



Western Australia

Health Services Act 2016

Health Services Act 2016

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Defined terms

Western Australia

Health Services Act 2016

An Act to —

- **provide for health services in Western Australia;**
- **make consequential amendments to the *Hospitals and Health Services Act 1927* and other Acts;**
- **repeal various enactments.**

Part 1 — Preliminary

1. Short title

This is the *Health Services Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — 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.

3. Act binds the State

This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

4. Objects of this Act

The objects of this Act are as follows —

- (a) to promote and protect the health status of Western Australians;
- (b) to identify and respond to opportunities to reduce inequities in health status in the Western Australian community;
- (c) to provide access to safe, high quality, evidence-based health services;
- (d) to promote a patient-centred continuum of care, including patient engagement, in the provision of health services;
- (e) to coordinate the provision of an integrated system of health services and health policies in the WA health system;
- (f) to promote effectiveness, efficiency and innovation in the provision of health services and teaching, training,

research and other services within the available financial and other resources;

- (g) to engage and support the health workforce in the planning and provision of health services and teaching, training, research and other services.

5. Medicare principles

The provision of health services through the public hospital system of the State is based on the Medicare principles set out in the National Health Agreement.

6. Terms used

In this Act, unless the contrary intention appears —

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;

assets —

- (a) means any legal or equitable estates or interests (whether present or future, whether vested or contingent and whether personal or assignable) in property; and
- (b) includes money, securities, choses in action and documents;

board means a board constituted under section 71;

board governed provider means a health service provider specified under section 32(1)(d) to be a board governed provider;

breach of discipline means a breach of discipline referred to in section 161;

chief executive, in relation to a health service provider, means the person appointed as chief executive of the health service provider under section 108(1);

chief executive governed provider means a health service provider specified under section 32(1)(d) to be a chief executive governed provider;

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

Commission CEO has the meaning given in section 43;

committee means a committee appointed under section 92(1);

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;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

Department CEO means the chief executive officer of the Department;

Department CEO direction means a direction issued by the Department CEO under section 28;

disciplinary action, in relation to a breach of discipline by an employee, means any one or more of the following —

- (a) a reprimand;
- (b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made;
- (c) transferring the employee to another health service provider with the consent of the employing authority of that health service provider;

- (d) if the employee is not a chief executive, transferring the employee to another office in the health service provider in which the employee is employed;
- (e) reduction in the monetary remuneration of the employee;
- (f) reduction in the level of classification of the employee;
- (g) alteration of the employee's scope of practice or duties, or both;
- (h) dismissal;

employee means a person employed in a health service provider and includes —

- (a) the chief executive of the health service provider;
- (b) a health executive employed in the health service provider;
- (c) a person employed in the health service provider under section 140;
- (d) a person seconded to the health service provider under section 136 or 142;

employing authority has the meaning given in section 103;

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 executive means a person holding an office referred to in section 105(1)(b) but does not include a chief executive;

Health Executive Service means the Health Executive Service mentioned in section 105;

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 professional means a person who is —

- (a) a health practitioner registered under the *Health Practitioner Regulation National Law (Western Australia)*; or
- (b) in a class of persons prescribed for the purposes of this definition;

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;

health service has the meaning given in section 7;

health service area means a health service area declared under section 32(1)(a);

health service provider means a health service provider established by an order made under section 32(1)(b);

hospital has the meaning given in section 8;

improvement action, in relation to an employee, means any one or more of the following actions by the employing authority of the employee for the purpose of improving the performance or conduct of the employee —

- (a) counselling;
- (b) training and development;
- (c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory;
- (d) any other action of a similar nature;

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;

liabilities means any liabilities, duties or obligations, whether actual, contingent or prospective, liquidated or unliquidated or

whether owed alone or jointly or jointly and severally with any other persons;

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);

member, of a board, means a person appointed under section 71(1);

Ministerial Body means the Health Ministerial Body established by section 10;

National Health Agreement means —

- (a) the National Health Reform Agreement between the Commonwealth and the States that was agreed to by the Council of Australian Governments on 2 August 2011, as amended from time to time; or
- (b) any agreement that replaces or supersedes that agreement;

patient means a person who has been, is being, or will or may be provided with health treatment or care;

personal information has the meaning given in the *Freedom of Information Act 1992* in the Glossary clause 1;

policy framework means a policy framework issued under section 26;

prescribed means prescribed by regulations made under this Act;

property means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property;

provide includes supply or carry out;

PSM Act means the *Public Sector Management Act 1994*;

public authority means any of these persons or bodies —

- (a) a department of the Public Service;

- (b) a State agency or instrumentality;
- (c) a local government, regional local government or regional subsidiary;
- (d) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued for a public purpose under a written law;
- (e) a person or body, or a person or body within a class of persons or bodies, prescribed for the purposes of this paragraph;

public health service has the meaning given in section 7(3);

public health service facility means a facility at which public health services are provided;

public hospital has the meaning given in section 8(6);

relevant lands official means —

- (a) the Minister for Lands; or
- (b) the Registrar of Titles; or
- (c) the Registrar of Deeds and Transfers; or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transaction affecting any estate or interest in land;

rights means any rights, powers, privileges or immunities, whether actual, contingent or prospective;

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

service agreement has the meaning given in section 43;

staff member, of a health service provider, means —

- (a) an employee in the health service provider;
- (b) a person engaged under a contract for services by the health service provider;

State tax includes —

- (a) duty chargeable under the *Duties Act 2008*; and

s. 7

- (b) any other tax, duty, fee, levy or charge under a law of the State;

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

WA health system has the meaning given in section 19(1);

WA health system-wide plan means a plan developed by the Department CEO for the purposes of the WA health system.

[Section 6 amended: No. 26 of 2016 s. 60; No. 1 of 2023 s. 4.]

7. Meaning of health service and public health service

- (1) A **health service** is a service for maintaining, improving, restoring or managing people's physical and mental health and wellbeing.
- (2) Without limiting subsection (1), a health service includes —
 - (a) a service mentioned in subsection (1) that is provided to a person at a hospital or any other place;
 - (b) a service dealing with public health, including a programme or activity for —
 - (i) the prevention and control of disease or sickness; or
 - (ii) the prevention of injury; or
 - (iii) the protection and promotion of health;
 - (c) a support service for a service mentioned in subsection (1);
 - (d) the provision of goods for a service mentioned in subsection (1).
- (3) A **public health service** is a health service provided by —
 - (a) a health service provider; or
 - (b) the Department CEO; or

- (c) a contracted health entity under a contract or other agreement entered into with —
 - (i) a health service provider; or
 - (ii) the Department CEO, the Minister or the Premier on behalf of the State.
- (4) A public health service —
 - (a) includes a health service declared under a regulation to be a public health service; and
 - (b) does not include a health service declared under a regulation not to be a public health service.

[Section 7 amended: No. 1 of 2023 s. 5.]

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).

[Section 7A inserted: No. 1 of 2023 s. 6.]

8. Meaning of hospital and public hospital

- (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) The Minister may by written notice determine any health service for the purposes of the definition of **day hospital facility** in subsection (1).
- (3) A determination under subsection (2) may be made —
- (a) generally; or
 - (b) in relation to specified health services or health services in a specified class; or
 - (c) by reference to a declaration or determination made under any law of the State or the Commonwealth.
- (4) Each of the following premises is a **hospital** for the purposes of this Act —
- (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;
- (b) a day hospital facility;
- (c) a nursing post.
- (5) In subsection (4) an ill person includes a person who has a mental illness (as defined in the *Mental Health Act 2014* section 4) but this section does not affect any requirements under that Act that a person be detained at an authorised hospital (as defined in section 4 of that Act) or at another place.
- (6) Subject to any order made under subsection (8), each of the following premises is a **public hospital** for the purposes of this Act —
- (a) a hospital controlled or managed by a health service provider or the Department CEO; or
- (b) a hospital declared to be a public hospital under subsection (7).
- (7) The Minister may by order published in the *Gazette* declare any hospital to be a public hospital for the purposes of this Act.
- (8) The Minister may by order published in the *Gazette* declare that any hospital is not a public hospital for the purposes of this Act or the *Private Hospitals and Health Services Act 1927*.

[Section 8 amended: No. 1 of 2023 s. 7.]

9. Application of Act to hospital where mentally ill treated

Where a public hospital or part of a public hospital is an authorised hospital under the *Mental Health Act 2014*, this Act has effect in relation to the hospital or part of the hospital, and

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persons received or admitted into it, subject to the provisions of that Act.

Part 2 — The Minister

10. Ministerial Body established

- (1) The Health Ministerial Body is established.
- (2) The Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Ministerial Body in its corporate name.
- (4) The Ministerial Body must be governed by the Minister.
- (5) The Ministerial Body has the status, immunities and privileges of the Crown.

11. Purpose and nature of Ministerial Body

- (1) The Ministerial Body is established to provide a body corporate through which the Minister, or a person to whom a function of the Minister is delegated under section 15(1), can perform any of the Minister's functions under this Act that can more conveniently be performed by a body corporate than an individual.
- (2) Any acts or things done through the Ministerial Body as described in subsection (1) must be regarded as —
 - (a) services under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
 - (b) operations of the Department for the purposes of Part 5 of that Act.
- (3) Despite the employment under the PSM Act of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the Ministerial

Body, the Ministerial Body and those officers are not an organisation for the purposes of that Act.

[Section 11 amended: No. 1 of 2023 s. 8.]

12. Execution of documents by Ministerial Body

- (1) The Ministerial Body must have a common seal.
- (2) A document is duly executed by the Ministerial Body if —
 - (a) the common seal of the Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Ministerial Body by the Minister; or
 - (c) it is signed on behalf of the Ministerial Body, as authorised under subsection (5), by the Department CEO or another person.
- (3) The common seal of the Ministerial Body must not be affixed to a document except as authorised by the Ministerial Body.
- (4) The common seal of the Ministerial Body must be affixed to a document in the presence of the Minister and the Minister must sign the document to attest that the common seal was so affixed.
- (5) The Ministerial Body may, by writing under its seal, authorise the Department CEO or another person to execute deeds or other documents on behalf of the Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section must be presumed to be duly executed unless the contrary is shown.
- (7) A document executed by the Department CEO or another person under this section without the common seal of the Ministerial Body must not be regarded as a deed unless it is executed as a deed as authorised under subsection (5).

- (8) When a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it must be presumed that the seal is the common seal of the Ministerial Body unless the contrary is shown.
- (9) For the purposes of this Act, a facsimile of any of the following may be used —
 - (a) the Ministerial Body's common seal;
 - (b) the Minister's signature;
 - (c) the signature of a person authorised under subsection (5) to execute deeds or other documents.
- (10) A deed or other document purporting to be endorsed with such a facsimile must be regarded as bearing the facsimile under subsection (9) unless the contrary is shown.

13. Minister's general powers

- (1) In this section —

acquire includes taking on lease or licence or in any other manner in which an interest in property may be acquired;

dispose of includes disposing of by way of lease or licence or in any other manner in which an interest in property may be disposed of.
- (2) For the purposes of this Act, the Minister may —
 - (a) acquire, hold, manage, improve, develop, dispose of and otherwise deal in property; and
 - (b) enter into a contract or other arrangement, including a joint arrangement or a contract or arrangement for the provision of services to or by a health service provider; and
 - (c) do all things necessary or convenient for the purpose of carrying out joint arrangements; and
 - (d) develop and turn to account any technology, software or other intellectual property and apply for, hold, exploit

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- and dispose of any patent, patent rights, copyright or similar rights; and
- (e) provide and turn to account health education and training services; and
 - (f) provide and turn to account advertising opportunities or opportunities to participate in arrangements in the nature of advertising or having a purpose similar to advertising; and
 - (g) give effect to —
 - (i) any agreement entered into by the Commonwealth with the State under the *Health Insurance Act 1973* (Commonwealth); and
 - (ii) the relevant guidelines (if any) formulated under that Act in relation to health services for the purposes of the agreement.
- (3) The power of the Minister to dispose of land does not extend to the transfer of Crown land for an estate in fee simple.
- (4) In exercising any power under this Part the Minister may act in conjunction with —
- (a) any person, firm or public authority; or
 - (b) any department of the Public Service or any agency of the State or the Commonwealth.

[Section 13 amended: No. 1 of 2023 s. 9.]

14. Minister's powers in relation to business arrangements

- (1) In this section —
- business arrangement*** means a company, a partnership, a trust, a joint venture, an arrangement or agreement for sharing profits or an arrangement or agreement for sponsorship;
- participate*** in a business arrangement includes form, promote, establish, enter into, manage, dissolve, wind-up and do anything incidental to the business arrangement.

- (2) Subject to subsection (3), the Minister may, for the purposes of this Act —
 - (a) participate in a business arrangement; and
 - (b) acquire, hold and dispose of shares, units or other interests in or relating to a business arrangement.
- (3) Before the Minister exercises a power conferred by subsection (2) in relation to a business arrangement the Minister must —
 - (a) notify the Treasurer of the proposal; and
 - (b) seek the Treasurer's approval to it.
- (4) Subsection (3) does not apply if the terms and conditions of that business arrangement are terms and conditions approved by the Treasurer in respect of —
 - (a) that business arrangement; or
 - (b) business arrangements of that class; or
 - (c) business arrangements generally.
- (5) The Treasurer may, by written notice given to the Minister, exempt any business arrangement or class of business arrangement from the operation of subsection (3).
- (6) An exemption may be unconditional or on specified conditions.
- (7) A notice under subsection (5) may be revoked or amended by the Treasurer by written notice given to the Minister.

15. Delegation by Minister

- (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) Without limiting the functions that may be delegated under this section, they include functions that are to be exercised or performed in the course of governing the affairs of the Ministerial Body under section 10(4).
- (3) The delegation must be in writing signed by the Minister.
- (4) A person to whom a function is delegated under this section cannot delegate that function.
- (5) The exercise or performance by a person of a function that has been delegated to the person under this section is to be taken to be in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not limit the ability of the Minister to perform a function through an officer or agent.

[Section 15 amended: No. 1 of 2023 s. 10.]

16. Power to delegate under *Health Legislation Administration Act 1984* excluded

The *Health Legislation Administration Act 1984* section 9 does not apply to or in relation to any function of the Minister under this Act.

17. Role of Mental Health Minister not affected

Nothing in this Act affects the role of the Minister responsible for the administration of the *Mental Health Act 2014* in the administration of that Act.

