



Western Australia

Health Services Amendment Act 2023

As at 22 Feb 2023

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Health Services Amendment Act 2023

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Health Services Act 2016* amended

3.	Act amended	3
4.	Section 6 amended	3
5.	Section 7 amended	5
6.	Section 7A inserted	6
	7A. What are successor health service providers for former public hospitals	6
7.	Section 8 amended	6
8.	Section 11 amended	8
9.	Section 13 amended	8
10.	Section 15 amended	8
11.	Section 19 amended	9
12.	Section 20 amended	10
13.	Section 20A inserted	11
	20A. Works and clinical commissioning	11
14.	Section 24 amended	12
15.	Section 26 amended	12
16.	Section 29 amended	13
17.	Section 34 amended	14
18.	Section 35 amended	14
19.	Section 36 amended	15
20.	Sections 36A to 36E inserted	16
	36A. Joint arrangements	16

Contents

	36B.	Power to borrow	17	
	36C.	Guarantees	18	
	36D.	Restricted power to enter arrangements on behalf of other health service providers or State	18	
	36E.	Health service providers may provide services to each other	19	
21.		Section 37 amended		20
22.		Section 38 amended		21
23.		Section 41 amended		21
24.		Section 46 amended		23
25.		Section 48 amended		24
26.		Section 49 amended		25
27.		Section 52 amended		25
28.		Sections 53A and 53B inserted		26
	53A.	Terms used	26	
	53B.	What is compensation	26	
29.		Section 55 replaced		27
	55.	Fees and charges for provision of health services	27	
30.		Section 56 amended		28
31.		Section 58 replaced		29
	57A.	Liability for, and right to recover, compensable charges for health services	29	
	57B.	Liability for, and right to recover, compensable charges for former hospital services	30	
	57C.	Waiving or refunding compensable charges payable under section 57A or 57B	32	
	57D.	Recovering amounts from compensation payer in relation to compensable charges	32	
	58.	Regulations about recovery of compensable charges	33	
32.		Section 59 amended		36
33.		Section 60 amended		36
34.		Section 62 amended		37
35.		Section 66 replaced		37
	66.	Notice of financial difficulty	37	
	66A.	Department CEO response to notice of financial difficulty	38	
	66B.	Minister's response to notice of financial difficulty	38	
36.		Section 67 amended		39

37.	Section 76A inserted		39
	76A. Removing board members from office	39	
38.	Section 77 amended		40
39.	Section 78A inserted		41
	78A. Delegation	41	
40.	Part 8 Division 2 Subdivision 2 heading replaced		41
	Subdivision 2 — Duties and personal interests		
41.	Section 79 amended		42
42.	Section 94 replaced		43
	94. Term used: adviser	43	
43.	Section 97 amended		43
44.	Section 102 amended		43
45.	Section 103 amended		44
46.	Part 9 Division 2 Subdivision 1 heading replaced		44
	Subdivision 1 — Purposes and composition of the Health Executive Service		
47.	Section 104A inserted		44
	104A. Purposes of Health Executive Service	44	
48.	Section 105 amended		45
49.	Section 107 amended		45
50.	Section 114 amended		46
51.	Section 117 amended		46
52.	Section 118 amended		46
53.	Section 119 amended		47
54.	Section 121 amended		47
55.	Section 123A inserted		49
	123A. Acting health executives	49	
56.	Section 140 amended		49
57.	Section 145 amended		50
58.	Section 146 amended		50
59.	Section 147 amended		50
60.	Section 149 amended		51
61.	Section 150 amended		51
62.	Section 157 amended		52
63.	Section 161 amended		52
64.	Section 167 amended		53
65.	Section 176 amended		53
66.	Section 177 amended		53
67.	Section 182 amended		53
68.	Section 187 amended		54
69.	Section 188 amended		56

70.	Section 193 amended	57
71.	Part 15 Division 1 replaced	58
	Division 1 — Transfers of property between health entities	
	194. Minister may order transfer of assets, rights or liabilities	58
72.	Section 200 amended	61
73.	Section 202 deleted	62
74.	Section 203 amended	62
75.	Section 205 amended	62
76.	Section 206 amended	62
77.	Section 208 amended	63
78.	Section 213 amended	63
79.	Section 215 amended	64
80.	Section 216 amended	65
81.	Section 217A inserted	65
	217A. Disclosure of health information in health information management system under legal process	65
82.	Section 231 amended	67
83.	Part 20 replaced	68
	Part 20 — Transitional, saving and validation provisions for the Health Services Amendment Act 2023	
	Division 1 — Validation of acts done by or on behalf of the State	
	259. Terms used	68
	260. Validation of pre-commencement conduct in relation to health interests	68
	261. Particular entities performing health services taken to be contracted health entities performing public health services	70
	262. Validation of acts done by Department CEO or authorised person in relation to land not held by Minister or Ministerial Body	71
	263. Validation of declarations of health service provider land under s. 208	73
	264. Exemption from State tax	75
84.	Part 20 Division 2 inserted	76
	Division 2 — Transitional provisions about reserves on eligible Crown land	
	265. Terms used	76

266.	Change of management body of Crown reserves in relation to eligible Crown land	77
267.	Changing particular condition in particular reserves over eligible Crown land by order	79
268.	Validity of leases, subleases and licences entered into by granting entity in relation to eligible Crown land	80
269.	Exemption from State tax	81
270.	Registration of documents	82
85.	Parts 21 and 22 deleted	82
Part 3 — <i>Mental Health Act 2014</i> amended		
86.	Act amended	83
87.	Section 4 amended	83
88.	Section 524 amended	83
89.	Section 541 amended	83
90.	Section 543 amended	84
Part 4 — <i>Motor Vehicle (Catastrophic Injuries) Act 2016</i> amended		
91.	Act amended	85
92.	Section 20 amended	85
93.	Section 30 amended	85
Part 5 — <i>Queen Elizabeth II Medical Centre Act 1966</i> amended		
94.	Act amended	86
95.	Section 13 amended	86
96.	Section 20 amended	86
97.	Sections 22 and 23 inserted	87
22.	<i>Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986</i> repealed	87
23.	Transitional provision for <i>Health Services Amendment Act 2023</i>	88
Part 6 — <i>University Medical School, Teaching Hospitals, Act 1955</i> amended		
98.	Act amended	89
99.	Section 4 amended	89



Western Australia

Health Services Amendment Act 2023

No. 1 of 2023

An Act to amend —

- **the *Health Services Act 2016*; and**
- **the *Mental Health Act 2014*; and**
- **the *Motor Vehicle (Catastrophic Injuries) Act 2016*; and**
- **the *Queen Elizabeth II Medical Centre Act 1966*; and**
- **the *University Medical School, Teaching Hospitals, Act 1955*.**

[Assented to 22 February 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Health Services Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Health Services Act 2016* amended

3. Act amended

This Part amends the *Health Services Act 2016*.

4. Section 6 amended

- (1) In section 6 delete the definition of ***contracted health entity***.
- (2) In section 6 insert in alphabetical order:

accountable authority, of a health service provider, means the accountable authority of the health service provider under the *Financial Management Act 2006* section 55;

administrator means an administrator appointed under section 99;

clinical commissioning, of a facility, means doing anything necessary or desirable to prepare the facility to provide public health services;

contracted health entity means a non-government entity that provides health services to the State under a contract or other agreement entered into with —

- (a) a health service provider; or
- (b) the Department CEO, the Minister or the Premier on behalf of the State;

financial difficulty, for a health service provider, means the health service provider is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available, or likely to be available, to it when the financial obligation is due;

former Act means the *Hospitals and Health Services Act 1927* as in operation immediately before 1 July 2016;

former hospital service includes accommodation, maintenance, care, and all other services rendered, goods supplied or work done at, by or on behalf of a former public hospital under the former Act;

former public hospital means any hospital that was —

- (a) conducted or managed by —
 - (i) a board constituted under the former Act; or
 - (ii) the Minister under the former Act;
- or
- (b) declared to be a public hospital under section 3 of the former Act;

Health Practitioner Regulation National Law means the Health Practitioner Regulation National Law that applies in this or any other participating jurisdiction as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

health property means —

- (a) a health reserve; or
- (b) property vested in, or held by, the Minister or Ministerial body;

health reserve means Crown land that is a reserve under the *Land Administration Act 1997* section 41 in respect of which the Minister or Ministerial body is the management body for the land under section 46(1) of that Act;

industrial instrument means an award, industrial agreement or order made under the *Industrial Relations Act 1979*, including a General Order made under section 50 of that Act, whether made before, on or after the commencement of the *Health Services Amendment Act 2023* section 4;

joint arrangement means an arrangement —

- (a) entered into by the Minister or Ministerial Body with a health service provider for the purposes of the functions of the health service provider; and
- (b) involving —
 - (i) the use of health property; or
 - (ii) controlling and managing the use of health property; or
 - (iii) sharing the use of health property for the purposes of the arrangement;

management body means a management body as defined in the *Land Administration Act 1997* section 3(1);

management order means a management order as defined in the *Land Administration Act 1997* section 3(1);

section 194 transfer order has the meaning given in section 194(2);

successor health service provider, for a former public hospital, has the meaning given in section 7A(1);

5. Section 7 amended

In section 7(3)(c) delete “with the Department CEO on behalf of the State, a health service provider or the Minister.” and insert:

with —

- (i) a health service provider; or
- (ii) the Department CEO, the Minister or the Premier on behalf of the State.

