

34 Removal from office

The Governor in Council may, at any time, remove a member from office if—

- (a) the member would be disqualified from becoming a member under section 33; or
- (b) the member consented to the borrowing of an amount that the foundation is not lawfully authorised to borrow under the *Statutory Bodies Financial Arrangements Act 1982*; or
- (c) the Minister recommends the removal because the Minister is satisfied the member—
 - (i) has not complied with section 46; or
 - (ii) is incapable of performing the member's functions; or
 - (iii) has neglected the member's functions or performed the member's functions incompetently; or
 - (iv) has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or foundation; or
 - (v) has been absent from 3 consecutive meetings of the board without the board's permission and without reasonable excuse.

35 Vacancy in office

The office of a member becomes vacant if the member—

- (a) resigns from office by giving notice of resignation to the Minister; or
- (b) is removed from office under section 34.

Division 2 Criminal history

36 Criminal history report

- (1) This section applies for deciding if a person—
 - (a) is disqualified from becoming a member under section 33; or
 - (b) may be removed as a member of the board under section 34.
- (2) The chief executive may ask the commissioner of the police service for a written report about the criminal history of the person that includes a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) However, the chief executive may make the request only if the person has given the chief executive written consent for the request.
- (4) The commissioner of the police service must comply with the request.
- (5) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

37 Changes in criminal history must be disclosed

- (1) This section applies if a person who is a member is convicted of an indictable offence.
- (2) The person must, unless the person has a reasonable excuse, immediately give notice of the conviction to the chief executive.
Maximum penalty—100 penalty units.
- (3) The notice must include the following information—
 - (a) the existence of the conviction;
 - (b) details adequate to identify the offence;
 - (c) when the offence was committed;

- (d) the sentence imposed on the person.

38 Confidentiality of criminal history information

- (1) This section applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the department.
- (2) The person must not, directly or indirectly, disclose the criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the criminal history information to another person—
 - (a) to the extent necessary to perform the person’s functions under this Act; or
 - (b) if the disclosure is authorised under an Act; or
 - (c) if the disclosure is otherwise required or permitted by law; or
 - (d) if the person to whom the information relates consents to the disclosure; or
 - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
 - (f) if the information is, or has been, lawfully accessible to the public.
- (4) The chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.
- (5) In this section—

criminal history information means—

 - (a) a report given to the chief executive under section 36; or
 - (b) a notice given to the chief executive under section 37.

Division 3 Business and meetings

39 Conduct of business

Subject to this division, a board may conduct its business, including its meetings, in the way it considers appropriate.

40 Presiding at meetings

- (1) The chairperson of the board of a foundation is to preside at all board meetings at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting, the deputy chairperson of the board is to preside.
- (3) If neither the chairperson nor deputy chairperson is present at a board meeting, the member chosen by the members of the board present is to preside.

41 Quorum at meetings

- (1) A quorum for a meeting of a board is a majority of its members for the time being.
- (2) However, if at a meeting a member present at the meeting is required under section 45 not to be present during deliberations, or not to take part in any decision, of the board for a particular matter, the remaining members present at the meeting constitute a quorum for the meeting.

42 Conduct of meetings

- (1) A question at a meeting of a board is decided by a majority of the votes of the members present at the meeting and able to vote on the question.
- (2) If the votes are equal, the member presiding at the meeting also has a casting vote.
- (3) A member who abstains from voting is taken to have voted for the negative.

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- (4) The board may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meetings, including, for example, teleconferencing.
- (5) A member who takes part in a meeting of the board under subsection (4) is taken to have been present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a meeting, if—
 - (a) notice of the resolution is given under procedures approved by the board; and
 - (b) a majority of members agree in writing to the resolution.

43 Minutes

A board must keep minutes of its board meetings.

44 Validity of decisions

A decision of a board is not invalidated only because there is a vacancy in the membership of the board.

Division 4 Other provisions about boards and members

45 Disclosure of interests at board meeting

- (1) This section applies to a member if—
 - (a) the member has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting of the board of a foundation; and
 - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the matter.

- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to the other members of the board at the meeting.
- (3) The member may further participate in the meeting only if a majority of the other members of the board vote in favour of the member's further participation.
- (4) However, the member can not participate in any vote on the matter at the meeting.
- (5) A disclosure under subsection (2) must be recorded in the minutes of the board.
- (6) A person does not have an interest that could conflict with the proper performance of the member's functions about the consideration of a matter merely because the person holds office as a member under section 30(1)(b).