Part 3 — The Department CEO

Division 1 — Role of Department CEO

18. Administration of this Act

Subject to the general control of the Minister and any directions or instructions given under the PSM Act section 32 by the Minister to the Department CEO, the Department CEO must carry out the administration of this Act.

19. Management of the WA health system

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

(1) The WA health system is comprised of —

- (a) the Department; and
- (b) health service providers; and
- (c) to the extent that contracted health entities provide health services to the State, the contracted health entities.

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

(3) The relationship between the Department CEO and the health service providers is also governed by the service agreements between the Department CEO and each health service provider.

[Section 19 amended: No. 1 of 2023 s. 11.]

20. Functions of Department CEO

- (1) The functions of the Department CEO include the following —
- (a) advising and assisting the Minister in the development and implementation of WA health system-wide planning;
 - (b) notifying the Minister of the amounts allocated to a health service provider under a service agreement;
 - [(c) *deleted*]
 - (d) promoting the effective and efficient use of available resources in the provision of public health services in the State;
 - (e) carrying out certain functions of health service providers as specified in service agreements pursuant to section 51;
 - (f) managing WA health system-wide industrial relations on behalf of the State, including the negotiation of industrial agreements, and making applications to make or vary awards;
 - (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;
 - [(h) *deleted*]
 - (i) establishing the conditions of employment for employees in health service providers in accordance with the requirements of any binding industrial instrument;
 - (j) arranging for the provision of health services by contracted health entities;
 - (k) providing support services to health service providers;

- [Section 20 amended: No. 24 of 2020 s. 64; No. 1 of 2023 s. 12.]

- (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
 - (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.

[Section 20A inserted: No. 1 of 2023 s. 13.]

21. Powers of Department CEO

The Department CEO may do anything necessary or convenient for the performance of the Department CEO's functions under this Act.

22. Staff who are not public servants

- (1) The Department CEO may, for and on behalf of the State, employ and manage persons in the Department for the purposes of this Act —
- (a) as wages staff; or
 - (b) as other staff.
- (2) Subject to any relevant award or industrial agreement, the terms and conditions of employment under subsection (1)(a) or (b) are to be the terms and conditions that the Department CEO determines.
- (3) A person employed under subsection (1)(a) or (b) is not a person appointed under the PSM Act Part 3.
- (4) Nothing in this section limits —
- (a) the Department CEO's powers under the PSM Act; or
 - (b) health service providers' employment powers under this Act.

23. Department CEO may provide, or arrange for the provision of, certain services and facilities

- (1) The Department CEO may, on behalf of the State, enter into a written contract with a non-government entity for the provision of health services —
 - (a) to the entity by the State; or
 - (b) by the entity to the State.
- (2) The Department CEO may provide health services, other services or facilities for any or all of the following purposes —
 - (a) to support the WA health system;
 - (b) to support a health service provider;
 - (c) to enable the co-ordinated provision of health services involving more than one health service provider or on a State-wide basis.
- (3) The Department CEO may determine the charges, if any, payable for any service or facilities provided by the Department CEO under subsection (2).
- (4) The Department CEO may arrange for a health service provider to use the services of any officer or employee (including by way of secondment to the health service provider) —
 - (a) in the Public Sector; or
 - (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the State.
- (5) The Department CEO may arrange for a health service provider to make use of the facilities of a department of the Public Service or a State agency or instrumentality.
- (6) An arrangement under subsection (4) or (5) must be made on terms agreed to by the Department CEO, the relevant health service provider and the party providing the services or facilities.

- (7) Nothing in this section limits the Department CEO's other powers under this or any other written law.

24. Delegation by Department CEO

- (1) The Department CEO may delegate any function of the Department CEO under another provision of this Act to —
- (a) a person employed or engaged in the Department; or
 - (b) a staff member of a health service provider.

[(2) deleted]

- (3) The Department CEO must not delegate a function of the Department CEO under section 20(1)(f) to a staff member of a health service provider.
- (4) The delegation must be in writing signed by the Department CEO.
- (5) A person to whom a function is delegated under this section cannot delegate that function.
- (6) A person exercising or performing a function that has been delegated to the person under this section is to be taken to be in accordance with the terms of the delegation unless the contrary is shown.
- (7) This section does not limit the ability of the Department CEO to perform a function through an officer or agent.

[Section 24 amended: No. 1 of 2023 s. 14.]

25. Power to delegate under *Health Legislation Administration Act 1984* excluded

The *Health Legislation Administration Act 1984* section 9 does not apply to or in relation to any function of the Department CEO under this Act.

Division 2 — Policy frameworks

26. Department CEO may issue policy frameworks

(1) In this section —

provision, of health services, includes the following —

- (a) matters that support the provision of health services, including —
 - (i) the engagement of contracted health professionals; and
 - (ii) private practice arrangements for health professionals;
- (b) the provision of health services by contracted health entities.

(2) The Department CEO may issue policy frameworks to ensure consistent approaches to the following —

- (a) service coordination and integration, and efficiency and effectiveness, in the provision of health services —
 - (i) between health service providers; and
 - (ii) between health service providers, the Department and other service providers;
- (b) the making of service agreements, other than Commission service agreements made under section 45;
- (c) the provision of health services;
- (d) the performance and exercise of functions by health service providers;
- (e) financial management 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);
- (f) employment, and termination of employment, in health service providers;
- (g) the movement of employees between health service providers or between a health service provider and another employer —
 - (i) by transfer for temporary or permanent employment; or
 - (ii) on secondment or temporary redeployment; or
 - (iii) for training;
- (h) the management and administration of the Health Executive Service;
- (i) the engagement of health professionals by health service providers and the conditions of engagement;
- [(j) deleted]*
- (k) the management of information, including the way in which information is collected, used and disclosed;
- (ka) the management of land and other property held by health service providers;
- (l) any other matter in connection with the functions of the Department CEO under this Act in respect of which the Department CEO considers it necessary or desirable to issue a policy framework.

- (3) A policy framework may apply to any of the following —
 - (a) the health service providers specified in the policy framework;
 - (b) all health service providers;
 - (c) a type of public health service facility specified in the policy framework;
 - (d) a type of public health service specified in the policy framework;
 - (e) a type of staff member of a health service provider.
- (4) The Department CEO may revoke or amend a policy framework.
- (5) The Department CEO must ensure that each policy framework is publicly available.

[Section 26 amended: No. 1 of 2023 s. 15.]

27. Policy framework is binding

- (1) A policy framework is binding on each health service provider to which it applies or relates.
- (2) A policy framework that applies to a staff member of a health service provider is binding on the staff member and the health service provider.

Division 3 — Department CEO directions

28. Department CEO may issue directions

- (1) The Department CEO may issue a direction requiring compliance in relation to —
 - (a) a matter set out in a policy framework; or
 - (b) any other matter in connection with the functions of the Department CEO under this Act in respect of which the Department CEO considers it necessary or desirable to issue directions.

- (2) A Department CEO direction under subsection (1)(a) may apply to any person or body to which the policy framework applies.
- (3) A Department CEO direction under subsection (1)(b) may apply to any person or body in relation to which the Department CEO performs or exercises functions.

29. Relationship between Department CEO direction and other instruments and directions

- (1) In this section —
Department CEO direction includes a decision made in the exercise of a discretion under the direction.
- (2) A Department CEO direction does not override —
 - (a) an industrial instrument; or
 - (b) a Commissioner's instruction under the PSM Act; or
 - (c) a direction of the Minister under section 60; or
 - (d) any other prescribed instrument.
- (3) If a Department CEO direction is inconsistent with a direction of a responsible authority given to a chief executive under the PSM Act section 32, the Department CEO direction prevails over the responsible authority's direction.

[Section 29 amended: No. 1 of 2023 s. 16.]

30. Department CEO direction is binding

- (1) A Department CEO direction is binding on each person or body to which it applies.
- (2) A Department CEO direction that applies to a staff member of a health service provider is binding on the staff member and the health service provider.

31. Department CEO direction must be given to chief executive and to board

The Department CEO must give a Department CEO direction to —

- (a) each person or body to which it applies; and
- (b) the board of any board governed provider to which it relates or applies; and
- (c) the chief executive of any chief executive governed provider to which it relates or applies.

Part 4 — Health service providers

Division 1 — Establishment

32. Establishment of health service provider

- (1) The Minister may, by order published in the *Gazette* —
 - (a) declare any one or more of the following to be a health service area —
 - (i) a part of the State;
 - (ii) a public hospital;
 - (iii) a public health service facility;
 - (iv) a public health service;and
 - (b) establish a health service provider for the health service area; and
 - (c) assign a corporate name to the health service provider; and
 - (d) specify whether the health service provider is to be a board governed provider or a chief executive governed provider.
- (2) A health service provider is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against a health service provider in its corporate name.

33. Status of health service provider

A health service provider is an agent of the State and has the status, immunities and privileges of the State.

Division 2 — Functions and powers

34. Functions

- (1) A health service provider's main function is to provide —
 - (a) health services stated in the service agreements for the health service provider; and
 - (b) teaching, training and research that supports the provision of health services as agreed with the Department CEO; and
 - (c) any other services agreed with the Department CEO.
- (2) A health service provider also has the following functions —
 - (a) to ensure the operations of the health service provider are carried out efficiently, effectively and economically;
 - (b) to enter into, and comply with, service agreements with the Department CEO and, if appropriate, with the Commission CEO;
 - (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;
 - (c) to comply with the policy frameworks and Department CEO directions that apply or relate to the health service provider;
 - (d) to contribute to the development of, and implement, WA health system-wide plans that apply to the health service provider and undertake further service planning that aligns with the WA health system-wide plans;
 - (e) to prepare and keep under review strategies —
 - (i) for the provision of health services by the health service provider; and

- (ii) to promote consultation with health professionals working in the health service provider; and
 - (iii) to promote consultation with health consumers and community members about the provision of health services by the health service provider;
- (f) to establish an efficient and effective procedure for dealing with complaints about the provision of health services by the health service provider;
- (g) to report to the Department CEO on the provision of health services by the health service provider;
- (h) to monitor and improve the quality of health services provided by the health service provider;
- (i) to develop and implement corporate and clinical governance arrangements for the health service provider;
- (j) to maintain land, buildings and other assets controlled and managed by the health service provider;
- (k) to cooperate with other providers of health services, including providers of primary health care, in planning for, and providing, health services;
- (l) subject to any Department CEO direction and the *Procurement Act 2020*, to arrange for the provision of health services by contracted health entities;
- (m) to manage the performance of the health service provider against the performance measures and operational targets stated in the service agreements;
- (n) to provide performance data, other data and any other information the Department CEO may require to the Department CEO;
- (o) other functions imposed under this Act or another written law;
- (p) other functions necessary or incidental to the functions mentioned in paragraphs (a) to (o).

- (3) In subsection (2)(i) —

clinical governance arrangements means policies, processes and systems for maintaining and improving —

- (a) patient safety, quality and care; and
- (b) the effectiveness and dependability of services provided by a health service provider.

[Section 34 amended: No. 24 of 2020 s. 65; No. 1 of 2023 s. 17.]

35. Commercial and other activities

- (1) Subject to any relevant policy framework, a health service provider may earn revenue by engaging in commercial activities that are not inconsistent with, and do not have an adverse effect on, the performance of its other functions.
- (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) The provision of a facility under subsection (2) may be on such terms and conditions, including the payment of charges, as the health service provider determines from time to time.
- (4) When engaging, or proposing to engage, in an activity under this section, a health service provider must ensure that —
 - (a) the activity is consistent with its service agreements and any relevant policy framework; and
 - (b) the activity is likely to be of benefit to the State.
- (5) A health service provider may perform its functions under this section in the State or elsewhere.

- (6) A health service provider is taken to be expressly authorised by Parliament for the purposes of the *State Trading Concerns Act 1916* section 4(2).

[Section 35 amended: No. 1 of 2023 s. 18.]

36. General powers

- (1) In this section —

acquire includes taking on lease or licence or in any other manner in which an interest in property may be acquired;

business arrangement means a company, a partnership, a trust, a joint venture or an arrangement or agreement for sharing profits;

dispose of includes disposing of by way of a lease or licence or in any other manner in which an interest in property may be disposed of;

participate in a business arrangement includes form, promote, establish, enter into, manage, dissolve, wind-up and do anything incidental to the business arrangement.

- (2) Subject to sections 37 and 38 and any relevant policy framework, a health service provider has all the powers it needs to perform its functions.
- (3) Subject to sections 37 and 38 and any relevant policy framework, a health service provider may, for the purpose of performing any of its functions —
- (a) acquire, hold, manage, improve, develop or dispose of and otherwise deal in property;
 - (b) enter into a contract or other arrangement, including a contract or arrangement for the provision of services to the health service provider;
 - (c) participate in any business arrangement and acquire, hold and dispose of, shares, units, or other interests in, or relating to a business arrangement;

- (d) produce and publish information on matters relating to its functions, including results for research and development undertaken by the health service provider, alone or collaboratively;
 - (e) produce and deal in any equipment, facilities or system associated with the performance of its functions;
 - (f) develop and turn to account any technology, software or other intellectual property that relates to its functions and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;
 - (g) sell advertising opportunities and enter into arrangements for sponsorship;
 - (h) use its expertise and resources to provide consultancy, advisory or other services for profit.
- (4) Subsection (3) does not limit subsection (2) or any of the health service provider's other powers.
- (5) Subject to sections 37 and 38 and any relevant policy framework, the health service provider may —
- (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
- [(b) *deleted*]
- (c) accept any gift, bequest or other payment if it is absolute, or subject to conditions that the health service provider would be able to satisfy.

[Section 36 amended: No. 1 of 2023 s. 19.]

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.

[Section 36A inserted: No. 1 of 2023 s. 20.]

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*.

[Section 36B inserted: No. 1 of 2023 s. 20.]

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.

[Section 36C inserted: No. 1 of 2023 s. 20.]

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.

[Section 36D inserted: No. 1 of 2023 s. 20.]

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 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).

[Section 36E inserted: No. 1 of 2023 s. 20.]

37. Restrictions on power to dispose of land

- (1) In this section —
- health service land** means —
- (a) land vested in, or held by, a health service provider under this Act; or
 - (b) land acquired by a health service provider.

- (2) The power of a health service provider to dispose of land does not extend to the transfer of Crown land for an estate in fee simple.
- (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).

[Section 37 amended: No. 1 of 2023 s. 21.]