6. Section 7A inserted

After section 7 insert:

7A. What are successor health service providers for former public hospitals

- (1) The *successor health service provider* for a former public hospital is a health service provider that is declared by the Minister by order published in the *Gazette* to be —
 - (a) the successor health service provider for the former public hospital; or
 - (b) a successor health service provider for the former public hospital in relation to a matter stated in the order.
- (2) The Minister may, by order published in the *Gazette*, revoke or amend an order made under subsection (1).

7. Section 8 amended

- (1) Delete section 8(1) and insert:

- (1) In this section —

day hospital facility means premises —

- (a) that are not attached to, or are set apart from, premises mentioned in subsection (4)(a); and
- (b) at which —
 - (i) persons are provided with a health service determined by the Minister under subsection (2); or

- (ii) persons will be provided with a health service determined by the Minister under subsection (2);

and

- (c) at which overnight accommodation is not provided;

nursing post means a place —

- (a) at which —
 - (i) a nurse is stationed and at which facilities exist for medical attention; or
 - (ii) a nurse will be stationed and at which facilities will exist for medical attention;

but

- (b) which is not normally used for overnight accommodation of patients.

(2) In section 8(4) —

(a) delete paragraph (a) and insert:

- (a) premises where —
 - (i) medical, surgical or dental treatment, or nursing care, is provided for ill or injured persons and at which overnight accommodation may be provided; or
 - (ii) medical, surgical or dental treatment, or nursing care, will be provided for ill or injured persons and at which overnight accommodation will be provided;

s. 8

(b) in paragraph (b) delete “facility; and” and insert:

facility;

8. Section 11 amended

In section 11(1) delete “the Minister” and insert:

the Minister, or a person to whom a function of the Minister is delegated under section 15(1),

9. Section 13 amended

(1) In section 13(1) delete the definition of *joint arrangement*.

(2) In section 13(1) in the definition of *dispose of* delete “of;” and insert:

of.

(3) In section 13(2)(b) after “including a” insert:

joint arrangement or a

10. Section 15 amended

(1) Delete section 15(1) and insert:

(1) The Minister may delegate any function of the Minister under another provision of this Act to —

(a) the Department CEO; or

- (b) a person employed or engaged in the Department; or
- (c) a staff member of a health service provider; or
- (d) a health service provider; or
- (e) a prescribed person or class of person.

(2) Delete section 15(4) and insert:

- (4) A person to whom a function is delegated under this section cannot delegate that function.

(3) In section 15(5):

- (a) delete “the Department CEO” (first occurrence) and insert:

a person

- (b) delete “the Department CEO” (second occurrence) and insert:

the person

11. Section 19 amended

(1) Before section 19(1) insert:

(1A) In this section —

system manager role means managing the WA health system to the extent necessary to provide stewardship, strategic leadership and direction and to allocate

s. 12

resources for the provision of public health services in the State.

(2) Delete section 19(2) and insert:

(2) The Department CEO is responsible for carrying out the system manager role.

12. Section 20 amended

(1) In section 20(1):

(a) delete “include —” and insert:

include the following —

(b) delete paragraphs (b) and (c) and insert:

(b) notifying the Minister of the amounts allocated to a health service provider under a service agreement;

(c) delete paragraphs (g) and (h) and insert:

(g) in accordance with regulations (if any) prescribed for this paragraph —

(i) classifying and determining the remuneration of an office of health executive; and

(ii) varying an office of health executive’s classification or remuneration;

- (d) in paragraph (i) delete “award, order or industrial agreement under the *Industrial Relations Act 1979*,” and insert:

industrial instrument;

- (e) in paragraph (n) after “provided by” insert:

health

- (f) after paragraph (n) insert:

- (na) collecting performance data and any other information from health service providers;

- (2) In section 20(2) delete “function and in particular subsection (1)(g) has effect subject to the provisions of the *Procurement Act 2020*.” and insert:

function.

13. Section 20A inserted

After section 20 insert:

20A. Works and clinical commissioning

- (1) The Department CEO may —
 - (a) provide strategic leadership and direction in relation to capital works, maintenance works and clinical commissioning of facilities for the provision of public health services in the State; and

s. 14

- (b) commission and deliver capital works or maintenance works for public health service facilities; and
 - (c) require a health service provider to commission and deliver capital works or maintenance works for public health service facilities under a service agreement; and
 - (d) carry out clinical commissioning of facilities; and
 - (e) require a health service provider to carry out clinical commissioning of facilities under a service agreement.
- (2) This section does not override —
- (a) the *Procurement Act 2020*; and
 - (b) any other written law that relates to or affects the commissioning or delivering of works or carrying out of clinical commissioning of facilities.

14. Section 24 amended

Delete section 24(2).

15. Section 26 amended

In section 26(2):

- (a) in paragraph (e) delete “of health service providers;” and insert:

and business activities of health service providers, including —

- (i) engaging in commercial activities under section 35; and

- (ii) performing functions under section 36(3)(a), (b), (c), (e), (f), (g) and (h) and (5); and
 - (iii) issuing a notice of financial difficulty to the Department CEO under section 66; and
 - (iv) how a health service provider determines a fee or charge (other than a fee or charge fixed under an order under section 56); and
 - (v) the fixing of fees and charges that health service providers may charge (other than fees and charges fixed under an order under section 56 or that are prescribed);
- (b) delete paragraph (j);
- (c) after paragraph (k) insert:
- (ka) the management of land and other property held by health service providers;

16. Section 29 amended

- (1) In section 29(1) delete the definition of *industrial instrument*.
- (2) In section 29(1) in the definition of *Department CEO direction* delete “direction;” and insert:

direction.

s. 17

17. Section 34 amended

After section 34(2)(b) insert:

- (ba) to do any or all of the following under a service agreement for the purposes of section 20A —
 - (i) commission and deliver capital works or maintenance works;
 - (ii) carry out clinical commissioning of facilities;

18. Section 35 amended

- (1) In section 35(1) delete “A health” and insert:

Subject to any relevant policy framework, a health

- (2) Delete section 35(2) and insert:

- (2) A health service provider may provide any facility under its control or management for the use of —
- (a) a health professional to carry out a health service or other service; or
 - (b) a person that engages in community work or conducts a service that has a community or charitable purpose.

- (3) In section 35(4):

- (a) delete “a commercial activity,” and insert:

an activity under this section,

(b) in paragraph (b) delete “WA health system.” and insert:

State.

Note: The heading to amended section 35 is to read:

Commercial and other activities

19. Section 36 amended

(1) In section 36(2) and (3) delete “sections 37 and 38,” and insert:

sections 37 and 38 and any relevant policy framework,

(2) In section 36(5):

(a) delete “The” and insert:

Subject to sections 37 and 38 and any relevant policy framework, the

(b) delete section 36(5)(a) and (b) and insert:

- (a) make any gift or act of grace payment —
- (i) for a charitable purpose or any other purpose of benefit to the community or a section of the community; or
 - (ii) that it considers to be in the health service provider’s interest;

or

20. Sections 36A to 36E inserted

After section 36 insert:

36A. Joint arrangements

- (1) A health service provider may enter into a joint arrangement with the Minister or Ministerial Body in relation to health property.
- (2) If a health service provider enters into a joint arrangement in relation to health property, the health service provider may deal with the property the subject of the joint arrangement, including by entering into leases, subleases, or licences in relation to the property, on behalf of —
 - (a) if the health property is a health reserve — the management body of the health reserve; or
 - (b) in any other case — the Minister or Ministerial body in which the health property is vested or held.
- (3) A health service provider dealing with health property under subsection (2) is not valid if it is inconsistent with —
 - (a) the joint arrangement; or
 - (b) any written law that relates to or affects how the property may be dealt with; or
 - (c) if the health property is a lease — the lease; or
 - (d) if the health property is a health reserve —
 - (i) the *Land Administration Act 1997*; or

- (ii) the management order in relation to the reserve, or a condition imposed by the order.

Example for paragraph (d)(ii):

If the management order does not empower the management body to enter into a lease, the health service provider cannot enter into a lease in relation to the health reserve.

- (4) A valid dealing with health property by a health service provider in accordance with the joint arrangement is —
 - (a) taken to be done by the Minister or Ministerial body that entered into the joint arrangement with the health service provider; and
 - (b) binding on the Minister or Ministerial body and the health service provider the subject of the joint arrangement.

36B. Power to borrow

- (1) A health service provider may, with the approval of the Treasurer —
 - (a) borrow or re-borrow money; or
 - (b) otherwise arrange for financial accommodation to be extended to the health service provider.
- (2) The Minister may, by order made with the consent of the Treasurer and published in the *Gazette*, exempt a transaction or class of transactions from the requirement to obtain the approval of the Treasurer under subsection (1).
- (3) The exemption in the order made under subsection (2) may be —
 - (a) unconditional; or
 - (b) subject to the conditions specified in the order;
or

- (c) apply in the circumstances specified in the order.
- (4) An order under subsection (2) may be revoked or amended by the Minister by order made with the consent of the Treasurer and published in the *Gazette*.