46 Member to act in foundation's interest

A member must at all times act impartially and in the interest of the foundation in performing the member's functions.

Part 4 Oversight of foundations and boards

Division 1 Interaction between Minister and foundations

47 Board must notify Minister about particular matters

- (1) The board of a foundation must give the Minister notice of a matter that raises a significant concern about—
 - (a) the financial viability of the foundation; or

[s 48]

Examples of matters that may raise a significant concern about a foundation's financial viability—

- 1 a proceeding started against the foundation that may result in payment of a significant amount of damages or legal costs
 - 2 a significant decrease in the value of funds held on investment by the foundation
- (b) the administration or management of the foundation.

Example of matter that may raise a significant concern about the administration or management of a foundation—

distributing funds held by the foundation towards something that is outside the scope of the foundation's registered objects

- (2) The notice must be given immediately after the board becomes aware of the matter.

48 Minister may require information or documents

- (1) This section applies if the Minister has a concern about the financial viability of a foundation or the administration or management of a foundation, whether or not the concern is based on notice received from the board of the foundation under section 47.
- (2) The Minister may, by notice given to the board of a foundation, ask the board to do the following within a stated reasonable period and in a stated reasonable way—
 - (a) give the Minister relevant information in the board's knowledge about a stated matter;
 - (b) give the Minister, or make available for inspection by the Minister, a relevant document or copy of a relevant document about a stated matter in the foundation's possession or control.
- (3) The board must comply with the request.
- (4) Unless the Minister is satisfied there are exceptional circumstances, the Minister must consult with the board about the information or documents that may be sought by the Minister before giving a notice.

-
- (5) If an original document is given to the Minister, the Minister may keep the document to copy it and must return the document to the board as soon as practicable after copying it.
 - (6) The Minister may disclose the information, or give the document or copy of the document, to an entity the Minister considers appropriate to help the Minister assess—
 - (a) the foundation’s financial viability; or
 - (b) the administration or management of the foundation.
 - (7) In this section—

relevant, in relation to information or a document, means relating to the board’s functions under this Act.

Division 2 Administrators

49 Removal of all board members

- (1) The Governor in Council may, at any time, on the recommendation of the Minister, remove all members of a board.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister is satisfied it is in the public interest to do so, having regard to the Minister’s consideration of the financial viability of the foundation or the administration or management of the foundation.
- (3) If the Governor in Council acts under subsection (1), the members go out of office.
- (4) No compensation is payable to a member in relation to the removal of the member.

50 Appointment of administrator

- (1) This section applies if—
 - (a) the members of a board are removed under section 49;
or

[s 51]

- (b) at any other time there are no members of a board.
- (2) The Governor in Council may, on the recommendation of the Minister, appoint a qualified person as administrator of the board.
- (3) In this section—
- qualified person* means a person the Minister considers has the necessary qualifications and experience to administer the board.

51 Term and role of administrator

- (1) A person appointed as an administrator of the board of a foundation must administer the foundation's affairs for the term stated in the administrator's appointment.
- (2) The Governor in Council may revoke the appointment for any reason before the term of appointment ends, either to appoint a different person as administrator or to appoint new members of the board.
- (3) While the appointment continues, the administrator constitutes the board instead of the members.

Part 5 Financial provisions

Division 1 Preliminary

52 Definitions for part

In this part—

derivative transactions means transactions entered into for—

- (a) managing or varying financial returns or financial or currency risks, including, for example, risks associated with the volatility of currency exchange, interest and discount rates; or

- (b) returning gains, or avoiding losses, by reference to financial or currency obligations or the movement of currency exchange, interest and discount rates or commodity prices.

Examples—

- 1 forward agreements, including, for example, forward bill agreements, forward commodity agreements, forward exchange agreements and forward rate agreements
- 2 futures contracts for bills, bonds, commodities, shares and the share price index
- 3 options, whether exchange traded or over-the-counter, including, for example, options on bonds, caps, collars, currencies, floors, interest rates and swaps
- 4 swaps, including, for example, commodity, CPI linked, currency exchange, equity linked and interest rate swaps

special financial arrangement means an arrangement that provides for, relates to, is directed towards or includes 1 or more of the following—

- (a) acquiring the whole or a part of a business;
- (b) entering into a joint venture or partnership;
- (c) acquiring or issuing bonds, debentures, inscribed stock, shares, stock or other securities;
- (d) acquiring foreign currency;
- (e) funding a prize to a person or entity, whether the prize is money or other property, if the value of the prize is equal to or more than the amount prescribed by regulation or, if no amount is prescribed, \$5,000;

Example—

sponsoring a prize for excellence in nursing or clinical practice

- (f) disposing of land, an interest in land or a building.