38. Transactions that require agreement or approval

- (1) In this section —
 - health service provider's liability** means the amount or value of the consideration or the amount to be paid or received by the health service provider, ascertained as at the time when the transaction is entered into;
 - transaction** means —
 - (a) the exercise of a power conferred by section 36(3)(c) in relation to a business arrangement; or
 - (b) a transaction for which the health service provider's liability exceeds the prescribed amount; or
 - (c) a gift or act of grace payment under section 36(5)(a) that exceeds the prescribed amount.
- (2) An amount for the purpose of paragraph (b) or (c) of the definition of **transaction** in subsection (1) may be prescribed by regulations made on the recommendation of the Treasurer.

- (3) Despite section 36, a health service provider must have the Minister's written agreement before it enters into a transaction that is not exempt under section 39.
- (4) The Minister must obtain the Treasurer's approval before giving a written agreement under subsection (3).

[Section 38 amended: No. 1 of 2023 s. 22.]

39. Exemptions from section 38

- (1) The Minister, with the Treasurer's agreement, may by order exempt a transaction or class of transaction from the operation of section 38(3).
- (2) An exemption may be unconditional or on specified conditions.
- (3) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer's agreement.
- (4) An order under subsection (1) or (3) must show sufficient particulars of the transaction or class of transaction to which it relates to enable the transaction or class to be identified.

40. Delegation

- (1) A health service provider may delegate any function of the health service provider under another provision of this Act to —
 - (a) a member of the health service provider's board; or
 - (b) a committee; or
 - (c) a staff member of the health service provider.
- (2) The delegation must be in writing executed by the health service provider.
- (3) A person or committee to whom a function is delegated under this section cannot delegate that function.
- (4) A person or committee exercising or performing a function that has been delegated to the person or committee under this section

is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) This section does not limit the ability of a health service provider to perform a function through an officer or agent.

41. Execution of documents by health service provider

- (1A) In this section —

administered provider means a health service provider administered by an administrator.

- (1) A health service provider must have a common seal.
- (2) A document is duly executed by a board governed provider that is not an administered provider if —
- (a) the common seal of the provider is affixed to it in accordance with subsections (4) and (5); or
 - (b) it is signed on behalf of the provider by a person or persons authorised to do so under subsection (7).
- (3) A document is duly executed by a chief executive governed provider if —
- (a) the common seal of the provider is affixed to it in accordance with subsections (4) and (6); or
 - (b) it is signed on behalf of the provider by a person or persons authorised to do so under subsection (8).
- (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) The common seal of a health service provider must not be affixed to any document except as authorised by the health service provider.

- (9) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (10) A document executed by a person under this section without the common seal of the health service provider is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (7), (8) or (8B).
- (11) When a document is produced bearing a seal purporting to be the common seal of a health service provider, it must be presumed that the seal is the common seal of the health service provider unless the contrary is shown.
- (12) For the purposes of this Act, a facsimile of any of the following may be used —
 - (a) a health service provider's common seal;
 - (b) the signature of a member of a health service provider;
 - (c) the signature of a person authorised under subsection (7), (8) or (8B) to execute deeds or other documents.
- (13) A deed or document purporting to be endorsed with a facsimile mentioned in subsection (12) must be regarded as bearing the facsimile under that subsection unless the contrary is shown.

[Section 41 amended: No. 1 of 2023 s. 23.]

42. Contract formalities

- (1) Insofar as the formalities of making, varying or discharging a contract are concerned, a person acting as authorised by a health service provider may make, vary or discharge a contract in the name of or on behalf of the health service provider in the same manner as if that contract were made, varied or discharged by a natural person.

- (2) The making or variation of a contract in accordance with subsection (1) is effectual in law and binds the health service provider and other parties to the contract.
- (3) Subsection (1) does not prevent a health service provider from making, varying or discharging the contract under its common seal.

Part 5 — Service agreements

Division 1 — Preliminary

43. Terms used

In this Part —

alcohol and drug health service means assessment, treatment, management, care or rehabilitation of persons experiencing alcohol or other drug use problems or co-occurring health issues;

alcohol and drug health service provider means a health service provider, but only to the extent that the health service provider provides an alcohol and drug health service;

Commission CEO means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Mental Health Act 2014* and the *Alcohol and Other Drugs Act 1974*;

Commission health service means —

- (a) a mental health service; or
- (b) an alcohol and drug health service;

Commission service agreement means an agreement entered into under section 45(1) or (2);

mental health service means treatment or care provided to people who have or may have a mental illness;

mental health service provider means a health service provider, but only to the extent that the health service provider provides a mental health service;

mental illness has the meaning given in the *Mental Health Act 2014* section 6;

service agreement means —

- (a) an agreement entered into under section 46(2); or
- (b) a Commission service agreement.

Division 2 — Commission service agreements

44. Head agreement between Department CEO and Commission CEO

- (1) The Department CEO may enter into an agreement (a *head agreement*) with the Commission CEO concerning the making of Commission service agreements during the period to which the head agreement relates.
- (2) The head agreement must state —
 - (a) the system-wide funding caps and performance standards that apply to the provision of Commission health services; and
 - (b) the role, responsibilities and accountability of the Department CEO in relation to the provision of Commission health services; and
 - (c) the role, responsibilities and accountability of the Commission CEO as a purchaser of Commission health services; and
 - (d) the action to be taken if the terms of a Commission service agreement are not agreed.
- (3) The Commission CEO and health service providers must give effect to the head agreement when entering into or amending a Commission service agreement.

45. Commission CEO and health service provider may enter into service agreement

- (1) The Commission CEO and a mental health service provider may enter into a service agreement for the provision of mental health services by the mental health service provider.
- (2) The Commission CEO and an alcohol and drug health service provider may enter into a service agreement for the provision of alcohol and drug health services by the alcohol and drug health service provider.

- (3) The service agreement must state the following —
- (a) the mental health services or alcohol and drug health services (the *services*) to be provided to the State by the mental health service provider or alcohol and drug health service provider (the *provider*);
 - (b) the teaching, training and research in support of the provision of the services to be provided by the provider;
 - (c) the funding to be provided to the provider for the provision of the services, including the way in which the funding is to be provided;
 - (d) the performance measures and operational targets for the provision of the services by the provider;
 - (e) how the evaluation and review of results in relation to the performance measures and operational targets is to be carried out;
 - (f) the performance data and other data to be provided by the provider to the Commission CEO and the Department CEO, including how, and how often, the data is to be provided;
 - (g) any other matter the Commission CEO considers relevant to the provision of the services by the provider.
- (4) A Commission service agreement is binding on the Commission CEO and the provider.

Division 3 — Service agreements generally

46. Department CEO and health service provider must enter into service agreement

- (1) This section does not apply in relation to the provision of Commission health services by a health service provider to the extent that a Commission service agreement is in effect in respect of those services.

- (2) The Department CEO and a health service provider must enter into a service agreement for the provision of health services, and other services, by the health service provider.
- (3) The service agreement must state the following —
 - (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;
 - [(b) deleted]*
 - (c) the funding to be provided to the health service provider for the provision of the services, including the way in which the funding is to be provided;
 - (d) the performance measures and operational targets for the provision of the services by the health service provider;
 - (e) how the evaluation and review of results in relation to the performance measures and operational targets is to be carried out;
 - (f) the performance data and other data to be provided by the health service provider to the Department CEO, including how, and how often, the data is to be provided;
 - (g) any other matter the Department CEO considers relevant to the provision of the services by the health service provider.

- (4) A service agreement entered into under subsection (2) is binding on the Department CEO and the health service provider.

[Section 46 amended: No. 1 of 2023 s. 24.]

47. Department CEO may decide on terms of service agreement

- (1) This section applies if the Department CEO and a health service provider cannot agree on some or all of the terms of a service agreement that is not a Commission service agreement —
- (a) for the first agreement after the health service provider is established — by a prescribed date; or
 - (b) for a service agreement that is to replace an existing service agreement — at least one month before the expiry of the existing agreement.
- (2) If the Department CEO and the health service provider cannot agree on a term of a service agreement, the Department CEO must decide the term and advise the health service provider of the decision.
- (3) A term decided under this section by the Department CEO must be included in the service agreement.

48. General provisions about service agreements

- (1) Without limiting section 45(3) or 46(3), a service agreement may —
- (a) deal with the matters stated in section 45(3) or 46(3) relating to funding provided by the Commonwealth, without the Commonwealth being a party to the agreement; and
 - (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) deleted]

- (3) Negotiations for a service agreement that is not a Commission service agreement must be conducted in accordance with any relevant policy framework.
- (4) Negotiations for a Commission service agreement must be conducted in accordance with the head agreement referred to in section 44.

[Section 48 amended: No. 1 of 2023 s. 25.]

49. Term of service agreement

- (1) A service agreement must be for a term of not longer than 3 years.
- (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.
- (2) A service agreement that is not a Commission service agreement must cover the forecast period set out in any relevant policy framework.

[Section 49 amended: No. 1 of 2023 s. 26.]

50. Procedure to amend service agreement

- (1) If a party to a service agreement wants to amend the terms of a service agreement, the party that wants to amend the agreement must give written notice of the proposed amendment to the other party.
- (2) If the parties cannot agree on a term of the amendment, the Department CEO or Commission CEO, as the case requires,

must decide the term and advise the health service provider of the decision.

- (3) A term decided under this section by the Department CEO or Commission CEO must be included in the service agreement.

51. Service agreement may provide for Department CEO to carry out specified functions

- (1) A service agreement may provide that the Department CEO, through the Department, will perform functions of the health service provider that are specified in the agreement for a period specified in the agreement (the *transfer period*).
- (2) Despite any other provision of this Act or any other written law, during the transfer period —
- (a) the Department CEO may perform the functions mentioned in subsection (1) as if the Department CEO were the health service provider; and
 - (b) the health service provider is not required to perform the functions mentioned in subsection (1).
- (3) The Department CEO has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions mentioned in subsection (1) during the transfer period.

52. Review and report on service agreements

- (1) A health service provider must report the results of the service provider's performance under a service agreement during each year covered by the service agreement within 3 months after the end of that year.
- (2) The report must be given to the Department CEO and, if the report relates to a Commission service agreement, to the Commission CEO.

- (3) The Department CEO and Commission CEO, if the case requires, must evaluate and review the results of the health service provider's performance under a service agreement for each year covered by a service agreement.

[Section 52 amended: No. 1 of 2023 s. 27.]

53. Other agreements for provision of services

Nothing in this Part limits the power of a health service provider to enter into an agreement to provide services under section 35 or 36.

Part 6 — Fees and charges for health services and other matters

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.

[Section 53A inserted: No. 1 of 2023 s. 28.]

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.

[Section 53B inserted: No. 1 of 2023 s. 28.]

54. Effect of National Health Agreement

In performing or exercising any function under this Part, the Minister and health service providers must have regard to the National Health Agreement.

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
 - (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.

s. 56

- (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).

[Section 55 inserted: No. 1 of 2023 s. 29.]

56. Minister may fix fees and charges for health services

- (1) In this section —
specified means specified in the order.
- (2) The Minister may, by order published in the *Gazette* —
- (a) fix fees and charges for the provision of health services by health service providers; and
 - (b) provide that no fees or charges are payable in respect of —
 - (i) a specified health service or class of health service; or
 - (ii) a health service rendered to a specified class of patient; or
 - (iii) a health service in respect of any specified public hospital or class of public hospital.
- (3) The Minister may amend or revoke an order made under subsection (2).
- (4) The order may adopt by reference fees or charges (as in force at a particular time or as in force from time to time) fixed or determined by a Commonwealth authority or body.
- (5) An adoption under subsection (4) may be wholly or in part and with or without modification.
- (6) The order may —
- (a) define classes of patient and classes of service; and

- (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
 - (b) adopt for the purposes of referring to a class of patient or class of service any definition in any law of the Commonwealth; and
 - (c) discriminate between classes of patient and classes of service and according to the circumstances in which a service is provided and in respect of the class of patient to whom it is provided; and
 - (d) fix different fees and charges according to the public hospital or class of public hospital in which or on behalf of which a service or class of service is provided; and
 - (e) provide that the charges for any health services provided in respect of any specified class of patient at or by a public hospital are to be of an amount determined by the Minister or another specified person according to the cost of providing the health service.
- (7) An order made under subsection (2) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (8) The *Interpretation Act 1984* section 42 applies to an order made under subsection (2) as if the order were a regulation.

[Section 56 amended: No. 1 of 2023 s. 30.]

57. Liability of persons for health service fees and charges

- (1) A fee or charge imposed under section 55 is payable by or on behalf of the person who received the health service.
- (2) A health service provider may waive, or refund, the whole or any part of a fee or charge.

s. 57A

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.

[Section 57A inserted: No. 1 of 2023 s. 31.]

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

s. 57C

- (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.

[Section 57B inserted: No. 1 of 2023 s. 31.]

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.

[Section 57C inserted: No. 1 of 2023 s. 31.]

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.

[Section 57D inserted: No. 1 of 2023 s. 31.]

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
- (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
 - (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).

[Section 58 inserted: No. 1 of 2023 s. 31.]

59. Fees and charges for other services, goods and facilities

- (1) Subject to subsection (2), a health service provider may determine, impose and collect a fee or charge for —
 - (a) the provision of services other than health services;

- (b) the provision or use of goods and materials other than goods and materials that are part of a health service;
 - (c) the use of facilities other than facilities that are part of a health service.
- (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).
- (3) Nothing in this section limits the powers of a health service provider to enter into an agreement to provide services, goods or facilities under section 35 or 36.

[Section 59 amended: No. 1 of 2023 s. 32.]

Part 7 — Accountability and financial provisions

Division 1 — Accountability

60. Minister may give directions

- (1) Subject to subsection (2), the Minister may give written directions to a health service provider with respect to the performance or exercise of its functions, either generally or in relation to a particular matter, and the health service provider must give effect to the direction.
- (2) A direction given under this section cannot be —
 - (a) about the nature of a health service to be provided to a particular person; or
 - (b) in any other way in respect of a particular person.
- (3) The health service provider must comply with a direction given under this section.
- (4) The text of a direction given under subsection (1) must —
 - (a) be laid before each House of Parliament, or dealt with under section 229, within 14 days after the direction is given; and
 - (b) be included in the annual report submitted by the accountable authority of the health service provider under the *Financial Management Act 2006* Part 5.

[Section 60 amended: No. 1 of 2023 s. 33.]

61. Minister to have access to information

- (1) In this section —

document includes any tape, disk or other device or medium on which information is recorded or stored;

information means information specified, or of a description specified, by the Minister that relates to the functions of a health service provider.