36C. Guarantees

- (1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the performance by the health service provider, in the State or elsewhere, of any financial obligation of the health service provider arising under section 36B.
- (2) A guarantee must be in the form, and subject to the terms and conditions, determined by the Treasurer.
- (3) The due payment of money payable by the Treasurer under a guarantee must be charged to the Consolidated Account, which this subsection appropriates accordingly.
- (4) The Treasurer is to cause any amounts received or recovered, from the health service provider or otherwise, in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

36D. Restricted power to enter arrangements on behalf of other health service providers or State

- (1) A health service provider (the *first provider*) may —
 - (a) enter into a contract or arrangement on behalf of, and binding on, another health service provider (the *second provider*) or the State; and
 - (b) carry out obligations under a contract or arrangement made for the second provider or the State under paragraph (a).

- (2) However, the first provider may enter into the contract or arrangement only if the first provider —
- (a) has the express written authority of —
 - (i) for a contract or arrangement in relation to a second provider — the second provider; or
 - (ii) for a contract or arrangement in relation to the State — the Department CEO on behalf of the State;
- and
- (b) acts in accordance with the written authority.

36E. Health service providers may provide services to each other

- (1) A health service provider (the *first provider*) may enter into a contract or other arrangement with another health service provider (the *second provider*) to —
- (a) provide health services to, or receive health services from, the second provider; or
 - (b) have the second provider provide health services on behalf of the first provider; or
 - (c) provide services other than health services to, or receive other services from, the second provider.
- (2) The power to enter into contracts or other arrangements under subsection (1) is subject to —
- (a) sections 37 and 38; and
 - (b) the limitation that a health service provider must not enter a contract to provide a health service mentioned in section 7(2)(a) and (b) unless the provision of the health service is within the health service area for which the

s. 21

health service provider is established under section 32(1); and

- (c) other limitations, or the conditions, imposed by a relevant service agreement under section 48(1)(b).

21. Section 37 amended

- (1) In section 37(1) in the definition of *health service land* paragraph (a) delete “in” and insert:

in, or held by,

- (2) Delete section 37(3) and insert:

- (3) A health service provider may only dispose of health service land if —
 - (a) the health service provider has the Minister’s written agreement to dispose of the land; or
 - (b) the disposal is of a class of disposals that has been exempted from the requirement to obtain the Minister’s written agreement by order made by the Minister and published in the *Gazette*.
- (4) The Minister may, by order published in the *Gazette*, revoke or amend an order made under subsection (3)(b).

22. Section 38 amended

- (1) In section 38(1) in the definition of *transaction*:
- (a) in paragraph (b) delete “amount.” and insert:

amount; or
 - (b) after paragraph (b) insert:
 - (c) a gift or act of grace payment under section 36(5)(a) that exceeds the prescribed amount.
- (2) In section 38(2) after “paragraph (b)” insert:
- or (c)

23. Section 41 amended

- (1) Before section 41(1) insert:
- (1A) In this section —
administered provider means a health service provider administered by an administrator.
- (2) In section 41(2) after “governed provider” insert:
- that is not an administered provider

(3) After section 41(3) insert:

- (3A) A document is duly executed by an administered provider if —
- (a) the common seal of the provider is affixed to it in accordance with subsections (4) and (6A); or
 - (b) it is signed on behalf of the provider by a person or persons authorised to do so under subsection (8B).

(4) After section 41(6) insert:

- (6A) The common seal of an administered provider must be affixed to a document in the presence of the administrator, and the administrator must sign the document to attest that the common seal was so affixed.

(5) In section 41(7) delete “seal, authorise a member or members of its board or an employee or employees in the provider” and insert:

common seal, authorise a member or members of its board or an employee or employees in the provider or another health service provider

(6) In section 41(8) after “employees in the provider” insert:

or another health service provider

- (7) After section 41(8) insert:
- (8A) A person authorised under subsection (7) ceases to be authorised if the board governed provider that authorised the person becomes an administered provider.
 - (8B) An administered provider may, by writing under its common seal, authorise an employee or employees in the provider or another health service provider to execute deeds or other documents on its behalf, either generally or subject to such conditions or restrictions specified in the authorisation.
- (8) In section 41(10) delete “subsection (7) or (8).” and insert:
- subsection (7), (8) or (8B).
- (9) In section 41(12)(c) delete “subsection (7) or (8)” and insert:
- subsection (7), (8) or (8B)

24. Section 46 amended

- (1) In section 46(2) delete “health services” and insert:
- health services, and other services,

- (2) Delete section 46(3)(a) and (b) and insert:
- (a) the services (the *services*) to be provided by the health service provider under the agreement, including —
 - (i) the health services to be provided to the State; and
 - (ii) the teaching, training and research in support of the provision of health services; and
 - (iii) the capital works or maintenance works to be commissioned and delivered under the agreement for the purposes of section 20A; and
 - (iv) any clinical commissioning of facilities to be carried out under the agreement for the purposes of section 20A;

25. Section 48 amended

- (1) Delete section 48(1)(b) and insert:
- (b) impose limitations or conditions on when and how a health service provider may agree to provide a service to, or receive a service from, another health service provider.
- (2) Delete section 48(2).
- (3) In section 48(3) delete “the relevant” and insert:

any relevant

26. Section 49 amended

(1) In section 49(1) delete “one year.” and insert:

3 years.

(2) After section 49(1) insert:

(1A) However, if it is considered necessary —

- (a) the Department CEO may extend the term of a service agreement that is not a Commission service agreement for a further 12 months after the end of the term of the agreement; and
- (b) the Commission CEO may extend the term of a Commission service agreement for a further 12 months after the end of the term of the agreement.

(3) In section 49(2) delete “the relevant” and insert:

any relevant

27. Section 52 amended

In section 52(1) delete “the year” and insert:

each year

28. Sections 53A and 53B inserted

At the beginning of Part 6 insert:

53A. Terms used

In this Part —

compensable charge, for a health service or former hospital service, means a fee or charge that a person who received compensation could be charged for the service when the service was provided;

compensation has the meaning given in section 53B;

compensation payer means a person who must pay compensation to another person in relation to an injury;

injury includes an illness or disease.

53B. What is compensation

(1) In this Part, *compensation* is a payment —

- (a) made in relation to an injury to a person (whether or not the payment is made to the person who suffered the injury and received the health service or former hospital service) that is —
 - (i) a payment of damages; or
 - (ii) a payment under a scheme of insurance or compensation under a written law or a law of the Commonwealth, a State or a Territory, but not including a payment under such a scheme to which the recipient has contributed; or
 - (iii) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under an insurance

scheme of a kind to which
subparagraph (ii) applies; or

- (iv) any other compensation or damages payment, other than a payment under a scheme to which the recipient has contributed; or
- (v) a payment of a kind, or in circumstances, prescribed by the regulations;

and

- (b) that is paid or payable after the day on which the *Health Services Amendment Act 2023* section 31 comes into operation, whether or not the injury, or the health service or former hospital service received in relation to the injury, occurs before or after that day.

- (2) However, *compensation* does not include a payment of a kind, or in circumstances, prescribed by the regulations.

29. Section 55 replaced

Delete section 55 and insert:

55. Fees and charges for provision of health services

- (1) A health service provider may determine and impose a fee or charge for the provision of a health service by the health service provider unless the service is —
 - (a) a health service provided to a person in respect of which it has been agreed under the National Health Agreement that the person is not to be charged, but only if the Agreement is in force at the time the service is provided; or

s. 30

- (b) a health service in respect of which the Minister has made an order under section 56(2)(b), but only if the order is in force at the time the service is provided.
- (2) A health service provider must not determine or impose a fee or charge under subsection (1) that is inconsistent with —
 - (a) an order made under section 56; or
 - (b) any policy framework issued under section 26(2)(e).

30. Section 56 amended

- (1) In section 56(2)(a) delete “a scale of” .
- (2) In section 56(4) delete “any scale of” .
- (3) After section 56(6)(a) insert:
 - (aa) confer a discretion on a person to determine whether a patient falls within a class of patient; and
 - (ab) specify criteria that a person may, or must, use to determine whether a patient falls within a class of patient; and

Note: The heading to amended section 56 is to read:

Minister may fix fees and charges for health services

31. Section 58 replaced

Delete section 58 and insert:

57A. Liability for, and right to recover, compensable charges for health services

- (1) This section applies if —
 - (a) a person (a *patient*) receives a health service from a health service provider in relation to an injury; and
 - (b) the health service provider that provides the health service to the patient did not charge the patient a compensable charge for the service.
- (2) When compensation is paid or payable in relation to an injury for which the patient received a health service, the compensable charge for the health service is payable to the health service provider that provided the health service.
- (3) The health service provider may recover the compensable charge payable under subsection (2) from —
 - (a) a compensation payer in relation to the injury if the compensation payer has not paid, or has partially paid, the compensation to the patient or patient's estate; or
 - (b) the patient if the patient receives compensation in relation to the injury; or
 - (c) the patient's estate if —
 - (i) the patient receives any compensation in respect of an injury before the patient dies; or

- (ii) the patient's estate receives any compensation in respect of an injury after the patient dies;
 - or
 - (d) another person who receives compensation on behalf of, or at the direction of, the patient.
- (4) If there is more than 1 compensation payer under subsection (3)(a), each person liable to pay compensation is jointly and severally liable to the health service provider for the compensable charge for the health service.
- (5) If the compensation payer pays the compensable charge to the health service provider under subsection (3)(a), the payment discharges the compensation payer's liability to pay —
- (a) an amount of compensation equivalent to the payment made to the patient or the patient's estate; and
 - (b) the compensable charge required to be paid under this Part.