Division 2 Special financial arrangements

53 Foundation may enter into special financial arrangement

- (1) A foundation may enter into a special financial arrangement under an approval under division 4.
- (2) However, a foundation does not need to obtain an approval under division 4 to—
 - (a) acquire, by way of a gift, devise or bequest, any of the following—
 - (i) the whole or a part of a business;
 - (ii) bonds, debentures, inscribed stock, shares, stock or other securities;
 - (iii) foreign currency; or
 - (b) dispose of land, an interest in land or a building if the land, interest in land or building was acquired by the foundation by way of a gift, devise or bequest.

Division 3 Derivative transactions

54 Derivative transactions permitted only for certain foundations

- (1) A foundation may enter into a derivative transaction—
 - (a) under an approval under division 4; and
 - (b) only if the foundation does so to hedge against a risk to which the foundation is or will be exposed.
- (2) A foundation may enter into a derivative transaction under this part—
 - (a) in its own name; or
 - (b) in the name of a person who, with the Minister's approval, has been appointed in writing by the foundation as its agent for this part.

55 Requirement to report to Minister about derivative transactions

- (1) For each derivative transaction entered into by a foundation, the foundation must give the Minister a report about the transaction at the times—
 - (a) stated in an approval under division 4; or
 - (b) if no times are stated in an approval under division 4—prescribed by regulation.
- (2) Each report must contain the following information—
 - (a) details sufficient to identify the derivative transaction;
 - (b) a statement about the underlying exposure against which the foundation is trying to hedge;
 - (c) the stated purpose of the derivative transaction, including details of the Minister’s approval under which the transaction was entered into and verification of compliance with the conditions of the approval;
 - (d) details of any realised or unrealised gains or losses from the derivative transaction.
- (3) However, if a foundation satisfies the Minister that, because of the number of derivative transactions entered into by the foundation, it is an undue burden on it to prepare a report under subsection (2) for each transaction, the report for subsection (1) may be a statement summarising the matters mentioned in subsection (2) for all of the foundation’s derivative transactions.

Division 4 Minister’s approval for special financial arrangements or derivative transactions

Subdivision 1 General approvals

56 Approval may be general in nature

- (1) The Minister may approve foundations to enter into a special financial arrangement or derivative transaction.
- (2) The approval must be published on the department’s website.
- (3) The approval may—
 - (a) apply generally to all foundations, special financial arrangements or derivative transactions or be limited in its application to—
 - (i) particular foundations, special financial arrangements or derivative transactions; or
 - (ii) particular classes of special financial arrangements or derivative transactions; or
 - (b) otherwise apply generally or be limited in its application by reference to stated exceptions or factors.
- (4) Also, the approval may—
 - (a) make different provision for different foundations, special financial arrangements or derivative transactions, or different classes of arrangements or transactions; or
 - (b) apply differently to stated exceptions or factors.
- (5) The approval may be on conditions the Minister considers necessary or desirable.
- (6) To remove any doubt, it is declared that an approval may apply to a foundation even though the foundation was not established when the approval was given.

Subdivision 2 Specific approvals

57 Application for approval

A foundation may apply, in writing, for the Minister's approval to enter into a special financial arrangement or derivative transaction.

58 Minister may ask for information or documents

The Minister may, by notice given to the foundation, ask the foundation to give the Minister within a stated reasonable period the information or documents the Minister considers necessary to decide the application.

59 Deciding application

- (1) The Minister must consider the application and decide to approve or not approve the application.
- (2) The Minister may approve the application entirely or partly.
- (3) An approval may be given on the conditions the Minister considers necessary or desirable.
- (4) The Minister must give the applicant notice of—
 - (a) the decision; and
 - (b) if the application is approved, the conditions of the approval.

60 Minister may give approval for other foundations

If an application is made under this subdivision and the Minister considers an approval should be given under subdivision 1, the Minister may deal with the application by giving an approval under subdivision 1.

61 Minister may amend or repeal approval

- (1) The Minister may amend or repeal an approval under this division even if a foundation does not apply for the amendment or repeal.
- (2) The amendment or repeal of an approval under this division does not affect its previous operation.

62 Register about approvals

A foundation must keep a register of the Minister's approvals under this subdivision for the foundation.