- (2) The Minister is entitled —
 - (a) to have information in the possession of a health service provider; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2), the Minister may —
 - (a) request the health service provider to furnish information to the Minister; and
 - (b) request the health service provider to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of the employees in the health service provider to obtain the information and furnish it to the Minister.
- (4) The health service provider must comply with a request under subsection (3) and make employees and facilities available to the Minister for the purposes of subsection (3)(c).
- (5) This section does not entitle the Minister to have personal information unless —
 - (a) disclosure of the information is required by some other written law; or
 - (b) the information is about an individual who consents to the Minister having the information; or
 - (c) the information is for the purpose of enabling or assisting the Minister to respond to or deal with a complaint or query made by the individual; or
 - (d) the information is for the purpose of enabling or assisting the Minister to —
 - (i) prepare for, answer, respond to or deal with a question asked or matter raised by a member of Parliament, whether in a House of Parliament or otherwise; or

- (ii) comply with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

Division 2 — Financial provisions

62. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

- (1) Except as provided in subsection (2), the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of health service providers and their operations.
- (2) The *Financial Management Act 2006* section 36(3) does not apply to money that comes into the possession of or under the control of a person employed in a health service provider in the circumstances specified in an order made by the Minister with the consent of the Treasurer and published in the *Gazette*.
- (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*.

[Section 62 amended: No. 1 of 2023 s. 34.]

63. Health funding arrangements under the National Health Agreement

The *National Health Funding Pool Act 2012* contains provisions relating to health funding arrangements.

64. Health service provider account

- (1) An account called the (*name of health service provider*) Account is to be established as an agency special purpose account under the *Financial Management Act 2006* section 16 for each health service provider.

- (2) Money received by the health service provider is to be credited to, and money paid by the health service provider is to be debited to, the Account.
- (3) Subsection (2) does not apply in respect of money for specific purposes or held on trust that the health service provider is obliged to credit to a separate agency special purpose account established under the *Financial Management Act 2006* section 16.

65. Health service provider's funds

- (1) Subject to subsection (2), the funds available for the purpose of enabling a health service provider to perform or exercise its functions under this or any other Act consist of money that is, under this Act or any other Act, lawfully received by or made available to, the health service provider.
- (2) Where any money has been accepted by the health service provider upon trust or lawful condition, the health service provider must apply the money in accordance with the trust or condition and is authorised by this section to do so.

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.

[Section 66 inserted: No. 1 of 2023 s. 35.]

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.

[Section 66A inserted: No. 1 of 2023 s. 35.]

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.

[Section 66B inserted: No. 1 of 2023 s. 35.]

67. Department CEO's power to require financial information

- (1) The Department CEO may direct the accountable authority of, or an employee in, a health service provider to provide the Department CEO with any information relating to the financial management of the health service provider that the Department CEO thinks necessary for the purposes of this Act.
- (2) An accountable authority or employee given a direction under subsection (1) must provide the information to the Department CEO within the period and in the manner and form directed by the Department CEO.

[Section 67 amended: No. 1 of 2023 s. 36.]

68. Various documents exempt from duty

The following documents are exempt from duty under the *Duties Act 2008* —

- (a) receipts given by and on behalf of the Department or a health service provider in relation to a public hospital;

- (b) declarations required or authorised under this Act in relation to a public hospital;
- (c) agreements entered into under this Act in relation to a public hospital.

69. Local governments may fund health services

- (1) In this section —

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession.

- (2) A local government has power to expend and apply, or to enter into an agreement to expend and apply, a portion of its general rates for any of the following —
- (a) in subsidising health services;
 - (b) in or towards the construction or acquisition, establishment, and maintenance of premises for the provision of health services;
 - (c) in subsidising a district nursing scheme;
 - (d) in contributing towards a subsidy or providing a subsidy to secure the services of a medical practitioner.
- (3) Despite subsection (2) —
- (a) the maximum portion of the general rates to be expended or applied under that subsection is 10% of the average annual amount received by the local government from general rates during the last 2 financial years preceding the year in which the amount is expended or applied; and
 - (b) an agreement under that subsection is not valid if it purports to bind the local government to expend or apply in any year a sum exceeding 10% of the average annual amount received by it from general rates during the last 2 financial years preceding the year in which the undertaking was given.

- (4) The term of an agreement entered into for the purposes of subsection (2) must not exceed 5 years.
- (5) An agreement entered into for the purposes of subsection (2) may be renewed during the last year of the agreement (with or without modification) for a term not exceeding 5 years.
- (6) A local government is authorised to borrow money for the construction, enlargement, improvement, and equipment of a hospital within the area of the local government.
- (7) The provisions of the *Local Government Act 1995* relating to the borrowing of money apply to the borrowing of money under subsection (6).
- (8) This section does not prejudice any power vested in a local government by or under any other Act.
- (9) The powers of a local government vested in it by or under the *Local Government Act 1995* are to be taken to be extended to give effect to this section.
- (10) The local governments of 2 or more districts the boundaries of which are adjacent, may enter into an agreement between themselves and the Minister for the purposes of this section.
- (11) This section does not apply to or in relation to a public hospital or proposed public hospital unless the Minister has given —
 - (a) prior approval in relation to the application of this section to or in relation to the public hospital or proposed public hospital; and
 - (b) a valid undertaking to provide at least one-half of the capital costs involved.

Part 8 — Administration of health service providers

Division 1 — Governance

70. Health service provider may be governed by board or chief executive

- (1) If an order made under section 32(1)(d) specifies that a health service provider is to be a board governed provider —
 - (a) the health service provider must have a board; and
 - (b) the board —
 - (i) is the governing body of the health service provider; and
 - (ii) in the name of the health service provider, is to perform or exercise the functions of the health service provider under this Act or any other written law.
- (2) If an order made under section 32(1)(d) specifies that a health service provider is to be a chief executive governed provider —
 - (a) the health service provider must not have a board; and
 - (b) the chief executive —
 - (i) is the governing body of the health service provider; and
 - (ii) in the name of the health service provider, is to perform or exercise the functions of the health service provider under this Act or any other written law.

Division 2 — Boards

Subdivision 1 — Constitution and procedures

71. Constitution of health service provider's board

- (1) A health service provider's board consists of at least 6 but not more than 10 persons appointed as members by the Minister.

- (2) Before appointing a member the Minister must seek and have regard to the recommendation of the Department CEO.
- (3) The Minister must ensure that —
 - (a) at least 3 members are health professionals, and at least 2 of them are practising health professionals; and
 - (b) each other member has a relevant qualification needed to enable the health service provider's functions under this Act to be effectively performed.
- (4) In subsection (3)(a) —
practising health professional means a person who —
 - (a) is a health professional registered under the *Health Practitioner Regulation National Law (Western Australia)*, other than as a student; and
 - (b) is currently directly or indirectly providing care or treatment to persons.
- (5) A relevant qualification for the purposes of subsection (3)(b) is one or more of the following —
 - (a) expertise and experience in health management, business management, financial management or human resource management;
 - (b) legal expertise;
 - (c) expertise and experience in the provision of clinical or other health services;
 - (d) expertise and experience in primary health care;
 - (e) expertise in the education and training of health professionals;
 - (f) knowledge and experience of the community serviced by the health service provider;
 - (g) experience as a consumer of health services or a carer;

- (h) any other background, skills, expertise, knowledge or experience that will enable the effective performance of the health service provider's functions.
- (6) The following persons are not eligible to be appointed as members of a health service provider's board —
 - (a) a staff member of the health service provider;
 - (b) an employee in the Department;
 - (c) an employee in the department of the Public Service principally assisting in the administration of the *Mental Health Act 2014*;
 - (d) an employee in the department of the Public Service principally assisting in the administration of the *Alcohol and Other Drugs Act 1974*.

72. Chairperson and deputy chairperson

- (1) The Minister must designate —
 - (a) a member of a board to be the chairperson of the board; and
 - (b) another member to be deputy chairperson of the board.
- (2) A member of a board may be designated as the chairperson or deputy chairperson at the same time as the person is appointed as a member or at any time after the person is appointed as a member.
- (3) Subject to this Subdivision, the chairperson or deputy chairperson holds office for the term, ending not later than the term of appointment as a member, stated in the instrument of designation as chairperson or deputy chairperson.
- (4) A vacancy arises in the office of chairperson or deputy chairperson of a board if the person holding the office —
 - (a) resigns office by written resignation given to the Minister; or
 - (b) ceases to be a member of the board.

- (5) A person resigning the office of chairperson or deputy chairperson of a board may continue to be a member of the board.

73. Deputy chairperson acting as chairperson

- (1) The deputy chairperson of a board must act as chairperson of the board —
- (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or for another reason cannot perform the duties of the office.
- (2) An act or omission of the deputy chairperson acting in the place of the chairperson is not to be questioned on the ground that the occasion for acting had not arisen or had ceased.

74. Alternate members

- (1) In this section —
cause includes —
- (a) illness; and
 - (b) absence; and
 - (c) the operation of section 81(1).
- (2) If a member of a board other than the chairperson is unable for any cause to act as a member, the Minister may appoint another person as an alternate member to act temporarily in the member's place.
- (3) If the deputy chairperson of a board is unable for any cause to act in the place of the chairperson at a meeting —
- (a) the members present may elect one of their number to act as chairperson; and

- (b) subsection (2) applies as if the member elected were absent from the meeting.
- (4) While acting in accordance with the appointment the alternate member is to be taken to be, and to have any entitlement of, a member.
- (5) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

75. Remuneration and allowances

A member of a board is entitled to be paid any remuneration and allowances that the Minister may determine on the recommendation of the Public Sector Commissioner.

76. Term of office

- (1) Subject to section 77, a member of a board holds office for the term, not exceeding 3 years, fixed in the member's instrument of appointment.
- (2) A member is eligible for reappointment but cannot hold office for more than 9 consecutive years.
- (3) A member of a board whose term of office expires without a person having been appointed to fill the vacancy continues in office until whichever of the following occurs first —
 - (a) a person is appointed to fill the vacancy;
 - (b) a period of 3 months elapses after the expiry of the term of office.
- (4) Subsection (3) ceases to apply if the member resigns or is removed from office.

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 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.

[Section 76A inserted: No. 1 of 2023 s. 37.]

77. Casual vacancies

- [(1) deleted]*
- (2) The office of a member of a board becomes vacant if the member —
- (a) dies or resigns; or
 - (aa) is removed from office under section 76A; or

- (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under section 80(1).
- (3) A member of a board may at any time resign from office by written resignation given to the Minister.

[(4) *deleted*]

[Section 77 amended: No. 1 of 2023 s. 38.]

78. Leave of absence

A board may, on any terms and conditions it thinks fit, grant a member of the board leave to be absent from office.

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.

[Section 78A inserted: No. 1 of 2023 s. 39.]

Subdivision 2 — Duties and personal interests

[Heading inserted: No. 1 of 2023 s. 40.]

79. Duties of board and committee members

- (1) A member of a board or committee must act impartially and in the public interest in the exercise of the member's functions as a member.
- (2) Accordingly a member must put the public interest before the interest of the health service provider.
- (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.

[Section 79 amended: No. 1 of 2023 s. 41.]

80. Disclosure of material personal interest

- (1) A member of a board who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
Penalty for this subsection: a fine of \$25 000.
- (2) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a committee meeting.
Penalty for this subsection: a fine of \$25 000.
- (3) Subsection (2) applies to a person who is a member of the committee and also a member of the board even though the person has already disclosed the nature of the interest at a board meeting.
- (4) A disclosure under subsection (1) or (2) must be recorded in the minutes of the meeting.

81. Voting by interested member

- (1) A member of a board or a committee who has a material personal interest in a matter being considered or about to be considered by the board or the committee —
 - (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at the meeting.
- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 82 in respect of the matter, whether relating to that member or a different member.

82. Section 81 may be declared inapplicable

Section 81 does not apply if —

- (a) a member has disclosed under section 80 an interest in a matter; and
- (b) the board or committee, as the case requires, has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

83. Quorum where section 81 applies

- (1) Despite section 86, if a member of a board is disqualified under section 81 in relation to a matter, a quorum is present during the consideration of the matter if at least half the number of

members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.

- (2) The Department CEO may deal with a matter insofar as the Board cannot deal with it because of subsection (1).

84. Minister may declare sections 81 and 83 inapplicable

- (1) The Minister may by writing declare that section 81 or 83 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of the declaration to be laid before each House of Parliament, or dealt with under section 229, within 14 sitting days after the declaration is made.

Subdivision 3 — Meetings

85. Holding meetings

- (1) The first meeting of a board is to be convened by its chairperson and subsequent meetings, unless convened under subsection (2), are to be held at times and places determined by the board.
- (2) A special meeting of a board may at any time be convened by its chairperson.

86. Quorum

A number of members of a board equal to at least half the number of members in office constitutes a quorum of the board.

87. Procedure at meetings

A board must determine its own meeting procedures to the extent that they are not fixed by this Act.

88. Voting

- (1) At a meeting of a board, each member present has a deliberative vote unless section 81 prevents the member from voting.

- (2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (3) A question is resolved according to how a majority of the votes are cast.

89. Holding meetings remotely

The presence of a person at a meeting of a board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

90. Resolution without meeting

A resolution in writing signed or assented to in writing by at least half of the number of members of a board in office has the same effect as if it had been passed at a meeting of the board.

91. Minutes

A board must cause accurate minutes to be kept of the proceedings at each of its meetings.

Subdivision 4 — Committees

92. Committees

- (1) A board governed provider —
 - (a) may appoint committees to assist it to perform its functions; and
 - (b) may discharge or alter any committee it has appointed.
- (2) A committee may include persons who are not members of the board of the health service provider but must include at least one member of the board.
- (3) A person who is a staff member of a board governed provider is not eligible to be a member of a committee of the board governed provider.

- (4) A board governed provider may give directions to a committee on the following matters —
 - (a) the functions to be performed by the committee;
 - (b) the committee's procedures;
 - (c) reporting by the committee on the performance of its functions.
- (5) A committee must comply with a direction of the board governed provider.
- (6) A committee may determine its own procedures but they must be consistent with any directions of the board governed provider and the terms of any delegation under which the committee is acting.

93. Remuneration and allowances

A member of a committee is entitled to be paid any remuneration and allowances that the Minister may determine on the recommendation of the Public Sector Commissioner.

Division 3 — Appointment of advisers to board, administrators, dismissal of board

94. Term used: adviser

In this Division —

adviser means an adviser appointed under section 95.

[Section 94 inserted: No. 1 of 2023 s. 42.]