57B. Liability for, and right to recover, compensable charges for former hospital services

- (1) This section applies if —
- (a) a person (a *patient*) received a former hospital service from a former public hospital in relation to an injury; and
 - (b) the former public hospital who provided the former hospital service to the patient did not charge the patient a compensable charge for the service.
- (2) When compensation is paid or payable in relation to an injury for which the patient received a former hospital

service, the compensable charge for the service is payable to the successor health service provider for the former public hospital that provided the service.

- (3) The successor health service provider for the former public hospital may recover the compensable charge for the former hospital service payable under subsection (2) from —
- (a) a compensation payer in relation to the injury if the compensation payer has not paid, or has partially paid, the compensation to the patient or patient's estate; or
 - (b) the patient if the patient receives compensation in relation to the injury; or
 - (c) the patient's estate if —
 - (i) the patient receives any compensation in respect of an injury before the patient dies; or
 - (ii) the patient's estate receives any compensation in respect of an injury after the patient dies;
- or
- (d) another person who receives compensation on behalf of, or at the direction of, the patient.
- (4) If there is more than 1 compensation payer under subsection (3)(a), each person liable to pay compensation is jointly and severally liable to the successor health service provider for the compensable charge for the former hospital service.
- (5) If the compensation payer pays the compensable charge to the successor health service provider under

subsection (3)(a), the payment discharges the compensation payer's liability to pay —

- (a) an amount of compensation equivalent to the payment made to the patient or the patient's estate; and
- (b) the compensable charge required to be paid under this Part.

57C. Waiving or refunding compensable charges payable under section 57A or 57B

A health service provider may waive, or refund, the whole or any part of a compensable charge that is payable, or has been paid, under section 57A or 57B.

57D. Recovering amounts from compensation payer in relation to compensable charges

- (1) This section applies if —
 - (a) a compensation payer has not paid, or has partially paid, compensation to the patient or the patient's estate in relation to an injury; and
 - (b) the health service provider to which a compensable charge is payable under this Part in relation to the injury has not been paid the compensable charge; and
 - (c) the chief executive of the health service provider has given notice to the compensation payer about the compensable charge that may be recovered under this Part.
- (2) The compensation payer must pay the compensable charge to the health service provider before paying the compensation to the patient or patient's estate.

58. Regulations about recovery of compensable charges

- (1) In this section —
treated injury, in relation to a person, means an injury for which the person —
- (a) receives a health service from a health service provider; or
 - (b) has received a former hospital service.
- (2) The regulations may —
- (a) require prescribed persons, or persons in a prescribed class, to give information or a document to a health service provider for the purposes of this Part, such as information or a document about —
 - (i) whether a person has made, or intends to make, a claim for compensation in relation to a person's treated injury; and
 - (ii) whether a person receives, or will receive, any compensation in respect of a person's treated injury; and
 - (iii) whether a person has had, or intends to have, another person seek compensation on their behalf in relation to the person's treated injury; and
 - (iv) whether a person is seeking, or intends to seek, compensation in relation to another person's treated injury; and
 - (v) the terms of a proposed or finalised settlement or consent order in relation to a claim for compensation for a person's treated injury; and
 - (vi) the terms of an award given to a person in relation to a person's treated injury; and

s. 31

(vii) matters related to the claim for compensation, and the health services or former hospital services that have been provided, in relation to a person's treated injury;

and

(b) require or permit the chief executive of a health service provider to give notice to prescribed persons, or persons in a prescribed class, about compensable charges that may be recovered under this Part, including notice of —

(i) a health service provider's intention to recover the compensable charges from a person under this Part, and the amount that the health service provider may recover; and

(ii) the health services, or former hospital services, that the health service provider or former public hospital provided in relation to a person's treated injury; and

(iii) the compensable charges for those services provided in relation to the treated injury in relation to which compensation is, or was, sought;

and

(c) specify the manner in which it is to be determined whether or not a health service or former hospital service was provided in the course of treatment of, or as a result of, a person's treated injury; and

(d) require a person seeking compensation in relation to a person's treated injury to take into account in a claim for compensation the compensable charges that the health service

provider may recover from the person seeking the compensation; and

- (e) specify the manner in which the recovery of a compensable charge for the provision of health services or former hospital services is to be apportioned if —
 - (i) liability for the act or omission causing the treated injury is apportioned in a judgment or settlement; or
 - (ii) a component of the compensation is specified to be for expenses that have already been incurred;

and

- (f) provide for the recovery of amounts that a person is liable to pay to a health service provider under sections 55, 57A and 57B, including —
 - (i) how the health service provider may recover the amount; and
 - (ii) how a person may seek review, including review by the State Administrative Tribunal, of a health service provider's decision under this Part or the regulations made for the purposes of this section.

(3) Regulations made under subsection (2)(a) may —

- (a) provide that an individual is not excused from complying with a requirement to give information or a document that might tend to incriminate the individual or make the individual liable to a penalty; and

s. 32

- (b) require the information or document to be given even if the information or document is, or contains, confidential information; and
 - (c) without limiting section 220, provide that a person giving the information or document does not breach an obligation of confidence in relation to confidential information; and
 - (d) prohibit a person from giving information or a document that the person knows is false or misleading in a material particular.
- (4) If the regulations make provision under subsection (3)(a), information or a document given by an individual in compliance with a requirement under regulations made under subsection (2)(a) is not admissible in evidence in any criminal proceedings against the individual, other than proceedings for an offence against the regulations made under subsection (2)(a) or (3)(d).

32. Section 59 amended

Delete section 59(2) and insert:

- (2) A fee or charge imposed by the health service provider under subsection (1) must not —
- (a) differ from a fee or charge prescribed under section 210(3)(b)(i) or 230(2)(c); or
 - (b) be inconsistent with any policy framework issued under section 26(2)(e).

33. Section 60 amended

In section 60(4)(b) delete “in respect”.

34. Section 62 amended

- (1) In section 62(2) delete “prescribed circumstances if the amount of the money is less than the amount approved under subsection (3).” and insert:

the circumstances specified in an order made by the Minister with the consent of the Treasurer and published in the *Gazette*.

- (2) Delete section 62(3) and insert:

- (3) An order under subsection (2) may be revoked or amended by the Minister by order made with the consent of the Treasurer and published in the *Gazette*.

35. Section 66 replaced

Delete section 66 and insert:

66. Notice of financial difficulty

If the accountable authority of a health service provider considers, after having regard to any policy framework issued under section 26(2)(e), that the health service provider is in financial difficulty, the accountable authority must —

- (a) notify the Department CEO in a manner consistent with any relevant policy framework; and
- (b) give reasons why the health service provider is in financial difficulty.

66A. Department CEO response to notice of financial difficulty

- (1) This section applies if the Department CEO receives a notice of financial difficulty under section 66.
- (2) The Department CEO may —
 - (a) require further financial information from the health service provider under section 67; or
 - (b) require the health service provider to take action; or
 - (c) if the Department CEO is satisfied that the health service provider is not in financial difficulty — take no action.
- (3) If the Department CEO is satisfied that the health service provider is in financial difficulty, the Department CEO —
 - (a) may take action to ensure that the health service provider is no longer in financial difficulty; and
 - (b) must —
 - (i) forward to the Minister the notice of financial difficulty; and
 - (ii) advise the Minister about any action taken, or to be taken.

66B. Minister's response to notice of financial difficulty

- (1) This section applies if —
 - (a) the Minister receives the notice and information under section 66A(3)(b); and
 - (b) the Minister is satisfied that the health service provider is in financial difficulty despite any action taken, or to be taken, under section 66A.

- (2) The Minister must, within 7 days of receipt of the notice and information —
 - (a) confer with the Treasurer and the health service provider for the purpose of determining what action is required to ensure that the health service provider is no longer in financial difficulty; and
 - (b) initiate such action as is required to ensure that the health service provider is no longer in financial difficulty.
- (3) For the purposes of subsection (2), the Minister may give the health service provider a direction under section 60 requiring the health service provider to cease or limit the performance or exercise of any function.

36. Section 67 amended

In section 67(1) delete “authority or an employee in” and insert:

authority of, or an employee in,

37. Section 76A inserted

After section 76 insert:

76A. Removing board members from office

- (1) In this section —
 - misconduct* includes —
 - (a) conduct that renders a member of a board unfit to hold office as a member even though the

s. 38

- conduct does not relate to a duty of the office;
and
- (b) a breach of duty of a board member under —
 - (i) section 79; or
 - (ii) the *Statutory Corporations (Liability of Directors) Act 1996*; or
 - (iii) common law or equity.
- (2) The Minister may remove a member of a board from office on the grounds of —
- (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) absence, without leave, from 3 consecutive ordinary board meetings of which the member has had notice.

38. Section 77 amended

- (1) Delete section 77(1).
- (2) Delete section 77(2)(a) and insert:
 - (a) dies or resigns; or
 - (aa) is removed from office under section 76A; or
- (3) Delete section 77(4).