Division 5 Offence

63 False or misleading documents

- (1) A person must not give a document under section 57 or 58 to the Minister containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the Minister, in writing, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Division 6 Miscellaneous

64 Management of foundation's funds by funds manager

- (1) A funds manager for a foundation may enter into a special financial arrangement or derivative transaction for the

foundation only if there is an approval under division 4 for the arrangement or transaction that applies to the foundation.

- (2) Subsection (3) applies if a funds manager enters into a derivative transaction for a foundation.
- (3) The funds manager is not required to give a report to the Minister under section 55 unless the approval under division 4 includes a condition that a funds manager acting under the approval for a foundation must give the report to the Minister.
- (4) Subsection (1) does not limit—
 - (a) the performance of a function by a funds manager that the funds manager is otherwise lawfully authorised to perform under the funds manager’s contract of engagement with a foundation; or
- (5) In this section—

Example of a function—

managing the sale of bonds, debentures, inscribed stock, shares, stock or other securities

- (b) a board or foundation from giving a direction to a funds manager in relation to the management of the foundation’s funds, including, for example, a direction to not manage the foundation’s funds in reliance on an approval under division 4.

funds manager, for a foundation, means a person engaged by the foundation to manage all or part of the foundation’s funds.

65 Money borrowed other than under Statutory Bodies Financial Arrangements Act 1982

- (1) This section applies if a foundation borrows an amount it is not lawfully authorised to borrow under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The members of the board of the foundation who consented to the borrowing of the amount are jointly and severally liable to repay the amount, and any interest payable on it, to the person from whom the amount was borrowed.

- (3) If an amount is appropriated from a fund administered by the foundation to repay the borrowed amount or interest on it, the members of the board of the foundation who consented to the misappropriation of the amount are jointly and severally liable to refund—
 - (a) the misappropriated amount; and
 - (b) interest at the rate of 12% a year.
- (4) If the members fail to repay an amount and interest under subsection (2) or (3), the amount may be recovered from the members by the Minister as a debt.
- (5) On recovering all or part of an amount and interest under subsection (4), the Minister—
 - (a) must pay the amount recovered—
 - (i) for an amount mentioned in subsection (2)—to the person from whom the amount was borrowed; or
 - (ii) for an amount mentioned in subsection (3)—into the fund from which the amount was appropriated; and
 - (b) may recover from the members mentioned in subsection (4) the full costs incurred in recovering the amount, including legal costs.
- (6) Subsection (2) does not apply to a member if, when the member consented to the borrowing, the member believed on reasonable grounds that the foundation was authorised under the *Statutory Bodies Financial Arrangements Act 1982* to borrow the amount.

66 Disposal of particular property

- (1) This section applies if the board of a foundation considers any property vested in the foundation that is subject to a condition or trust is—
 - (a) unfit or not required for its purposes; or
 - (b) property of insufficient value.

- (2) The foundation may—
 - (a) sell the property; or
 - (b) exchange the property for other property; or
 - (c) dispose of the property in another way.
- (3) If the property is sold, the proceeds of sale must be applied in the following order—
 - (a) in payment of the reasonable expenses incurred in selling the property;
 - (b) the balance to be held and managed for the registered objects of the foundation.
- (4) If the property is exchanged for other property, the property acquired by way of the exchange must be held and managed for the registered objects of the foundation.
- (5) A person who acquires property from a foundation under this section acquires ownership of the property free from any condition or trust relating to the sale, disposal, exchange or use of the property to which the property was subject when vested in the foundation.
- (6) In this section—

property of insufficient value means property that—

 - (a) is of no value; or
 - (b) if sold by a foundation, would not be likely to return sufficient proceeds of sale to cover the expenses reasonably incurred by the foundation in selling the property.

Part 6 Legal proceedings

67 Application of part

This part applies to a proceeding for an offence against this Act.

68 Proceedings for offences

- (1) The proceeding is to be heard and decided summarily.
- (2) The proceeding must be started within whichever is the longer of the following—
 - (a) 1 year after the commission of the offence;
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

69 Appointments and authority

- (1) In the proceeding, the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—
 - (a) the appointment under this Act of a member of a board;
 - (b) the authority of a member of a board, or the managing executive officer of a foundation, to do anything under this Act.
- (2) In this section—

appointment, of a member of a board, includes the holding of office under section 30(1)(b).

70 Signatures

A signature purporting to be the signature of the Minister, a member of a board or the managing executive officer of a foundation is evidence of the signature it purports to be.