95. Minister may appoint advisers to boards

- (1) The Minister may appoint a person to be an adviser to a board if the Minister considers that the adviser may assist the board to improve the performance of —
 - (a) the board; or
 - (b) the health service provider governed by the board.

- (2) The Minister must not appoint more than 2 persons to be advisers to a board at the same time.
- (3) In deciding whether to appoint an adviser to a board, the Minister may have regard to the performance of the board or the health service provider governed by the board in relation to the following —
 - (a) the safety and quality of health services being provided by the health service provider;
 - (b) the way in which the health service provider is complying with a service agreement for the health service provider;
 - (c) the financial management of the health service provider.

96. Terms and conditions of appointment as adviser

- (1) An adviser holds office for the period (not exceeding one year) specified in the adviser's instrument of appointment.
- (2) An adviser is entitled to be paid remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.
- (3) An adviser may resign from office by written resignation given to the Minister.

97. Functions of advisers

- (1) The functions of an adviser to a board are —
 - (a) to attend board meetings; and
 - (b) to provide information and advice to the board to assist it in performing its functions under this Act; and
 - (c) to advise the Minister and the Department CEO on any matter relating to the performance of the board or the health service provider governed by the board.

- (2) An adviser to a board is not a member of the board but sections 80(1) and 81(1)(b) apply to an adviser as if the adviser were a member of the board.

[Section 97 amended: No. 1 of 2023 s. 43.]

98. Obligations of board in relation to advisers

- (1) While an adviser's appointment is in force, the board must provide the adviser with all notices of board meetings, and all documents and other information provided to board members.
- (2) The board must permit the adviser —
- (a) to attend all meetings of the board; and
 - (b) to provide information and advice to the board during meetings.

99. Minister may appoint administrator for health service provider

- (1) In this section —
- qualified person*** means a person the Minister considers has the necessary qualifications and experience to administer a health service provider.
- (2) This section applies —
- (a) if the members of a health service provider's board are dismissed under section 102; or
 - (b) if at any other time there are no members of a health service provider's board; or
 - (c) if, in the case of a board governed provider, a board has not been appointed.
- (3) The Minister may appoint the Department CEO, the chief executive of the health service provider or another qualified person to administer the health service provider.

100. Terms and conditions of appointment as administrator

- (1) An administrator is entitled to be paid remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.
- (2) The Minister may revoke the appointment of an administrator for any reason before the term of appointment expires, either to appoint a different person as administrator or to appoint new members of a board of the health service provider.
- (3) The regulations may make provision with respect to administrators.

101. Role of administrator

- (1) An administrator must administer the health service provider's affairs for the term stated in the administrator's instrument of appointment.
- (2) The functions of an administrator are subject to any conditions that may be specified in the administrator's instrument of appointment.
- (3) While the appointment continues, the administrator is to be taken to constitute the board instead of the members.

102. Minister may dismiss all members of board

- (1) The Minister may, at any time, dismiss all the members of the board of a health service provider.
- (2) If the Minister acts under subsection (1) all of the offices of the members become vacant.
- (3) The Minister may act under subsection (1) only if the Minister is satisfied that —
 - (a) the health service provider has failed to perform its functions effectively; or

- (b) the health service provider has negligently or wilfully failed to comply with a service agreement; or
 - (c) the health service provider has failed to comply with a direction given by the Minister under section 60.
- (4) No compensation is payable to a member of the board in relation to the dismissal of the member from the board under this section.
- (5) If the Minister acts under subsection (1), notice of the action must —
 - (a) be laid before each House of Parliament or dealt with under section 229 within 14 days after the action is taken; and
 - (b) be included in the annual report submitted by the accountable authority of the health service provider under the *Financial Management Act 2006* Part 5.

[Section 102 amended: No. 1 of 2023 s. 44.]

Part 9 — Health service provider employment

Division 1 — Preliminary

103. Term used: employing authority

(1) In this Part —

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.

(2) For the purposes of paragraph (b) of the definition of *employing authority* in the PSM Act section 5(1), the Department CEO is the employer of the chief executive.

[Section 103 amended: No. 1 of 2023 s. 45.]

104. Application of PSM Act

- (1) Unless otherwise specified in this Act or by the regulations, the PSM Act applies to administration and management, human resource management and conduct of health service providers and employees under this Act.
- (2) For the purposes of subsection (1) the PSM Act applies as if —
 - (a) a reference in that Act to an employee were a reference to an employee as defined in section 6;
 - (b) a reference in that Act to an employing authority were a reference to an employing authority as defined in section 103.

- (3) The PSM Act Part 3 does not apply to employees.

Division 2 — Health Executive Service

Subdivision 1 — Purposes and composition of the Health Executive Service

[Heading inserted: No. 1 of 2023 s. 46.]

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.

[Section 104A inserted: No. 1 of 2023 s. 47.]

105. Composition of Health Executive Service

- (1) The Health Executive Service comprises —
 - (a) the chief executives of health service providers; and
 - (b) the persons holding offices that are for the time being the subject of a determination under subsection (2).
- (2) The Department CEO may make a written determination that an office in a health service provider is an executive office.
- (3) The Department CEO may revoke or amend a determination made under subsection (2).

- (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.

[Section 105 amended: No. 1 of 2023 s. 48.]

Subdivision 2 — Chief executives

106. Chief executive

- (1) Each health service provider must have a chief executive.
- (2) A chief executive of a health service provider is the chief employee of the health service provider for the purposes of the PSM Act.

107. Functions and powers of chief executive

- (1) Subject to Department CEO directions and, in the case of a board governed provider, the control of the board, a chief executive has —
- (a) the functions and powers conferred on a chief employee under the PSM Act; and
 - (b) the functions and powers mentioned in subsections (2) and (3).
- (2) The chief executive of a health service provider has the following functions —
- (a) to manage the day-to-day operations of the health service provider;
 - (b) in the case of a board governed provider, to advise the board in relation to the functions of the provider under this Act and other written laws;
 - (c) to ensure that advice and information is available to the health service provider so that informed decisions can be made;

- (d) to cause health service provider decisions to be implemented;
 - (e) to be responsible for the management, supervision and direction of other employees of the health service provider;
 - (f) to perform any other function specified or delegated by the health service provider or imposed under this Act or any other written law as a function to be performed by the chief executive.
- (3) Subject to Department CEO directions and, in the case of a board governed provider, to the control of the board, a chief executive may do all things that are necessary or convenient to be done for or in connection with the performance of the functions of a chief executive.
- (4) In performing the functions of a chief executive of a health service provider, the chief executive must use best endeavours to attain performance objectives agreed with the Department CEO and, in the case of a board governed provider, the board.

[Section 107 amended: No. 1 of 2023 s. 49.]

108. Appointment of chief executive

- (1) Each chief executive is to be appointed by the Department CEO for and on behalf of the State.
- (2) The term for which a person is appointed to be the chief executive of a health service provider must be fixed in the instrument of appointment and must not be longer than 5 years.
- (3) The appointment must be to the level of classification determined by the Department CEO —
 - (a) in accordance with the relevant policy framework; and
 - (b) as being appropriate to the functions to be performed by the person appointed.

109. Procedure for appointment of chief executive

- (1) If —
- (a) there is a vacancy or an impending vacancy in the office of a chief executive of a health service provider; and
 - (b) it is not intended to fill the vacancy by transferring a chief executive to that office under section 116, or temporarily by directing an employee to act in the office under section 117,

the Department CEO must act under this section to enable the filling of the vacancy or impending vacancy.

- (2) In the case of a vacancy or impending vacancy in the office of a chief executive of a board governed provider, the Department CEO must, for the purposes of subsection (1), invite the board of the provider to inform the Department CEO of any matters that it wishes the Department CEO to take into account in recommending a person for appointment to the office referred to in subsection (1).
- (3) The Department CEO must give notice of the vacancy or impending vacancy in the manner the Department CEO thinks sufficient to enable suitably qualified persons to apply for the office.
- (4) The Department CEO must cause applicants for the office to be examined, but nothing in this section requires the examination of all the applicants.
- (5) The Department CEO —
- (a) may seek advice from such sources as the Department CEO considers relevant; and
 - (b) if the appointment is to the office of chief executive of a board governed provider, may invite the chairperson of the board to assist the Department CEO to decide on the person or persons suitable for appointment to the office; and

- (c) may invite any other persons the Department CEO thinks fit to assist the Department CEO to decide on the person or persons suitable for appointment to the office.
- (6) Any person invited to assist the Department CEO may take part in the examination of applicants or in the deliberations of the Department CEO on the matter or in both.
- (7) In deciding on a person to be appointed as a chief executive of a health service provider, the Department CEO must have regard to the need for the appointment of a person who —
 - (a) is able to discharge the specific responsibilities placed on the chief executive; and
 - (b) will foster a spirit of service to the community in staff members of the health service provider; and
 - (c) will promote effectiveness and efficiency in the health service provider; and
 - (d) will be a responsible manager of the health service provider; and
 - (e) will maintain appropriate standards of conduct and integrity among staff members of the health service provider.

110. Remuneration and leave entitlements

- (1) The remuneration and allowances of a chief executive are to be determined by the Department CEO on the recommendation of the Public Sector Commissioner.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the chief executive.

111. Contract of employment

Subject to this Act, the employment of a chief executive appointed under section 108 or reappointed under section 113 is governed by a contract of employment referred to in section 128.

112. Appointment of health service provider employee or public service officer

(1) If a person was —

- (a) an employee in a health service provider; or
- (b) a public service officer,

immediately before appointment as a chief executive, the person retains all existing and accrued rights on appointment as if service as the chief executive were a continuation of service as that employee or officer.

(2) If a person was a chief executive immediately before appointment as a public service officer, the person retains all existing and accrued rights on appointment as if service as a public service officer were a continuation of service as a chief executive.

113. Reappointment of chief executive

(1) If the contract of employment of a chief executive of a health service provider is about to expire and the chief executive has notified the Department CEO that the chief executive wishes to be reappointed, the Department CEO must —

- (a) reappoint the chief executive to the relevant office for and on behalf of the State; or
- (b) notify the chief executive that the chief executive will not be reappointed.

(2) Before making a decision under subsection (1) in relation to the chief executive of a board governed provider, the Department CEO must invite the board of the provider to inform the Department CEO of any matters that it wishes the Department CEO to take into account in making the decision.

(3) The term for which a person is reappointed to be the chief executive of a health service provider must be fixed in the instrument of appointment and must not be longer than 5 years.

- (4) If the Department CEO notifies the chief executive that the chief executive will not be reappointed, the vacancy or impending vacancy must be filled in accordance with section 108.

114. Performance criteria for chief executive and review of performance

- (1) The chief executive of a health service provider must enter into an agreement with the Department CEO and, in the case of a board governed provider, the chairperson of the board concerning the performance criteria to be met by the chief executive during the period to which the agreement relates.
- (2) The agreement must be entered into —
 - (a) within 6 weeks after the appointment under section 108(1); and
 - (b) at any time when required to do so under a Department CEO direction.
- (3) The performance agreement is not legally enforceable.
- (4) The performance of the chief executive of a health service provider must be reviewed, at least annually, by the Department CEO and, in the case of the chief executive of a board governed provider, the chairperson of the board.
- (5) The review must have regard to the agreed performance criteria for the office and any other relevant matter.

[Section 114 amended: No. 1 of 2023 s. 50.]

115. Removal from office

- (1) The Department CEO may at any time remove a chief executive of a health service provider from the office of chief executive.
- (2) If the health service provider is a board governed provider, the Department CEO must consult with the board before acting under subsection (1).

116. Transfer from office

- (1) The Department CEO may at any time transfer a chief executive from —
- (a) the office of chief executive to —
 - (i) another office of chief executive that is vacant and that is at the same level of classification as, or at a lower level of classification than, the first-mentioned office; or
 - (ii) the performance of other functions in a health service provider;
 - or
 - (b) the performance of other functions in a health service provider to an office of chief executive that is vacant and that is at the same level of classification as, or at a lower level of classification than, the office from which the chief executive was transferred to the performance of those functions.
- (2) Before transferring a chief executive the Department CEO must consult —
- (a) if the chief executive to whom the proposed transfer relates is located in a board governed provider — with the board; and
 - (b) if the provider of destination is a board governed provider — with the board; and
 - (c) with the chief executive to whom the proposed transfer relates.
- (3) In subsection (2)(b) —
- provider of destination*** means —
- (a) the health service provider to an office in which the chief executive is proposed to be transferred; or

- (b) the health service provider to the performance of other functions in which the chief executive is proposed to be transferred.
- (4) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a chief executive who is transferred under subsection (1) retains for the remainder of the term of the chief executive's contract of employment a level of classification equal to the highest level of classification of any office previously occupied by the chief executive during that period.
- (5) The transfer of a chief executive under this section does not affect the term of the chief executive's contract of employment.

117. Acting chief executive

- (1) The Department CEO may direct an employee, or an employee of the Department, (the *appointee*) to act in the office of a chief executive —
 - (a) during a vacancy in the office; or
 - (b) during a period when the person holding the office is, or is expected to be absent or for any reason unable to perform the functions of the office.
- (2) The Department CEO must specify in the direction the period, not exceeding 12 months, for which the appointee can act.
- (3) The Department CEO may cancel the direction at any time.
- (4) Before giving a direction under subsection (1) in respect of the office of a chief executive of a board governed provider, the Department CEO must consult with the board.
- (5) The appointee —
 - (a) must comply with the direction; and
 - (b) has, while acting in the office, all the powers and functions of the office.

- (6) The validity of anything done by or in relation to a person purporting to act under this section cannot be called into question on the ground that —
- (a) the occasion for the person to act had not arisen or had ceased; or
 - (b) there is a defect or irregularity in the direction.

[Section 117 amended: No. 1 of 2023 s. 51.]

118. Employment of chief executive cannot be litigated and is not an industrial matter

- (1) In this section, a reference to the employment of a chief executive is a reference to —
- (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive; or
 - (b) the removal, retirement, termination of employment or other cessation of office of a chief executive; or
 - (c) any disciplinary proceedings or action taken under Part 10 or 11 against a chief executive; or
 - (d) the remuneration or terms and conditions of employment of a chief executive.
- (2) The employment of a chief executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant office of chief executive.
- (4) An industrial instrument does not have effect insofar as it relates to the employment of a chief executive.
- (5) Subsection (4) does not prevent a contract of employment of a chief executive from applying any provision of an industrial instrument to the employment of the chief executive.