39. Section 78A inserted

At the end of Part 8 Division 2 Subdivision 1 insert:

78A. Delegation

- (1) A board may delegate any function of the board under another provision of this Act, including the board's functions as an employing authority, to —
 - (a) a committee; or
 - (b) a member of the board; or
 - (c) a staff member of the health service provider or another health service provider.
- (2) A delegation under this section must be in writing signed by each member of the board.
- (3) A person or committee to whom a function is delegated under this section cannot delegate that function.
- (4) A person exercising or performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the board to perform a function through an officer or agent.

40. Part 8 Division 2 Subdivision 2 heading replaced

Delete the heading to Part 8 Division 2 Subdivision 2 and insert:

Subdivision 2 — Duties and personal interests

41. Section 79 amended

After section 79(2) insert:

- (3) Subject to subsections (1) and (2), a member of a board or committee has a duty —
- (a) to act in good faith and in the interests of the health service provider; and
 - (b) not to have a personal interest in conflict with the interests of the health service provider, unless the member has the consent of the board or committee of which the member is a part; and
 - (c) if the member has the consent of the board or committee of which the member is a part under paragraph (b) — to appropriately manage the personal interest that conflicts with the interests of the health service provider; and
 - (d) not to act with an improper purpose; and
 - (e) not to profit at the expense of the health service provider or the State, unless the member has the consent of the board or committee of which the member is a part; and
 - (f) not to use the member's position, or information or knowledge received in that position, to obtain an advantage for a person or disadvantage the health service provider or the State; and
 - (g) not to be employed or engaged by, or act on the behalf of, another person in any capacity that is inconsistent with the interests of the Department, the Department CEO and health service providers, unless the member has the

consent of the board or committee of which the member is a part.

- (4) If a board, committee or the Department CEO considers that it is reasonably likely that a member of the board or committee has breached a duty referred to in this section, the board, committee or Department CEO must advise the Minister of the likely breach of the duty.

Note: The heading to amended section 79 is to read:

Duties of board and committee members

42. Section 94 replaced

Delete section 94 and insert:

94. Term used: adviser

In this Division —

adviser means an adviser appointed under section 95.

43. Section 97 amended

In section 97(2) delete “advisor” and insert:

adviser

44. Section 102 amended

In section 102(5)(b) delete “in respect”.

45. Section 103 amended

In section 103(1) delete the definition of *employing authority* and insert:

employing authority means —

- (a) in relation to a chief executive — the Department CEO; or
- (b) in relation to a health service provider, health executive or an employee (other than a chief executive) of a health service provider —
 - (i) if the health service provider is a board governed provider — the board; or
 - (ii) if the health service provider is a chief executive governed provider — the chief executive.

46. Part 9 Division 2 Subdivision 1 heading replaced

Delete the heading to Part 9 Division 2 Subdivision 1 and insert:

Subdivision 1 — Purposes and composition of the Health Executive Service

47. Section 104A inserted

At the beginning of Part 9 Division 2 Subdivision 1 insert:

104A. Purposes of Health Executive Service

The purposes of the Health Executive Service are —

- (a) to provide for a group of executive officers who are capable of —
 - (i) furnishing high-level strategic and operational advice; and
 - (ii) undertaking managerial responsibilities in health service providers;and
- (b) to promote the efficient and effective provision of health services within the WA health system.

48. Section 105 amended

After section 105(3) insert:

- (4) Before making a written determination under subsection (2) or revoking or amending a determination under subsection (3), the Department CEO must consider whether the written determination will be consistent with the purposes of the Health Executive Service under section 104A.

49. Section 107 amended

In section 107(2)(e) delete “employment, management, supervision, transfer, direction and dismissal” and insert:

management, supervision and direction

s. 50

50. Section 114 amended

In section 114(2)(a) delete “on” and insert:

within 6 weeks after the

51. Section 117 amended

(1) In section 117(1) delete “employee” and insert:

employee, or an employee of the Department, (the *appointee*)

(2) In section 117(2) delete “employee” and insert:

appointee

(3) In section 117(5) delete “An employee directed under subsection (1) to act in an office —” and insert:

The appointee —

52. Section 118 amended

(1) In section 118(4) delete “award, order or industrial agreement under the *Industrial Relations Act 1979*, whether made or registered, as the case requires, before or after the commencement of this section,” and insert:

industrial instrument

- (2) In section 118(5) delete “award, order or industrial agreement under the *Industrial Relations Act 1979*” and insert:

industrial instrument

53. Section 119 amended

In section 119(1):

- (a) delete “Act” and insert:

Act, including the chief executive’s functions as a responsible authority under Part 10 or an employing authority,

- (b) delete paragraph (a) and insert:

- (a) a staff member of the health service provider or another health service provider; or

54. Section 121 amended

- (1) After section 121(1) insert:

- (1A) The classification and remuneration of an appointment under subsection (1) must be —
- (a) in accordance with any classification level and remuneration of health executives under section 20(1)(g); and
 - (b) in accordance with any relevant policy framework; and
 - (c) appropriate to the functions to be performed by the person appointed.

s. 54

- (1B) An appointment under subsection (1) is subject to —
- (a) the classification level and remuneration of the appointment under subsection (1A); and
 - (b) the health executive’s contract of employment under section 128.
- (2) In section 121(2) delete “award, order or industrial agreement under the *Industrial Relations Act 1979*.” and insert:
- industrial instrument.
- (3) Delete section 121(5) and insert:
- (5) A person is taken to be appointed to an office of health executive in the health service provider under subsection (1) if —
- (a) the person holds an office that is the subject of a written determination under section 105(2) (whether the determination is made before, on or after the commencement of this subsection); and
 - (b) when the written determination is made, the appointment is governed by a contract of employment.

55. Section 123A inserted

After section 123 insert:

123A. Acting health executives

- (1) The employing authority of a health service provider may direct an employee of the health service provider to act in an office of health executive —
 - (a) during a vacancy in the office; or
 - (b) during a period when the employee holding the office is, or is expected to be, absent or for any reason unable to perform the functions of the office.
- (2) The direction under subsection (1) must specify the period, not exceeding 12 months, for which the employee can act.
- (3) The employing authority of a health service provider may cancel the direction at any time.
- (4) The employee —
 - (a) must comply with the direction; and
 - (b) has, while acting in the office, all the powers and functions of the office.

56. Section 140 amended

- (1) In section 140(1) delete “A” and insert:

An employing authority of a

- (2) In section 140(3):
- (a) delete “award, order or industrial agreement under the *Industrial Relations Act 1979*,” and insert:

industrial instrument,
 - (b) delete “health service provider” and insert:

employing authority

57. Section 145 amended

In section 145(2) delete “*Health Practitioner Regulation National Law (Western Australia)*” and insert:

Health Practitioner Regulation National Law

58. Section 146 amended

In section 146(1) delete “*Health Practitioner Regulation National Law (Western Australia)*” and insert:

Health Practitioner Regulation National Law

59. Section 147 amended

In section 147(1):

- (a) in paragraph (a) delete “*Health Practitioner Regulation National Law (Western Australia)*; or” and insert:

Health Practitioner Regulation National Law; or

- (b) in paragraphs (b) and (c) delete “*Health Practitioner Regulation National Law (Western Australia)*” and insert:

Health Practitioner Regulation National Law

60. Section 149 amended

Delete section 149(2) and insert:

- (2) Unless the employing authority of an employee otherwise directs, any salary withheld under subsection (1) is forfeited to the State if —
- (a) the employee suspended under section 147 does not successfully appeal under the Health Practitioner Regulation National Law against the action taken under that Law as mentioned in section 147(1)(a) or (b); or
 - (b) the employee suspended under section 148 is convicted or found guilty of the offence concerned or another serious offence.

61. Section 150 amended

(1) Delete section 150(1) and insert:

- (1) The employing authority of an employee may take such disciplinary action or improvement action, or both disciplinary action and improvement action, as the employing authority considers appropriate (having regard to section 151) with respect to the employee, if —
- (a) the registration of the employee as a registered health practitioner is suspended under the

Health Practitioner Regulation National Law;
or

- (b) conditions are imposed on the registration of the employee as a registered health practitioner under the Health Practitioner Regulation National Law that, in the opinion of the employee's employing authority, are inconsistent with any of the inherent requirements of the terms of employment of the employee; or
- (c) conditions are imposed on the registration of the employee as a registered health practitioner under the Health Practitioner Regulation National Law that, in the opinion of the employee's employing authority, the health service provider in which the health practitioner is employed will be unable to accommodate for operational reasons.

- (2) In section 150(2)(a) and (b) delete "*Health Practitioner Regulation National Law (Western Australia)*" and insert:

Health Practitioner Regulation National Law

62. Section 157 amended

Delete section 157(1).

63. Section 161 amended

In section 161(b)(i) before "applicable" insert:

or the PSM Act

64. Section 167 amended

Delete section 167(4) and insert:

- (4) The Department CEO may notify any employing authority of a health service provider of the matters notified under subsection (2) if the Department CEO considers that —
 - (a) it is necessary to ensure the safety of patients;
or
 - (b) the information is relevant to the carrying out of the employing authority's functions.

65. Section 176 amended

In section 176 delete “the policy framework mentioned in section 26(2)(j) and”.