71 Other evidentiary aids

- (1) A certificate purporting to be signed by the Minister, chief executive or chairperson of the board of a foundation stating any of the following matters is evidence of the matter—
 - (a) a stated document is 1 of the following things made, given or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a direction, notice or requirement;
 - (iii) a record;
 - (iv) the register;
 - (b) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a).
- (2) In this section—

appointment, in relation to a member of a board, includes the holding of office under section 30(1)(b).

Part 7 Ending foundations

72 Removal from register

- (1) A foundation may apply to the Minister for its entry in the register to be removed.
- (2) The Governor in Council may, by gazette notice, order that the entry for a foundation be removed from the register—
 - (a) because of an application made by the foundation under subsection (1); or
 - (b) if the Governor in Council is satisfied the foundation should be dissolved.

73 Dissolution

- (1) This section applies in relation to a foundation whose entry in the register has been removed.

- (2) A regulation may dissolve the foundation.

74 Status of particular property on dissolution of foundation

- (1) This section applies if—
- (a) a foundation is dissolved; and
 - (b) on the dissolution, there is land—
 - (i) granted, under the *Land Act 1994*, in trust to the foundation; or
 - (ii) reserved, under the *Land Act 1994*, for the purposes of the foundation.
- (2) The land does not form part of the assets of the foundation for its dissolution.

75 Property held on trust on dissolution of foundation

- (1) This section applies if—
- (a) a foundation is dissolved; and
 - (b) on the dissolution, the foundation is a trustee of a trust under which property, including, for example, land, is held.
- (2) The Governor in Council may, by gazette notice, do any of the following—
- (a) constitute or nominate another person as trustee for the trust;
 - (b) nominate another use to which property should be held or applied;
 - (c) terminate the trust;
 - (d) make an order the Governor in Council considers appropriate.
- (3) An order made under subsection (2) must be given effect.
- (4) However, an order under subsection (2) may not override the provisions of an instrument creating the trust under which a

foundation holds property if the instrument provides for the variation of the trust or substitution of a new trust upon the dissolution of the foundation.

76 Distribution of surplus property

- (1) This section applies if—
 - (a) either—
 - (i) a foundation is dissolved; or
 - (ii) the endorsement of a foundation as a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth) is revoked; and
 - (b) there is property (*surplus property*) of the foundation remaining after satisfaction of the debts and liabilities of the foundation.
- (2) The surplus property must be given or transferred to an entity—
 - (a) that has objects similar to the foundation; and
 - (b) is a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth).

77 Effect of dissolution on offices

If a foundation is dissolved under section 73, the members of the board of the foundation go out of office.

Part 8 Miscellaneous

78 Amalgamation of foundations

- (1) Two or more foundations may apply to the Minister to be amalgamated as a single foundation.
- (2) The application must be in the approved form.

[s 79]

- (3) If the Minister is satisfied the amalgamation of the foundations is appropriate in the circumstances, the Minister may recommend to the Governor in Council the making of a regulation to amalgamate the foundations.
- (4) A regulation under subsection (3)—
 - (a) must amalgamate the foundations by—
 - (i) dissolving each foundation and establishing a new foundation (the *new foundation*); or
 - (ii) identifying the foundation that is to continue (the *continuing foundation*), dissolving each other foundation and providing for the other foundations to be a part of the continuing foundation; and
 - (b) may provide for anything else in relation to the amalgamation, including, for example, dealing with assets, liabilities, rights and obligations.
- (5) On the dissolution of a foundation under this section, the members of the board of the foundation go out of office.
- (6) Part 7 does not apply to an amalgamation under this section.
- (7) A new foundation is taken to have been established under section 12.

79 Register of foundations

- (1) The chief executive must—
 - (a) keep a register of foundations; and
 - (b) publish the register on the department’s website.
- (2) The register must, for each foundation, contain—
 - (a) the name of the foundation; and
 - (b) the day on which the foundation was established; and
 - (c) the name of the foundation’s associated Hospital and Health Service; and
 - (d) if the foundation was established for an existing or proposed public sector hospital, public sector health

service facility or public sector health service—the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service; and

- (e) the current registered objects of the foundation.

80 Delegations

- (1) A foundation may delegate its functions under this Act to a member of the board.
- (2) A board may delegate the board's functions under this Act to—
- (a) a member of the board; or
 - (b) a member of the staff of the board's foundation; or
 - (c) a person working as a volunteer for the foundation.
- (3) In this section—
functions includes powers.

81 Protection of members from civil liability

- (1) A member of a board is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the State.