- (6) An appeal does not lie under the *Industrial Relations Act 1979* in relation to the employment of a chief executive.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief lie in respect of —
 - (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive; or
 - (b) the reappointment of, or failure to reappoint, a chief executive; or
 - (c) the entitlement or non-entitlement of a person to be so appointed or reappointed.
- (8) Nothing in this section prevents a person from raising with the Department CEO a complaint concerning the employment of a chief executive.

[Section 118 amended: No. 1 of 2023 s. 52.]

119. Delegation

- (1) A chief executive of a health service provider may delegate any function of the chief executive under another provision of this Act, including the chief executive's functions as a responsible authority under Part 10 or an employing authority, to —
 - (a) a staff member of the health service provider or another health service provider; or
 - (b) an employee or person engaged in the Department.
- (2) A delegation under this section must be in writing signed by the chief executive.
- (3) A person 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 to be 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 chief executive to perform a function through an officer or agent.

[Section 119 amended: No. 1 of 2023 s. 53.]

120. Modification of PSM Act delegation provision

For the purpose of the exercise of a chief executive's powers under the PSM Act section 33, that section is to be read as if any reference in that section to the Commissioner were a reference to the Department CEO.

Subdivision 3 — Health executives

121. Appointment of health executives

- (1) The employing authority of a health service provider may for and on behalf of the State appoint a person to an office of health executive in the health service provider.
- (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.
- (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) An appointment under subsection (1) is subject to any binding industrial instrument.
- (3) The term for which a person is appointed to be a health executive must be fixed in the instrument of appointment and must not be longer than 5 years.
- (4) The appointment must be governed by a contract of employment referred to in section 128.
- (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.

[Section 121 amended: No. 1 of 2023 s. 54.]

122. Reappointment of health executive

On the expiry of the term of a health executive in a health service provider, the health executive is eligible for reappointment under section 121(1) on the basis of terms and conditions agreed between the health executive and the health executive's employing authority.

123. Transfer of health executives

- (1) The employing authority of a health service provider may at any time transfer a health executive of the health service provider from the health executive's office, or the performance of any functions in the Health Executive Service, to —
 - (a) another office of health executive that is vacant; or
 - (b) the performance of other functions in a health service provider.

- (2) An employing authority must, before transferring a health executive under subsection (1) from one health service provider to another health service provider —
 - (a) obtain the consent of the employing authority of the health service provider to which the health executive is proposed to be transferred; and
 - (b) consult with the health executive proposed to be transferred.
- (3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a health executive may only be transferred under subsection (1) at the level of classification which the health executive had immediately before the transfer.
- (4) If the office to which a health executive is transferred under subsection (1)(a) is an office, or the functions to the performance of which a health executive is transferred under subsection (1)(b) are functions, in a different health service provider, the employing authority of that health service provider becomes the employing authority of the health executive.
- (5) On the transfer of a health executive under subsection (1), the employing authority of the health service provider to which that transfer takes place is substituted for the employing authority of the health service provider from which that transfer takes place as a party to the contract of employment of the health executive.
- (6) The transfer of a health executive under subsection (1) does not affect the term of the health executive's contract of employment.

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.

[Section 123A inserted: No. 1 of 2023 s. 55.]

124. Performance assessment

- (1) The performance of a health executive must be reviewed, at least annually, by the employing authority of the health executive.
- (2) The review must have regard to the agreed performance criteria for the office and any other relevant matter.

125. Termination of contract of employment by employing authority

- (1) A health executive's contract of employment may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination given to the health executive by the health executive's employing authority.
- (2) An employing authority may, in lieu of 4 weeks' notice of termination, pay the health executive a prescribed amount.

Subdivision 4 — General provisions about chief executives and health executives

126. Terms used

In this Subdivision —

department has the meaning given in the PSM Act section 3(1);

executive means a chief executive or a health executive;

organisation has the meaning given in the PSM Act section 3(1) and includes a health service provider.

127. Conditions of employment

An executive's employment is governed by —

- (a) this Act and other applicable written laws; and
- (b) the executive's contract of employment.

128. Employment of chief executives and health executives governed by contract of employment

- (1) The contract of employment of an executive must —
 - (a) be in writing; and
 - (b) be signed by or on behalf of the parties to the contract.
- (2) The contract of employment expires on the day on which the term of appointment of the executive concerned expires or is terminated.
- (3) The contract of employment (the ***original contract***) may be varied at any time by a further contract between the parties but the term of the original contract cannot be extended to a total period of more than 5 years after the day on which the original contract of employment came into force.
- (4) The employing authority of an executive acts for and on behalf of the State in any contract of employment between that employing authority and the executive.

129. Content of contract of employment

- (1) The matters to be dealt with in a contract of employment between an executive and the executive's employing authority include —
 - (a) the functions of the office of the executive, including performance criteria for the purpose of reviews of the member's performance; and
 - (b) the remuneration for the executive; and
 - (c) any election by the executive to retain a right of return within the meaning of section 132.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975*, if that Act applies to the executive.

130. Termination of contract of employment by executive

- (1) An executive's contract of employment may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination given to the executive's employing authority by the executive.
- (2) An employing authority may agree to an executive giving the employing authority less than 4 weeks' notice of termination.

131. Notification or payment in lieu if executive is not reappointed

If the employing authority of an executive does not propose to reappoint the executive, the employing authority must —

- (a) notify the executive of that fact not less than 4 weeks before the expiry of the executive's contract of employment; or
- (b) pay the executive in lieu of that period of notice an amount —
 - (i) not exceeding the maximum amount prescribed; and

- (ii) not less than the minimum amount prescribed for each day by which that period of notice falls short of 4 weeks.

132. Right of return for certain executives

- (1) In this section —

right of return means the entitlement of an executive to employment in a department or organisation in accordance with this section;

statutory office means an office, post or position that is established under an Act by which the right to appoint to that office, post or position is vested in the Governor or a Minister.

- (2) An executive may elect to retain a right of return if, for a continuous period of not less than 6 months ending immediately before the executive's first appointment as an executive, the executive —

- (a) was employed for an indefinite period in a department or organisation (the *originating place of employment*); or
- (b) held a statutory office or a series of statutory offices on a full-time basis and, before holding the statutory office or any of those statutory offices, was employed for an indefinite period in a department or organisation (the *originating place of employment*).

- (3) An election referred to in subsection (2) —

- (a) may be made in the first contract of employment entered into by the executive, but, unless made in that contract, cannot be made in any subsequent contract of employment for the same or another office in the Health Executive Service; and
- (b) is revoked if that election is not again made by the executive in a subsequent contract of employment; and

- (c) may be revoked by the executive by notice in writing delivered to the executive's employing authority; and
 - (d) if revoked, cannot be made again.
- (4) An executive who has elected to retain a right of return is entitled to employment in the executive's originating place of employment at the same level of classification as the executive held immediately before ceasing to be employed for an indefinite period within the meaning of subsection (2)(a) or (b), as the case requires, if the executive —
 - (a) ceases to be an executive otherwise than by reason of the revocation of a determination under section 105(3); and
 - (b) in the case of —
 - (i) a chief executive, is not reappointed to the same or another office of chief executive or to the performance of other functions in the Health Executive Service; or
 - (ii) a health executive, is not reappointed to the same or another office of health executive or to the performance of other functions in a health service provider.
- (5) A person is not entitled to a right of return if the person's employment in the Public Sector was terminated, or the person was dismissed, under this Act for substandard performance or breach of discipline.
- (6) An employee dismissed under Part 10 is, for the purposes of subsection (5), to be taken to have been dismissed for breach of discipline.
- (7) This section does not prevent the application of the provisions of this Act relating to the management of the redeployment and redundancy of employees to a person who is employed in a health service provider, department or organisation under a right of return.

- (8) Nothing in this section affects the entitlement of any executive under another written law to employment in a department or organisation in accordance with that written law.

133. Compensation if executive has no right of return

- (1) This section applies to a person —
- (a) who ceases to be an executive, otherwise than by reason of —
 - (i) the revocation of a determination under section 105(3); or
 - (ii) termination of employment in the Public Sector, or dismissal, under this Act for substandard performance or breach of discipline,
before the executive's contract of employment expires by effluxion of time; and
 - (b) who does not have a right of return within the meaning of section 132.
- (2) An employee dismissed under Part 10 is, for the purposes of subsection (1)(a)(ii), to be taken to have been dismissed for breach of discipline.
- (3) A person to whom this section applies is entitled to such compensation, if any, as the Department CEO determines by reference to the remuneration to which that person is entitled for a particular period ending immediately before the day referred to in subsection (4).
- (4) The maximum compensation payable to a person under this section is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before the day on which the person ceased to be an executive in the manner specified in subsection (1)(a).

134. Repayment of compensation

- (1) In this section —
prescribed period means a period prescribed for the purposes of this section that commences on the payment of compensation to a person under section 133.
- (2) This section applies to a person if the person —
- (a) is paid compensation under section 133; and
 - (b) is subsequently —
 - (i) employed in a department or organisation; or
 - (ii) engaged by an employing authority within the meaning of this Act or the PSM Act under a contract for services.
- (3) A person employed or engaged as mentioned in subsection (2)(b) before the expiry of the prescribed period in relation to that person must refund to the Treasurer an amount that bears to the amount of the compensation the same proportion as the unexpired portion of that period bears to that period.
- (4) If a person who is required to comply with subsection (3) does not do so, the amount unrefunded may be recovered by the Treasurer in a court of competent jurisdiction as a debt owed by that person to the State.

135. Election to take compensation instead of right of return

- (1) An executive who has an entitlement under section 132(4) to employment may elect in writing to take compensation under section 133 instead of exercising that entitlement.
- (2) On an election under subsection (1) taking effect, the executive concerned —
- (a) ceases to have an entitlement under section 132(4); and
 - (b) becomes entitled to compensation under section 133.

136. Secondment of executive

- (1) In this section —
relevant employer means —
- (a) the employing authority of a department or organisation;
or
 - (b) an employer outside the Public Sector.
- (2) The employing authority of an executive may enter into an arrangement in writing with a relevant employer for the secondment of the executive to perform functions or services for, or duties in the service of, the relevant employer during the period specified in the arrangement.
- (3) An employing authority must not act under subsection (2) unless —
- (a) the employing authority considers it to be in the public interest to do so; and
 - (b) the executive concerned consents.

137. Vacation of office of executive

- (1) The office of an executive becomes vacant if —
- (a) the executive dies; or
 - (b) in the case of a chief executive, the chief executive is removed from the office under section 115; or
 - (c) the executive completes a term and is not reappointed;
or
 - (d) the executive is dismissed, or retires, under this Act; or
 - (e) the employment of the executive is terminated under this Act; or
 - (f) the executive resigns by written resignation given —
 - (i) in the case of a chief executive, to the Department CEO; or

- (ii) in the case of a health executive, to the employing authority of the executive's health service provider,
and the Department CEO or that employing authority, as the case requires, accepts that resignation; or
 - (g) the executive is appointed or transferred under this Part to another office (unless it is an appointment and the Department CEO authorises the offices being held concurrently by the executive).
- (2) The vacation of an office under subsection (1)(a), (b), (c), (d), (e) or (f) terminates the contract of employment of the executive concerned.

138. Operation of Division

This Division prevails over any inconsistent provision of any other written law or of the terms of appointment of or contract with a person.

Division 3 — Other staff

139. Division does not apply to Health Executive Service

This Division does not apply to employees employed in the Health Executive Service.

140. Employees of health service provider

- (1) An employing authority of a health service provider may employ and manage employees for and on behalf of the State.
- (2) Employees employed under subsection (1) are in addition to employees employed as health executives in the Health Executive Service.
- (3) Subject to any relevant industrial instrument, the terms and conditions of employment of employees employed under

subsection (1) are the terms and conditions the employing authority determines.

[Section 140 amended: No. 1 of 2023 s. 56.]

141. Transfers between health service providers or between health services providers and the Department

- (1) If the employing authority of a health service provider considers it to be in the best interests of the health service provider or the WA health system to do so, the employing authority may —
 - (a) transfer an employee in the health service provider from one office in the health service provider to another office in that health service provider; or
 - (b) transfer an employee in the health service provider from an office in the health service provider to an office in another health service provider.
- (2) If the employing authority of the Department and the employing authority of a health service provider consider it to be in the best interests of the WA health system to do so —
 - (a) the employing authority of the Department may transfer an employee in the Department from an office in the Department to an office in the health service provider; and
 - (b) the employing authority of the health service provider may transfer an employee in the health service provider from an office in the health service provider to an office in the Department.
- (3) A transfer under subsection (1) or (2) must be —
 - (a) at the same or equivalent level of classification; and
 - (b) to an office —
 - (i) for which the employee possesses requisite qualifications; and

- (ii) the functions of which are appropriate to the employee's level of classification.
- (4) An employing authority cannot transfer an employee under subsection (1)(b) or (2) unless —
 - (a) the transfer complies with the relevant policy framework; and
 - (b) the employing authority of the health service provider to which the employee is to be transferred or, if the employee is to be transferred to the Department, the Department CEO, has approved the transfer; and
 - (c) the employee to be transferred has been consulted.
- (5) On the transfer of an employee under subsection (1)(b) or (2) —
 - (a) the office from which the employee was transferred becomes vacant; and
 - (b) the employing authority of the health service provider to which the employee was transferred or, if the employee was transferred to the Department, the Department CEO —
 - (i) becomes the employing authority of the employee; and
 - (ii) is substituted for the employing authority of the health service provider from which the employee was transferred as a party to any contract of employment of the employee.
- (6) If the employee is employed on contract, the transfer has effect despite anything in the contract under which the employee is transferred.

142. Secondment of employee

- (1) In subsection (3) —
relevant employer means —
- (a) the employing authority of a department or organisation;
or
 - (b) an employer outside the Public Sector.
- (2) A chief executive of a health service provider may arrange with another employer for an employee of that other employer to perform duties in the service of the health service provider for the purposes of this Act.
- (3) A chief executive of a health service provider may enter into an arrangement with a relevant employer for the secondment of an employee in the health service provider to perform functions or services for, or duties in the service of, the relevant employer during the period specified in the arrangement.
- (4) A chief executive must not act under subsection (3) unless —
- (a) the chief executive considers it to be in the public interest to do so; and
 - (b) the employee concerned consents.

143. Contracts for services

- (1) The employing authority of a health service provider may, in accordance with any relevant policy framework, engage a person under a contract for services on the terms and conditions (including as to remuneration) that the employing authority determines.
- (2) This section does not detract from the power that the PSM Act section 100 gives the employing authority of a health service provider to engage a person under a contract for services or appoint a person on a casual employment basis.