66. Section 177 amended

In section 177(1) in the definition of *confidential information* delete “means” and insert:

includes

67. Section 182 amended

In section 182 delete “Division — ” and insert:

Part —

68. Section 187 amended

(1) Before section 187(1) insert:

(1AA) In this section —

confidential information includes any information that —

- (a) is about a person who is receiving or has received a health service; and
- (b) could identify the person;

record —

- (a) means any record of information, irrespective of how the information is recorded or stored or able to be recovered; and
- (b) includes —
 - (i) anything from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
 - (ii) anything on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means.

(2) In section 187(1):

(a) in paragraph (e) delete “person.” and insert:

person; and

(b) after paragraph (e) insert:

(f) may exercise powers under subsections (1A) and (1B).

- (3) After section 187(1) insert:
- (1A) The inquirer may enter the premises of a health service provider (including any hospital or other facility controlled or managed by the health service provider) for the purposes of an inquiry.
 - (1B) On entering premises under this section the inquirer may do 1 or more of the following —
 - (a) inspect the premises;
 - (b) generally make any investigation or inquiry that is relevant to the functions, management or operations of the health service provider;
 - (c) examine any records of the health service provider, including records containing confidential information, that are relevant to the inquirer's functions;
 - (d) make copies of records referred to in paragraph (c) or any part of them and, for that purpose, take away and retain any of those records or any part of them for any time that may be reasonably necessary;
 - (e) require a person in or about the premises to provide information or answer questions in connection with the inquirer's functions;
 - (f) require any person to produce any record or other thing in the possession or under the control of the person that relates to, or that the inquirer believes on reasonable grounds relates to, the functions, management or operations of the health service provider;
 - (g) require the owner or occupier of the premises to provide the inquirer with such assistance and facilities as is or are reasonably necessary to

enable the inquirer to exercise functions under this section.

- (4) In section 187(2) delete “subsection (1)” and insert:

subsections (1), (1A) and (1B)

69. Section 188 amended

- (1) Delete section 188(2) and insert:

(2) A person must not, without lawful excuse, refuse or fail to produce a document as required by —

- (a) a notice under section 187(1)(b); or
- (b) an inquirer under section 187(1B)(f).

Penalty for this subsection: a fine of \$10 000.

- (2) Delete section 188(4) and insert:

(4) A person must not, without lawful excuse, refuse or fail to —

- (a) answer a question when required to do so under section 187(1)(e); or
- (b) provide information or answer questions when required to do so under section 187(1B)(e).

Penalty for this subsection: a fine of \$10 000.

70. Section 193 amended

(1) In section 193(1):

(a) in paragraph (a) before “written” insert:

draft

(b) in paragraph (b) before “report” insert:

draft

(c) in paragraph (c) delete “report to the inquirer with 28 days after receiving the” and insert:

draft report to the inquirer within 28 days after receiving the draft

(2) In section 193(2):

(a) before “report” insert:

draft

(b) in paragraph (a) before “findings” insert:

preliminary

(c) in paragraph (b) before “recommendations” (both occurrences) insert:

draft

(d) delete paragraph (c).

s. 71

- (3) After section 193(2) insert:
- (2A) After considering any comments on the draft report received by the inquirer under subsection (1)(c), the inquirer must —
- (a) prepare a final report that includes —
 - (i) the inquirer’s final findings, conclusions and recommendations; and
 - (ii) any prescribed matters under subsection (2)(d);
 - and
 - (b) give the final report to —
 - (i) the Minister; and
 - (ii) if the inquirer is not the Department CEO — the Department CEO.
- (4) In section 193(3) before “report” (first occurrence) insert:

final

71. Part 15 Division 1 replaced

Delete Part 15 Division 1 and insert:

Division 1 — Transfers of property between health entities

194. Minister may order transfer of assets, rights or liabilities

- (1) In this section —

associated interest, in relation to a health asset that is land, means a lease, easement, occupancy right, contract, agreement, asset, liability, licence, instrument or other right, function or obligation associated with the land;

earlier transfer order includes a transfer order under section 194 or 238 as in force before the *Health Services Amendment Act 2023* section 71 comes into operation;

health asset means land or an asset, right or liability held for —

- (a) the purposes of this Act or the former Act; or
- (b) the purpose of providing a health service; or
- (c) a purpose associated with, or in relation to, the purposes of this Act, the former Act or providing a health service;

Example for paragraph (c):

Land used for accommodating staff who work on land used to provide a health service.

health entity means —

- (a) the Crown; and
- (b) the State; and
- (c) the Minister; and
- (d) the body corporate established under the *Health (Miscellaneous Provisions) Act 1911*; and
- (e) the Ministerial Body; and
- (f) a health service provider; and
- (g) another Minister, including a Minister to whom the administration of the former Act was committed; and
- (h) another person who holds land for or on behalf of the State.

- (2) The Minister may, by order (a ***section 194 transfer order***) published in the *Gazette* —
 - (a) transfer a health asset held by a health entity to the State, the Ministerial Body or a health service provider; or
 - (b) transfer an associated interest in relation to a health asset that is land held by a health entity to the State, the Ministerial Body or a health service provider.
- (3) A section 194 transfer order may specify things by reference to 1 or more schedules that —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection.
- (4) Anything specified in a schedule to a section 194 transfer order is taken to be specified in the order.
- (5) A thing may be specified in a section 194 transfer order by describing the class to which it belongs.
- (6) A section 194 transfer order takes effect on a day stated in the order.
- (7) Before a section 194 transfer order relating to a health asset that is land or an associated interest in relation to a health asset that is land is made specifying anything by reference to a schedule, the Minister must consult with each relevant lands official about the form and content of the schedule.
- (8) To the extent to which a schedule to a section 194 transfer order relates to the functions of the Registrar of Titles, the schedule must be in a form that meets the requirements of the Registrar.

- (9) A section 194 transfer order may amend an earlier transfer order or a schedule to a section 194 transfer order, or a further section 194 transfer order may be made, to correct an error in an earlier transfer order or a schedule to a section 194 transfer order.
- (10) A reference in a written law, contract or other document to the health entity from whom a health asset or associated interest in relation to a health asset that is land is transferred under a section 194 transfer order is taken, on and after the day stated in the order, to be a reference to a person to whom the health asset or associated interest is transferred in the order.
- (11) A section 194 transfer order may contain provisions of a savings or transitional nature consequent on the making of the order.
- (12) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (7) or (8) was not complied with.

72. Section 200 amended

- (1) In section 200(2)(a):
 - (a) delete “transfer order made under section 194” and insert:

section 194 transfer order
 - (b) delete “transfer order; and” and insert:

section 194 transfer order; and

s. 73

- (2) In section 200(5)(a):
- (a) delete “transfer order made under section 194” and insert:

section 194 transfer order
 - (b) delete “transfer order; and” and insert:

section 194 transfer order; and

73. Section 202 deleted

Delete section 202.

74. Section 203 amended

In section 203 before “transfer” (each occurrence) insert:

section 194

75. Section 205 amended

In section 205(3) before “transfer order” insert:

section 194

76. Section 206 amended

In section 206 before “transfer order” insert:

section 194

77. Section 208 amended

In section 208(1) delete “land vested in, or under the care, control and management of, a health service provider to be health service provider land.” and insert:

of the following land to be health service provider land —

- (a) land vested in, or held by, a health service provider;
- (b) Crown land that is a reserve under the *Land Administration Act 1997* section 41 in respect of which a health service provider is the management body for the land;
- (c) health property in relation to which a health service provider has entered into a joint arrangement.

78. Section 213 amended

- (1) In section 213 delete the definition of ***health information***.
- (2) In section 213 insert in alphabetical order:

health information means personal information, whether collected before, on or after the *Health Services Amendment Act 2023* section 78 comes into operation, that is —

- (a) information, or an opinion, about —
 - (i) the health (at any time) of an individual;
or
 - (ii) a disability (at any time) of an individual; or

s. 79

(iii) an individual's expressed wishes about the future provision of health services to the individual; or

(iv) a health service provided, or to be provided, to an individual;

or

(b) other personal information collected to provide, or in providing, a health service to an individual;

legal process —

(a) means a subpoena, summons, order or other legal requirement that health information be disclosed; but

(b) does not include a legal requirement under the *Freedom of Information Act 1992* to disclose a document.

(3) In section 213 in the definition of ***information policy framework*** delete “section 26(2)(k).” and insert:

section 26(2)(k);

79. Section 215 amended

(1) Before section 215(1) insert:

(1A) In this section —

CEO means the CEO within the meaning of the *Health Legislation Administration Act 1984* as in operation immediately before 1 July 2016.

(2) Delete section 215(1)(a) and insert:

- (a) health information collected by —
 - (i) a health service provider or the Department CEO; or
 - (ii) if the health information was collected before 1 July 2016 by the CEO or a former public hospital to provide a former hospital service, the CEO or former public hospital;

80. Section 216 amended

In section 216 delete “disclose health information for any of these” and insert:

collect, use and disclose information, including health information, for any of the following

Note: The heading to amended section 216 is to read:

Collection, use and disclosure of information by Department CEO

81. Section 217A inserted

After section 217 insert:

217A. Disclosure of health information in health information management system under legal process

- (1) This section applies if a legal process requires the Department CEO to disclose health information to a person or court and the health information is —
 - (a) about or in relation to a patient; and

s. 81

- (b) contained in a health information management system.
- (2) The legal process may be complied with by —
 - (a) the Department CEO; or
 - (b) if the information was collected by a health service provider — the health service provider; or
 - (c) if the information was collected by a former public hospital — the successor health service provider for the former public hospital.
- (3) The Department CEO may direct that a health service provider comply with the legal process if the Department CEO considers it is appropriate for the health service provider to comply with the legal process and —
 - (a) the health information was collected by the health service provider; or
 - (b) both of the following apply —
 - (i) the health information was collected by a former public hospital;
 - (ii) the health service provider is the successor health service provider for the former public hospital.
- (4) If the Department CEO gives a direction under subsection (3), the health service provider must comply with the legal process.
- (5) If a health service provider complies with the legal process, the Department CEO is taken to comply with the legal process.