82 Approval of forms

The chief executive may approve forms for use under this Act.

83 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 9 **Repeal and transitional provisions**

Division 1 **Repeal provision**

84 **Repeal**

The Hospitals Foundations Act 1982, No. 45 is repealed.

Division 2 **Transitional provisions**

85 **Definitions for division**

In this division—

continued foundation means a body corporate continued as a foundation under section 86.

repealed Act means the repealed *Hospitals Foundations Act 1982*.

86 **Continuation of body corporate established under repealed Act as foundation**

- (1) A body corporate established under the repealed Act, section 7 and in existence immediately before the commencement continues in existence as a foundation established under section 12 of this Act.
- (2) A regulation may state the name of a foundation mentioned in subsection (1).

87 **Continuation of register**

- (1) The register kept under the repealed Act, section 9 continues in existence as the register under this Act.

- (2) Subsection (3) applies if the entry on the register for a continued foundation does not contain all of the information required under section 79(2).
- (3) The foundation must, within 3 months after the commencement, give the chief executive the required information.

88 Replacement of objects registered under repealed Act

- (1) A continued foundation must, within 3 months after the commencement, give the chief executive notice of the objects for the foundation that are consistent with the objects mentioned in section 7 to replace the objects registered for the foundation under the repealed Act, section 9.
- (2) The board of a foundation may, within the period mentioned in subsection (1), apply, under section 22, to change an object of the foundation.

89 Continuation of boards and members

- (1) A board of members (however described) (an *existing board*) of a continued foundation that was established under the repealed Act and in existence immediately before the commencement continues as the board of the foundation under this Act.
- (2) An existing board is taken to be established under section 27.
- (3) A thing done by or in relation to an existing board before the commencement is taken to be a thing done by or in relation to the board continued under this section.
- (4) Without limiting subsection (1) or (2)—
 - (a) a person who holds the office of a member of an existing board continues to hold office as a member of the board under this Act until—
 - (i) the end of the person's term of office; or
 - (ii) the person earlier vacates office; and

- (b) a person serving as a chairperson or deputy chairperson continues to hold office as a chairperson or deputy chairperson of the board under this Act until—
 - (i) the end of the person's term of office; or
 - (ii) the person earlier vacates office.

90 Assets and liabilities

On the commencement—

- (a) the assets and liabilities of a continued foundation continue to be the assets and liabilities of the foundation; and
- (b) any property that, immediately before the commencement, was held in trust by a continued foundation continues to be held by the foundation on the same trust.

91 Property previously given

- (1) Property given, under the repealed Act, to a continued foundation is taken to be property given to the foundation under this Act.
- (2) The property may be dealt with under this Act.

92 Status of particular land

- (1) This section applies if, before the commencement, there is land—
 - (a) granted, under the *Land Act 1994*, in trust to a continued foundation; or
 - (b) reserved, under the *Land Act 1994*, for the purposes of a continued foundation.
- (2) The land continues to be granted in trust to the foundation or reserved for the purposes of the foundation.

Schedule 1 Dictionary

section 6

administrator, for a foundation, means a person appointed under section 50 to administer the foundation.

approved form means a form approved under section 82.

associated Hospital and Health Service, for a foundation, means—

- (a) the Hospital and Health Service in association with which the foundation performs its functions; or
- (b) if the foundation performs its functions in association with Health and Wellbeing Queensland—Health and Wellbeing Queensland.

board means a board of a foundation established under section 27.

chief executive officer, of a foundation's associated Hospital and Health Service, means—

- (a) if the foundation performs its functions in association with Health and Wellbeing Queensland—the chief executive officer of Health and Wellbeing Queensland; or
- (b) otherwise—the health service chief executive of the foundation's associated Hospital and Health Service.

criminal history, for a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

derivative transactions, for part 5, see section 52.

foundation means a foundation established under section 12.

Health and Wellbeing Queensland means Health and Wellbeing Queensland under the *Health and Wellbeing Queensland Act 2019*.

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

Hospital and Health Board see the *Hospital and Health Boards Act 2011*, schedule 2.

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

managing executive officer, of a foundation, means a person who is the most senior officer (however called) of the foundation who manages the day-to-day operation of the foundation.

member, of a board, see section 30(1).

notice means written notice.

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

public sector health service facility see the *Hospital and Health Boards Act 2011*, schedule 2.

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

register means the register of foundations kept by the chief executive under section 79.

registered object, of a foundation, means an object included in the current objects of the foundation contained in the register.

special financial arrangement, for part 5, see section 52.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.