Part 10 — Criminal and misconduct matters concerning employees

144. Terms used

In this Part —

responsible authority means —

- (a) in relation to a chief executive — the Department CEO;
- (b) in relation to an employee (other than a chief executive) in a health service provider — the chief executive of the health service provider;
- (c) in relation to a staff member who is engaged under a contract for services in a health service provider — the chief executive of the health service provider;

serious offence has the meaning given in the PSM Act section 80A.

145. Duty of staff member to report certain criminal conduct and misconduct findings

- (1) A staff member who is charged with having committed, or is convicted or found guilty of, a serious offence must, within 7 days of the charge being laid or the conviction, report that fact in writing to the staff member's responsible authority.
- (2) A staff member who has a misconduct finding made against them under the Health Practitioner Regulation National Law must, within 7 days of receiving notice of the finding —
 - (a) report that fact to the staff member's responsible authority; and
 - (b) provide the person to whom the report is made with a copy of the finding.

- (3) In subsection (2) —
misconduct finding includes a finding of unsatisfactory professional performance, unprofessional conduct or professional misconduct.

[Section 145 amended: No. 1 of 2023 s. 57.]

146. Further reporting and notification

- (1) A staff member's responsible authority must report any conduct of the staff member that the responsible authority suspects on reasonable grounds constitutes or may constitute professional misconduct or unsatisfactory professional performance under the Health Practitioner Regulation National Law to —
- (a) the professional board or authority that deals with the registration of the staff member as a health practitioner; and
 - (b) the Department CEO.
- (2) A staff member's responsible authority must, on becoming aware that the staff member has been charged with having committed, or has been convicted or found guilty of, a serious offence, report the staff member's charge, conviction or the finding of guilt to the Department CEO.
- (3) The Department CEO may, if the Department CEO considers it appropriate to do so for the protection of a health service provider's patients, notify a health service provider or any other person or body of a report received under subsection (1) or (2).
- (4) A notification under subsection (3) may be made in such form as the Department CEO considers appropriate.
- (5) The duty of a person to make a report under subsection (1) or (2) must be complied with, and the Department CEO may give a notification under subsection (3), despite —
- (a) the provisions of any other Act, whether enacted before or after this Act; or

- (b) any obligation the person has to maintain confidentiality about a matter to which the report relates.
- (6) Without limiting section 220, in complying with subsection (1) or (2) or giving a notification under subsection (3) a person —
 - (a) does not incur any civil or criminal liability; and
 - (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
 - (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.
- (7) Subsection (1) does not affect an obligation under another written law to report professional misconduct or unsatisfactory professional performance.

[Section 146 amended: No. 1 of 2023 s. 58.]

147. Suspending employee if health practitioner registration is suspended or becomes conditional

- (1) An employee's employing authority may suspend the employee from duty during any period for which —
 - (a) the registration of an employee as a registered health practitioner is suspended under the Health Practitioner Regulation National Law; or
 - (b) conditions are imposed on the registration of an 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 an 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) An employing authority who has suspended an employee from duty under this section may at any time remove or vary the terms of the suspension.

[Section 147 amended: No. 1 of 2023 s. 59.]

148. Suspending employee pending decision in relation to serious offence

- (1) If an employee is charged with having committed a serious offence, the employing authority of the employee may suspend the employee from duty.
- (2) Subject to subsection (3), a suspension arising from a charge referred to in subsection (1) has effect until the criminal charge or any action that the employing authority is considering taking under section 150 has been finalised.
- (3) The employing authority may at any time remove or vary the terms of the suspension.

149. Salary during suspension

- (1) An employee may be suspended under section 147 or 148 on full pay, partial pay or without pay.
- (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.

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- (3) An employee is entitled to have any pay of the employee that is withheld under subsection (1) and not forfeited under subsection (2) restored to the employee.

[Section 149 amended: No. 1 of 2023 s. 60.]

150. Disciplinary or improvement action where registration suspended or conditional or in case of serious offence

- (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) An employing authority cannot take action under subsection (1) —
- (a) until all rights of appeal under the Health Practitioner Regulation National Law against the action taken under that Act have lapsed or been exhausted; or

- (b) if the employee successfully appeals under the Health Practitioner Regulation National Law against the action taken under that Act.
- (3) Despite the *Sentencing Act 1995* section 11, if an employee is convicted or found guilty of a serious offence the employing authority 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.
- (4) Before any disciplinary action or improvement action is taken with respect to an employee under this section, the employee must be given an opportunity to make a submission in relation to the action that the employing authority is considering taking.
- (5) A decision of an employing authority to take disciplinary action or improvement action with respect to an employee may be carried into effect at any time.

[Section 150 amended: No. 1 of 2023 s. 61.]

151. Protection of patients to be paramount consideration

The protection of a health service provider's patients must be the paramount consideration in relation to determining whether to take disciplinary action against an employee under section 150.

152. Power of employing authority to take improvement or other action not limited

- (1) Nothing in this Part limits the power of an employing authority under other provisions of this Act or the PSM Act to take improvement action in relation to an employee in circumstances in which the employing authority considers it appropriate to do so.

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- (2) Nothing in this Part limits the power of an employing authority to take other action against an employee under Part 11 or under any other law.

153. Appeals and referrals

- (1) Section 172 applies to a decision to suspend an employee under section 147 or 148 or to take disciplinary action under section 150.
- (2) In the exercise of jurisdiction under the *Industrial Relations Act 1979*, regard must be had to section 151.

Part 11 — Substandard performance and disciplinary matters

Division 1 — General

154. Application and effect of Part

- (1) Subject to section 155, this Part applies to all employees.
- (2) This Part prevails to the extent that it is inconsistent with any enactment that applies to —
 - (a) an employee; or
 - (b) a member of a class of employees.

155. Application of Part in respect of former employees

- (1) A person who has ceased to be employed in a health service provider (a *former employee*) is, in prescribed circumstances, to be taken to be an employee for the purposes of this Part if the person —
 - (a) may have committed a breach of discipline; and
 - (b) was an employee at the time of the suspected breach.
- (2) If the former employee is found to have committed a breach of discipline, the disciplinary action that may be taken under this Act in respect of a former employee is the disciplinary action prescribed for the purposes of this subsection.
- (3) A former employee's retirement or resignation, or the benefits, rights and liabilities arising from the retirement or resignation, are not affected by any disciplinary action taken in respect of the former employee.
- (4) For the purposes of this Part, a reference to an employing authority is, in prescribed circumstances, to be taken to be a reference to the employing authority of a former employee.

156. Power of employing authority to take improvement or other action not limited

- (1) Nothing in this Part limits the power of an employing authority under other provisions of this Act to take improvement action in relation to an employee in circumstances in which the employing authority considers it appropriate to do so.
- (2) Nothing in this Part limits the power of an employing authority to take other action against an employee under Part 10 or under any other law.

157. Inconsistent provisions, instruments and contracts

[(1) deleted]

- (2) The provisions of this Part prevail, to the extent of any inconsistency, over any other provision of this Act.
- (3) The provisions of this Part and any regulations made for the purposes of this Part prevail, to the extent of any inconsistency, over any industrial instrument.
- (4) The provisions of this Part and any regulations made for the purposes of this Part prevail, to the extent of any inconsistency, over the terms and conditions applying to an employee's employment under a contract of employment or agreement with the employee, whether entered into or renewed before, on or after the commencement of this section.

[Section 157 amended: No. 1 of 2023 s. 62.]

Division 2 — Substandard performance

158. What is substandard performance

- (1) For the purposes of this Division, the performance of an employee is substandard if and only if the employee does not, in the performance of the functions that the employee is required to perform, attain or sustain a standard that a person may

reasonably be expected to attain or sustain in the performance of those functions.

- (2) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not the performance of an employee is substandard, regard —
- (a) must be had —
 - (i) to any written selection criteria or job specifications applicable to; and
 - (ii) to any duty statement describing; and
 - (iii) to any written work standards or instructions relating to the manner of performance of, the functions the employee is required to perform; and
 - (b) may be had —
 - (i) to any written selection criteria or job specifications applicable to; and
 - (ii) to any duty statement describing; and
 - (iii) to any written work standards or instructions relating to the manner of performance of, functions similar to those functions.

159. Powers in relation to substandard performance

- (1) Subject to subsection (2), if an employee's employing authority is of the opinion that the performance of the employee is substandard, the employing authority may —
- (a) withhold for such period as the employing authority thinks fit an increment of remuneration otherwise payable to the employee; or
 - (b) reduce the level of classification of the employee; or
 - (c) terminate the employment in the health service provider of the employee.

- (2) If an employee does not admit to the employee's employing authority that the employee's performance is substandard, that employing authority must, before forming the opinion that the performance of the employee is substandard, cause an investigation to be held into whether or not the performance of the employee is substandard.

Division 3 — Disciplinary matters

160. Term used: section 173(2) breach of discipline

In this Division —

section 173(2) breach of discipline means a breach of discipline arising out of disobedience to, or disregard of, a lawful order referred to in section 173(2).

161. What is a breach of discipline

An employee commits a breach of discipline if the employee —

- (a) disobeys or disregards a lawful order; or
 - (b) contravenes —
 - (i) any provision of this Act or the PSM Act applicable to that employee; or
 - (ii) any public sector standard or code of ethics; or
 - (iii) a policy framework;
- or
- (c) commits an act of misconduct; or
 - (d) is negligent or careless in the performance of the employee's functions; or
 - (e) commits an act of victimisation within the meaning of the *Public Interest Disclosure Act 2003* section 15.

[Section 161 amended: No. 1 of 2023 s. 63.]

162. Options in relation to suspected breach of discipline

If an employing authority of an employee is made aware, or becomes aware, by any means that the employee may have committed a breach of discipline, the employing authority may —

- (a) decide to deal with the matter as a disciplinary matter under this Division in accordance with the relevant regulations; or
- (b) decide that it is appropriate —
 - (i) to take improvement action with respect to the employee; or
 - (ii) to take no action.

163. Dealing with disciplinary matter

- (1) In dealing with a disciplinary matter under this Division an employing authority —
 - (a) must proceed with as little formality and technicality as this Division, the relevant regulations and the circumstances of the matter permit; and
 - (b) is not bound by the rules of evidence; and
 - (c) may, subject to this Division and the relevant regulations, determine the procedure to be followed.
- (2) Even though an employing authority decides to act under section 162(a), the employing authority may, at any stage of the process, decide instead that it is appropriate —
 - (a) to take improvement action with respect to the employee; or
 - (b) that no further action be taken.
- (3) After dealing with a matter as a disciplinary matter under this Division —
 - (a) if the employing authority finds that the employee has committed a section 173(2) breach of discipline, the

employing authority must take disciplinary action by dismissing the employee; and

- (b) if the employing authority finds that the employee has committed a breach of discipline that is not a section 173(2) breach of discipline, the employing authority must decide —
 - (i) to take disciplinary action, or both disciplinary action and improvement action, with respect to the employee; or
 - (ii) to take improvement action with respect to the employee; or
 - (iii) that no further action is to be taken.

164. Action against employee pending decision on breach of discipline

- (1) If an employing authority has decided to act under section 162(a) in relation to an employee, the employing authority may, in accordance with the relevant regulations —
 - (a) suspend the employee on full pay, partial pay or without pay; or
 - (b) alter the employee's scope of practice or duties.
- (2) Subject to subsection (3) a suspension or alteration arising from a decision referred to in subsection (1) has effect until a decision is made under section 163(2) or (3) or 166 in respect of the suspected breach.
- (3) The employing authority may at any time remove, or vary the terms of, the suspension or alteration.
- (4) Unless the employing authority otherwise directs, any pay withheld under subsection (1) is forfeited to the State if it is decided to take disciplinary action with respect to the employee for the breach of discipline.

- (5) An employee is entitled to have any pay of the employee that is withheld under subsection (1) and not forfeited under subsection (4) restored to the employee.

165. Special disciplinary inquiries

- (1) The Department CEO may at any time before a decision is made under section 162(b) or 163(2) or (3) in respect of a suspected breach of discipline direct that a special disciplinary inquiry be held into the suspected breach.
- (2) A direction under subsection (1) may be made on the request of the employing authority of the employee suspected to have committed the breach of discipline or on the initiative of the Department CEO.
- (3) Sections 185 to 192 apply to and in relation to a person holding a special disciplinary inquiry and to a special disciplinary inquiry as if references in those sections to an inquirer and to an inquiry were references to the person holding the special disciplinary inquiry and to the special disciplinary inquiry, respectively.
- (4) Without limiting subsection (1), a person holding a special disciplinary inquiry may have regard to any information elicited, or findings made, in another special disciplinary inquiry, or in an investigation, inspection or audit under Part 13 or an inquiry under Part 14.
- (5) A person who holds a special disciplinary inquiry must, at the conclusion of the inquiry —
- (a) make a finding that the employee —
 - (i) has committed a section 173(2) breach of discipline; or
 - (ii) has committed a breach of discipline other than a section 173(2) breach of discipline; or

- (iii) has not committed a breach of discipline;
and
- (b) prepare a report on the conduct and finding of the special disciplinary inquiry; and
- (c) if the finding is that the employee has committed a breach of discipline other than a section 173(2) breach of discipline, include in the report a recommendation as to any disciplinary action and improvement action that should be taken by the employing authority; and
- (d) provide the employing authority and the Department CEO with a copy of the report.

166. Consequence of report of special disciplinary inquiry

On receiving a report under section 165(5), the employing authority must accept the finding in the report and —

- (a) in the case of a finding that the employee has committed a section 173(2) breach of discipline, take disciplinary action by dismissing the employee; or
- (b) in the case of a finding that the employee has committed a breach of discipline other than a section 173(2) breach of discipline —
 - (i) decide to take disciplinary action or improvement action, or both disciplinary action and improvement action, in relation to the employee in accordance with the recommendation in the report; or
 - (ii) decline to accept the recommendation in the report and decide to take such other disciplinary action or improvement action, or both disciplinary action and improvement action, in relation to the employee as could have been recommended in the report;

or

- (c) in the case of a finding that no breach of discipline was committed by the employee, notify the employee of that finding and that no further action will be taken in the matter.