82. Section 231 amended

- (1) Delete section 231(4) and insert:
- (4) Regulations may adopt the code or subsidiary legislation by reference as existing or in force —
 - (a) at a particular date; or
 - (b) from time to time; or
 - (c) when the regulations are made.
 - (4A) The code or subsidiary legislation is adopted as existing or in force when the regulations are made if the regulations adopt the code or subsidiary legislation by reference without specifying that —
 - (a) the code or subsidiary legislation is adopted from time to time; or
 - (b) a particular text is adopted.
 - (4B) If the regulations adopt the code or subsidiary legislation by reference as existing or in force at a particular date under subsection (4)(a) or when the regulations are made under subsection (4)(c) or (4A), any amendments made to the code or subsidiary legislation after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.
- (2) In section 231(5) delete “a code or subsidiary legislation by reference,” and insert:

the code or subsidiary legislation by reference at a particular date, when the regulations are made or without reference to a particular date,

83. Part 20 replaced

Delete Part 20 and insert:

Part 20 — Transitional, saving and validation provisions for the *Health Services Amendment Act 2023*

Division 1 — Validation of acts done by or on behalf of the State

259. Terms used

In this Division —

commencement day means the day on which the *Health Services Amendment Act 2023* section 83 comes into operation;

health entity has the meaning given in section 194(1).

260. Validation of pre-commencement conduct in relation to health interests

(1) In this section —

government entity means a health service provider, the State, the Minister or the Ministerial Body;

health interest means an interest vested in or held by a health entity for —

- (a) the purposes of this Act or the former Act; or
- (b) the purpose of providing a health service; or
- (c) a purpose associated with, or in relation to, the purposes of this Act, the former Act or providing a health service;

interest —

- (a) means an interest in land or an asset, right or liability; and
 - (b) includes an agreement, asset, contract, easement, instrument, lease, liability, licence or other occupancy right or other right, function or obligation.
- (2) This section applies if —
- (a) before commencement day, a government entity did or made, or purportedly did or made, an act or omission (the ***relevant act or omission***) in relation to a health interest, including granting an interest in the health interest; and
 - (b) when the relevant act or omission was done or made, or purportedly done or made, the health interest was vested in, or held by, a health entity (the ***holding health entity***) that was not the government entity; and
 - (c) the relevant act or omission was not valid and effective but only because the health interest was not vested in, or held by, the government entity.
- (3) The following provisions apply, and are taken always to have applied, in relation to the relevant act or omission —
- (a) the relevant act or omission is taken —
 - (i) to have been done or made by the holding health entity; and
 - (ii) to be valid and effective;
 - (b) to the extent necessary in consequence of, or otherwise to give full effect to, paragraph (a) — any acts or omissions (other than the relevant

act or omission) done or made, or purportedly done or made, by, or in relation to, the government entity are taken —

- (i) to have been done or made by, or in relation to, the holding health entity;
and
 - (ii) to be valid and effective;
 - (c) to the extent necessary in consequence of, or otherwise to give full effect to, paragraphs (a) and (b) — any other acts or omissions done or made, or purportedly done or made, that would not otherwise be valid and effective are taken to be valid and effective.
- (4) The rights, obligations and liabilities of all health entities and other persons are taken to be, and to always have been, in accordance with the provisions set out in subsection (3).

261. Particular entities performing health services taken to be contracted health entities performing public health services

- (1) This section applies to a non-government entity that provides health services under a contract or other agreement entered into with the Premier before commencement day.
- (2) The non-government entity is taken to have been a contracted health entity while the contract or other agreement is in force.
- (3) A health service provided by the non-government entity under the contract or agreement entered into with the Premier is, and is taken to have been on and from the day on which the entity entered into the contract or agreement, a public health service.

- (4) Health information collected by the non-government entity before commencement day that is held in a health information management system is, and is taken to always have been, health information collected by a contracted health entity and held in the health information management system under section 215(1).
- (5) A staff member of the non-government entity that was given access to health information in a health information management system before commencement day is, and is taken to always have been, a staff member of a contracted health entity for the purposes of section 215(2)(c).

262. Validation of acts done by Department CEO or authorised person in relation to land not held by Minister or Ministerial Body

- (1) Subsection (2) applies if —
 - (a) before commencement day, the Department CEO purported to do an act (the *relevant act*) under a delegation under section 15 in relation to land vested in, or held by, a health entity (the *holding health entity*) other than the Minister; and
 - (b) the relevant act was not valid and effective but only because the land was not vested in, or held by, the Minister.
- (2) The following provisions apply, and are taken always to have applied, in relation to the relevant act —
 - (a) the relevant act is taken —
 - (i) to have been done by the holding health entity; and
 - (ii) to be valid and effective;

- (b) to the extent necessary in consequence of, or otherwise to give full effect to, paragraph (a) — any acts (other than the relevant act) or omissions done or made, or purportedly done or made, by, or in relation to, the Department CEO or Minister are taken —
 - (i) to have been done or made by, or in relation to, the holding health entity; and
 - (ii) to be valid and effective;
 - (c) to the extent necessary in consequence of, or otherwise to give full effect to, paragraphs (a) and (b) — any other acts or omissions done or made, or purportedly done or made, that would not otherwise be valid and effective are taken to be valid and effective.
- (3) Subsection (4) applies if —
- (a) before commencement day, the Department CEO (or another person authorised to execute deeds or other documents) purported to execute a deed or other document under section 12(5) in relation to land vested in, or held by, a health entity (the *relevant health entity*) other than the Ministerial Body; and
 - (b) the document was not valid and effective but only because the land was not vested in, or held by, the Ministerial Body.
- (4) The following provisions apply in relation to the document —
- (a) the document is taken —
 - (i) to have been executed by the relevant health entity; and
 - (ii) to be valid and effective;

-
- (b) to the extent necessary in consequence of, or otherwise to give full effect to, paragraph (a) — any acts or omissions (other than the execution of the document) done or made, or purportedly done or made, by, or in relation to, the Department CEO or Ministerial Body are taken —
- (i) to have been done or made by, or in relation to, the relevant health entity; and
 - (ii) to be valid and effective;
- (c) to the extent necessary in consequence of, or otherwise to give full effect to, paragraphs (a) and (b) — any other acts or omissions done or made, or purportedly done or made, that would not otherwise be valid and effective are taken to be valid and effective.
- (5) The rights, obligations and liabilities of all health entities and other persons are taken to be, and to always have been, in accordance with the provisions set out in subsection (2) or (4) (as the case requires).
- (6) This section does not limit section 260.

263. Validation of declarations of health service provider land under s. 208

- (1) In this section —
- health service provider land* has the meaning given in section 207;
- provider offence* has the meaning given in section 212(1);
- responsible provider* has the meaning given in section 212(1);

validated land means land taken under subsection (3) to have been validly declared to be health service provider land under section 208.

- (2) This section applies to land —
 - (a) purportedly declared before commencement day by the Minister to be health service provider land under section 208; but
 - (b) that was not vested in, or under the care, control and management of, a health service provider when or after the land was so declared.
- (3) The land is taken to be, and to always have been, validly declared to be health service provider land under section 208 for so long as the declaration purported to be in operation.
- (4) The rights, obligations and liabilities of all health entities and other persons are taken to be, and to always have been, the same as if the validated land had been validly declared under section 208 to be health service provider land.
- (5) Anything done, or purportedly done, in relation to validated land before commencement day is as valid and effective as it would have been if the validated land had been validly declared under section 208 to be health service provider land at the time the thing was done.
- (6) In subsection (5), a reference to the doing of anything includes a reference to any omission to do anything.
- (7) Regulations made under Part 16 and the offence under section 211(4) in relation to health service provider land are taken to have, and to have always had, full force and effect in relation to validated land.

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- (8) In a proceeding for a provider offence in relation to validated land commenced before commencement day —
- (a) the proceeding is taken to have validly commenced; and
 - (b) if the proceeding was commenced in the name of a health service provider under section 212(2), the health service provider is taken to be the responsible provider in relation to the validated land where the provider offence occurred.
- (9) If a person was convicted of a provider offence in relation to validated land before commencement day, the conviction cannot be quashed or set aside only on the ground that the validated land was not validated land when the provider offence was committed.
- (10) If an infringement notice was issued in relation to a provider offence before commencement day, the infringement notice cannot be invalidated only on the ground that the validated land was not validated land when the infringement notice was issued.
- (11) If a pecuniary penalty was paid to a health service provider under section 212(5) for a provider offence in relation to validated land, the payment to the health service provider is taken to have been validly made to the responsible provider under section 212(5).

264. Exemption from State tax

- (1) State tax is not payable in relation to —
- (a) anything that occurs by operation of this Division; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind

made, executed, lodged or given) under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.

- (2) The Minister may certify in writing that —
- (a) a specified thing occurred by operation of this Division; or
 - (b) a specified thing was done under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.
- (3) For all purposes and in all proceedings, a certificate under subsection (2) is sufficient evidence of the matters it certifies unless the contrary is shown.

84. Part 20 Division 2 inserted

At the end of Part 20 (as inserted by section 83 of this Act) insert:

Division 2 — Transitional provisions about reserves on eligible Crown land

265. Terms used

In this Division —

eligible Crown land —

- (a) means Crown land that is —
 - (i) a reserve under the *Land Administration Act 1997* section 41 in respect of which a reserve health entity is the management body for the land; and
 - (ii) reserved for a health purpose;

but

- (b) does not include The Queen Elizabeth II Medical Centre Reserve reserved under the *Queen Elizabeth II Medical Centre Act 1966* section 6;

health purpose means any or all of the following purposes —

- (a) the purposes of this Act or the former Act;
- (b) the purpose of providing a health service;
- (c) a purpose associated with, or in relation to, the purposes of this Act, the former Act or providing a health service;

Example for paragraph (c):

Land used for accommodating staff who provide a health service.

reserve change day means the day on which the *Health Services Amendment Act 2023* section 84 comes into operation;

reserve health entity —

- (a) means a health entity as defined in section 194(1); but
- (b) does not include the Crown or the State.

266. Change of management body of Crown reserves in relation to eligible Crown land

- (1) The Minister may, by order (a ***reserve order***) published in the *Gazette*, change the management body of eligible Crown land from a reserve health entity to the Ministerial Body or a health service provider for the purposes of the *Land Administration Act 1997* section 46(1).

- (2) A reserve order may specify things by reference to 1 or more schedules that —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection.
- (3) Anything specified in a schedule to a reserve order is taken to be specified in the reserve order.
- (4) A thing may be specified in a reserve order by describing the class to which it belongs.
- (5) If the eligible Crown land the subject of a reserve order is reserved other than for the purposes of this Act, the reserve order may provide that the purpose of the reserve is changed to be for the purposes of this Act.
- (6) A reference in a written law or other document to the reserve health entity who, before the reserve order, was the management body of the eligible Crown land is taken, on and after the reserve change day, to be a reference to the person who is the management body of the eligible Crown land under the order.
- (7) A reserve order may contain provisions of a savings or transitional nature consequent on the making of the order.
- (8) A reserve order takes effect on the reserve change day.
- (9) For the purposes of section 270 and the *Land Administration Act 1997* —
 - (a) a reserve order must be treated as if it were —
 - (i) an order made under the *Land Administration Act 1997* section 50(1)(a) revoking the management order placing the care, control and management of the reserve with the reserve health entity and

specifying that any interests that existed in, or any caveats that existed in respect of, the reserve immediately before the reserve change day continue to exist in respect of the reserve on and after the reserve change day; and

- (ii) subject to subsection (5) and section 267, a management order made under the *Land Administration Act 1997* section 46(1) placing the care, control and management of the reserve with the Ministerial Body or health service provider stated in the order, which is subject to any conditions (with the changes necessary to take account of differences as to the purpose and management body) to which the management order referred to in subparagraph (i) was subject immediately before the reserve change day;

and

- (b) a reserve order that changes the purpose of the reserve under subsection (5) must be treated as if it were an order made under the *Land Administration Act 1997* section 51 changing the purpose of the reserve.

267. Changing particular condition in particular reserves over eligible Crown land by order

- (1) In this section —

Minister for Lands means the body corporate continued under the *Land Administration Act 1997* section 7(1).

- (2) This section applies to eligible Crown land that is —
- (a) subject to a condition (the *condition*) stated in the management order that the eligible Crown land only be leased, subleased or licensed with the approval of the Minister for Lands; and
 - (b) listed in —
 - (i) an order made by the Minister under this section and published in the *Gazette*; or
 - (ii) a schedule to an order referred to in subparagraph (i) that is published in the *Gazette* or made available for public inspection.
- (3) The management order for the eligible Crown land listed in the order is taken, on and from the reserve change day, not to state that the land is subject to the condition.

268. Validity of leases, subleases and licences entered into by granting entity in relation to eligible Crown land

- (1) In this section —
- granting entity* means the Minister, the Ministerial Body or a health service provider;
- interest* means a lease, sublease or licence.
- (2) This section applies to an interest granted by the granting entity in relation to eligible Crown land if —
- (a) the granting entity granted the interest —
 - (i) before the reserve change day; and
 - (ii) when it was not the management body of the eligible Crown land;
- and

- (b) the management body of the eligible Crown land had power to grant the interest when the interest was granted.
- (3) The interest is —
- (a) as valid and effective, and is taken to have always been as valid and effective, as the interest would have been if the granting entity were the management body of the eligible Crown land when the interest was granted; and
 - (b) taken to have been granted by the management body.
- (4) An act done by a person in relation to the interest is as valid and effective, and is taken to have always been as valid and effective, as the act would have been if the granting entity were the management body of the eligible Crown land when the interest was entered into.

269. Exemption from State tax

- (1) State tax is not payable in relation to —
- (a) anything that occurs by operation of this Division; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.
- (2) The Minister may certify in writing that —
- (a) a specified thing occurred by operation of this Division; or
 - (b) a specified thing was done under this Division, or to give effect to this Division, or for a

purpose connected with or arising out of giving effect to this Division.

- (3) For all purposes and in all proceedings, a certificate under subsection (2) is sufficient evidence of the matters it certifies unless the contrary is shown.

270. Registration of documents

- (1) The relevant lands officials must —
 - (a) take notice of this Division and orders made under this Division, including any schedule to the order; and
 - (b) record and register in the appropriate manner the documents necessary to show the effect of this Division and any order.
- (2) The Minister must give a copy of each order made under this Division and any schedule to it, and any amendment to an order or to a schedule to an order, to each relevant lands official.

85. Parts 21 and 22 deleted

Delete Parts 21 and 22.

Part 3 — *Mental Health Act 2014* amended

86. Act amended

This Part amends the *Mental Health Act 2014*.

87. Section 4 amended

In section 4 in the definition of *private psychiatric hostel* delete “*Hospitals and Health Services Act 1927* section 26P;” and insert:

Private Hospitals and Health Services Act 1927 section 2(1);

88. Section 524 amended

In section 524(b) before “*Hospitals*” insert:

Private

89. Section 541 amended

(1) In section 541(b) before “*Hospitals*” insert:

Private

(2) In section 541 in the note before “*Hospitals*” insert:

Private

s. 90

90. Section 543 amended

- (1) In section 543(1)(b) before “*Hospitals*” insert:

Private

- (2) In section 543 in the note delete “Hospitals and Health Services Act 1927” and insert:

Private Hospitals and Health Services Act 1927

**Part 4 — *Motor Vehicle (Catastrophic Injuries)*
Act 2016 amended**

91. Act amended

This Part amends the *Motor Vehicle (Catastrophic Injuries) Act 2016*.

92. Section 20 amended

In section 20(1) before “*Hospitals*” insert:

Private

93. Section 30 amended

In section 30(1) in the definition of *hospital* delete “*Hospitals and Health Services Act 1927* section 2(1);” and insert:

Health Services Act 2016 section 8;

**Part 5 — *Queen Elizabeth II Medical Centre Act 1966*
amended**

94. Act amended

This Part amends the *Queen Elizabeth II Medical Centre Act 1966*.

95. Section 13 amended

(1) Delete section 13(2e) and insert:

(2e) While a setting aside and delegation under subsection (2a) are in force, the delegate has, for the purposes for which the site was set aside, all the powers delegated to the delegate under subsection (2a) in respect of the site as if those powers had been conferred on the delegate by this Act.

(2) Delete section 13(2g)(b)(i) and insert:

(i) to the delegate under the regulations; or

96. Section 20 amended

(1) In section 20(1), (1a) and (1d) delete “Trust may, with the approval of the Governor, make by-laws” and insert:

Governor may make regulations

(2) In section 20(2) delete “Trust” and insert:

Governor

- (3) In the provisions listed in the Table:
- (a) delete “by-laws” (each occurrence) and insert:

regulations
 - (b) delete “by-law” (each occurrence) and insert:

regulation

Table

s. 20(1a)(i), (k), (m), (n), (p), (q), (r), (s) and (t)	s. 20(1b) def. of <i>specified</i>
s. 20(1c)	s. 20(1e)
s. 20(2)	s. 20(3)
s. 20(4)	

Note: The heading to amended section 20 is to read:

Regulations

97. Sections 22 and 23 inserted

After section 21 insert:

22. *Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986 repealed*

The *Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986* are repealed.

23. Transitional provision for *Health Services Amendment Act 2023*

If a written law or document refers to the *Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986* repealed under section 22, on and from the day on which the *Health Services Amendment Act 2023* section 97 comes into operation the reference is taken to be a reference to —

- (a) if the reference is to a by-law — a regulation made under this Act that corresponds to the by-law; or
- (b) if the reference is to the by-laws — regulations made under this Act.

**Part 6 — *University Medical School, Teaching
Hospitals, Act 1955* amended**

98. Act amended

This Part amends the *University Medical School, Teaching Hospitals, Act 1955*.

99. Section 4 amended

In section 4(1) delete “State” and insert:

Senate