167. Notification of outcome of disciplinary matter

- (1) The employing authority of an employee must notify the employee —
 - (a) whether or not the employee has been found under this Division to have committed any breach of discipline alleged against the employee; and
 - (b) if such a finding has been made against the employee, what action has been taken under this Division in relation to the employee.
- (2) The employing authority of an employee must notify the Department CEO if —
 - (a) the employee has been found under this Division to have committed any breach of discipline alleged against the employee; and
 - (b) the disciplinary action ordered was dismissal, or the employing authority is of the opinion that the breach of discipline could result in a serious risk to the safety of patients.
- (3) A notification under subsection (1) or (2) must be given in writing within 30 days of the finding being made.
- (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.

[Section 167 amended: No. 1 of 2023 s. 64.]

168. Termination of other employment if employee is dismissed

- (1) Any employing authority of an employee may, after receiving notification under section 167(4) that the employee has been dismissed by disciplinary action under this Part by another employing authority of the employee, terminate the employment of the employee.
- (2) An employing authority —
 - (a) must not terminate the employment of an employee under subsection (1) earlier than the prescribed period after receiving notification under section 167(4) in respect of the employee; and
 - (b) must comply with the relevant policy framework when acting under subsection (1).
- (3) If the employment of an employee is terminated under subsection (1), the contract of employment of the employee is terminated.

169. Payment and recovery of fine

If a fine is imposed on an employee under this Division, the employee must pay the amount of the fine to the Treasurer and, if the employee does not do so, that amount may be recovered in a court of competent jurisdiction as a debt owing to the State.

170. When disciplinary action can be taken

A decision of an employing authority to take disciplinary action or improvement action with respect to an employee may be carried into effect at any time.

Division 4 — Appeals and referrals

171. Terms used

In this section —

government officer has the meaning given in the *Industrial Relations Act 1979* section 80C;

Industrial Commission has the meaning given to **Commission** in the *Industrial Relations Act 1979* section 7(1).

172. Certain decisions and findings may be appealed or referred

(1) In this section —

disciplinary decision or finding means —

- (a) a decision made under section 159(1)(b) or (c); or
- (b) a finding made in the exercise of a power under section 165(5)(a)(ii); or
- (c) a decision made under section 147, 148 or 164 to suspend a government officer or other employee on partial pay or without pay; or
- (d) a decision to take disciplinary action made under section 150(1), 163(3)(b) or 166(b); or
- (e) a decision to terminate the employment of a government officer or other employee under section 168(1).

(2) Subject to sections 118 and 173, an employee or former employee who —

- (a) is, or was, a government officer; and
- (b) is aggrieved by a disciplinary decision or finding made in respect of the government officer,

may appeal against that decision or finding to the Industrial Commission constituted by a Public Service Appeal Board appointed under the *Industrial Relations Act 1979* Part IIA Division 2.

- (3) A Public Service Appeal Board has jurisdiction to hear and determine an appeal under subsection (2) in accordance with the *Industrial Relations Act 1979* Part IIA Division 2.
- (4) Despite the *Industrial Relations Act 1979* section 29, but subject to section 173, an employee or former employee who —
 - (a) is not a government officer; and
 - (b) is aggrieved by a disciplinary decision or finding made in respect of the employee,may refer the decision or finding to the Industrial Commission as if the decision or finding were an industrial matter that could be so referred under the *Industrial Relations Act 1979*, and that Act applies to and in relation to that decision accordingly.
- (5) A referral under subsection (4) must be made within the prescribed period after the making of the decision or finding.
- (6) If it appears to the Industrial Commission or the Public Service Appeal Board that the employing authority failed to comply with the relevant policy framework or the rules of procedural fairness in making the decision or finding the subject of a referral or appealed against, the Industrial Commission or Public Service Appeal Board —
 - (a) is not required to determine the reference or allow the appeal solely on that basis and may proceed to decide the reference or appeal on its merits; or
 - (b) may quash the decision or finding and remit the matter back to the employing authority with directions as to the stage at which the disciplinary process in relation to the matter is to be recommenced by the employing authority if the employing authority continues the disciplinary process.

173. Referrals in relation to directions that are lawful orders

- (1) A reference in this section to an applied section is a reference to that section of the PSM Act as applied under Part 12.

- (2) A direction referred to in applied section 94(2)(b) or (3)(c)(i) is a lawful order for the purposes of section 161(a) if —
 - (a) the direction is given to the employee concerned in accordance with the relevant regulations referred to in applied section 94; and
 - (b) the direction is upheld by the Industrial Commission on a referral under applied section 95(2), or if the period referred to in applied section 95(3) has expired without that direction having been so referred.
- (3) Nothing in subsection (2) limits the meaning of lawful order in section 161(a).
- (4) Despite the *Industrial Relations Act 1979* section 29(1), but subject to section 118, an employee or former employee —
 - (a) against whom proceedings have been taken under this Part for a suspected breach of discipline arising out of alleged disobedience to, or disregard of, a direction which is by virtue of subsection (2) a lawful order for the purposes of section 161(a); and
 - (b) who is aggrieved by —
 - (i) a decision made under section 164 to suspend the employee on partial pay or without pay; or
 - (ii) a finding made in respect of the person referred to in section 163(3)(a), 165(5)(a)(i) or 166(a),may refer the decision or finding referred to in paragraph (b) to the Industrial Commission as if that decision or finding were an industrial matter that could be so referred under that Act.
- (5) The *Industrial Relations Act 1979* applies to and in relation to that decision or finding referred under subsection (4) as if the decision were an industrial matter referred to the Industrial Commission in accordance with that Act.
- (6) In exercising its jurisdiction under this section in relation to a direction consisting of a lawful order referred to in

subsection (2), the Industrial Commission must confine itself to determining whether or not that direction has been, or is capable of having been, complied with.

Part 12 — Redeployment and redundancy of employees

174. Application of PSM Act Part 6 and regulations made for the purposes of that Part

- (1) The PSM Act Part 6 applies, with the changes set out in subsection (2) and any other necessary changes, to and in respect of health service providers and employees in health service providers.
- (2) For the purposes of subsection (1) the following changes apply —
 - (a) section 173(2) of this Act applies in the place of the PSM Act section 94(4);
 - (b) the reference in the PSM Act section 95(1) definition of **section 94 decision** to “a lawful order by virtue of section 94(4)” is to be read as “a lawful order by virtue of the *Health Services Act 2016* section 173(2)”.
- (3) The regulations may modify the operation of regulations made for the purposes of the PSM Act Part 6 in relation to their application to and in respect of health service providers and employees in health service providers.

Part 13 — Investigations, inspections and audits

175. Department CEO may investigate, inspect or audit health service provider

The Department CEO may, for the purpose of assessing compliance with this Act —

- (a) investigate the management, administration and operations of, and health services provided by, a health service provider; and
- (b) inspect public health service facilities and other premises of a health service provider; and
- (c) audit health service providers.

176. Procedures

Subject to this Part, the Department CEO may determine the procedures to be followed in connection with investigations, inspections and audits under this Part.

[Section 176 amended: No. 1 of 2023 s. 65.]

177. Powers of Department CEO

- (1) 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 includes any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) anything from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

- (b) anything on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means.
- (2) For the purposes of section 175, the Department CEO may enter the premises of a health service provider (including any hospital or other facility controlled or managed by the health service provider) to investigate any matters relating to the operation or administration of the health service provider.
- (3) On entering premises under this section the Department CEO may do any one or more of the following —
 - (a) inspect the premises;
 - (b) generally make any investigation or inquiry that is relevant to the operation or administration of the health service provider;
 - (c) examine any records of the health service provider, including records containing confidential information, that are relevant to the Department CEO'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 Department CEO'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 Department CEO believes on reasonable grounds relates to, the operation or administration of the health service provider;
 - (g) require the owner or occupier of the premises to provide the Department CEO with such assistance and facilities as is or are reasonably necessary to enable the

Department CEO to exercise functions under this section.

[Section 177 amended: No. 1 of 2023 s. 66.]

178. Incriminating information or answers

- (1) An individual is not excused from complying with a requirement under section 177(3) to provide information or answer questions, or to produce any document or thing, on the ground that the information, answer, document or thing might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However, any information or answer provided, or document or thing produced, by an individual in compliance with a requirement under section 177(3) is not admissible in evidence in any criminal proceedings against the individual, other than proceedings for an offence under section 181.

179. Liability for complying with requirement

- (1) A person must comply with a requirement under section 177(3) to provide information or answer questions, or to produce any document or thing, despite the provisions of any other written law.
- (2) No civil or criminal liability is incurred as a result of compliance with a requirement under section 177(3).
- (3) Compliance with a requirement under section 177(3) is not to be regarded as —
 - (a) a breach of any duty of confidentiality or secrecy imposed by law; or
 - (b) a breach of professional ethics or standards or any principles of conduct applicable to the person's employment; or
 - (c) unprofessional conduct.

180. Failure to comply with requirement

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of the Department CEO under section 177(3).

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

- (2) Subsection (1) does not apply unless, when the Department CEO makes the requirement, the Department CEO informs the person that a failure to comply with the requirement may constitute an offence.

181. False information

A person must not, in connection with a requirement made by the Department CEO under section 177(3), provide any information or produce any document that the person knows is false or misleading in a material particular.

Penalty: a fine of \$10 000.

Part 14 — Inquiries

182. Terms used

In this Part —

inquirer means a person conducting an inquiry;

inquiry means an inquiry conducted under section 183.

[Section 182 amended: No. 1 of 2023 s. 67.]

183. Department CEO may conduct inquiry

- (1) The Department CEO may, on the Department CEO's own initiative or on the direction of the Minister, conduct an inquiry in respect of part or all of the functions, management or operations of one or more health service providers.
- (2) An inquiry may be conducted by the Department CEO personally, or by a person appointed in writing by the Department CEO for the purpose.
- (3) A person appointed by the Department CEO to conduct an inquiry —
 - (a) is to be paid the remuneration and allowances (if any) that are determined by the Department CEO on the recommendation of the Public Sector Commissioner; and
 - (b) must conduct the inquiry in accordance with any directions given in writing by the Department CEO.

184. Preliminary matters

- (1) Before an inquiry is conducted, the Department CEO must —
 - (a) inform the Minister in writing of the Department CEO's intention to do so; and
 - (b) state in writing the terms of reference of the inquiry; and
 - (c) if the inquiry is to be conducted by someone other than the Department CEO, state in writing which (if any) of

the powers set out in section 187 the inquirer is to have for the purposes of the inquiry.

- (2) The Department CEO may at any time, in writing —
 - (a) amend the terms of reference of an inquiry; or
 - (b) amend the statement of powers required by subsection (1)(c).
- (3) If the Department CEO does either of the things mentioned in subsection (2), the Department CEO must inform the Minister in writing what the Department CEO has done.

185. Procedure

- (1) In conducting an inquiry the inquirer —
 - (a) must act with as little formality as possible; and
 - (b) is not bound by the rules of evidence and may inform themselves on any matter in any manner the inquirer considers appropriate; and
 - (c) may receive written or oral submissions; and
 - (d) may consult with any person the inquirer considers appropriate.
- (2) Subject to this Part and the regulations, the inquirer may determine the procedure to be followed at, or in connection with, an inquiry.

186. Hearings

- (1) The inquirer may hold hearings for the purposes of an inquiry.
- (2) Hearings must be held in public.
- (3) However, the inquirer may direct that a hearing, or any part of a hearing, be held in private if the inquirer is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.

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- (4) The inquirer has a discretion as to whether any person may appear at a hearing in person or be represented by another person.

187. Inquirer's powers

(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.

- (1) For the purposes of an inquiry, the inquirer (if the Department CEO) —
- (a) may, by written notice, require the attendance of a person at a place and time specified in the notice; and
 - (b) may, by written notice, require a person to produce at a place and time specified in the notice a document that is in the possession or under the control of that person; and
 - (c) may inspect any document produced and retain it for any reasonable period that the inquirer thinks fit, and may make copies of it or any of its contents; and

- (d) may require a person to take an oath or make an affirmation and may administer an oath or affirmation to a person; and
 - (e) may require a person to answer any question put to that person; and
 - (f) may exercise powers under subsections (1A) and (1B).
- (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

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are reasonably necessary to enable the inquirer to exercise functions under this section.

- (2) For the purposes of an inquiry, the inquirer (if not the Department CEO) has whichever of the powers set out in subsections (1), (1A) and (1B) that the statement in writing required by section 184(1)(c) states that the inquirer is to have for that purpose.
- (3) A person required by a notice under this section to attend or to produce a document is entitled to be paid the prescribed allowances (if any) for the person's travelling and other expenses.

[Section 187 amended: No. 1 of 2023 s. 68.]

188. Failure to comply with requirements of notice

- (1) A person must not, without lawful excuse, refuse or fail to attend as required by a notice under section 187(1)(a).
Penalty for this subsection: a fine of \$10 000.
- (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.
- (3) A person must not, without lawful excuse, refuse or fail to be sworn or make an affirmation when required to do so under section 187(1)(d).
Penalty for this subsection: a fine of \$10 000.
- (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.

[Section 188 amended: No. 1 of 2023 s. 69.]

189. Incriminating answers or documents

- (1) It is not a lawful excuse for the purposes of section 188 for an individual to refuse to answer a question or produce a document on the ground that the answer or the document might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However, an answer given or a document produced by an individual in compliance with a requirement under section 187 is not admissible in evidence in any criminal proceedings against the individual, other than proceedings for an offence under section 191.

190. Disruption of inquiry

- (1) A person must not wilfully insult an inquirer when the inquirer is conducting an inquiry.
Penalty for this subsection: a fine of \$10 000.
- (2) A person must not wilfully interrupt or wilfully obstruct the conduct of an inquiry.
Penalty for this subsection: a fine of \$10 000.

191. False information

During an inquiry a person must not give an answer or other information to the inquirer if the person knows that the answer or information is false or misleading in a material particular.

Penalty: a fine of \$10 000.

192. Protection for certain purposes

- (1) A person (the *informant*) is not liable in any way for any loss or damage suffered by another person because the informant has given information or produced a document, in good faith, to an inquirer for the purposes of an inquiry.
- (2) An action in tort does not lie against an inquirer, or any person acting under the direction of an inquirer, for anything the inquirer or person has done or omitted to do, in good faith, for the purposes of an inquiry or an inquirer's report under section 193.
- (3) Nothing in this section limits section 220 or 226.

193. Reports

- (1) As soon as is practicable after completing an inquiry, the inquirer must —
 - (a) prepare a draft written report relating to the inquiry; and
 - (b) give the draft report to each health service provider to which the inquiry relates; and
 - (c) notify the health service provider that the health service provider may provide comments on the draft report to the inquirer within 28 days after receiving the draft report.
- (2) The draft report must include —
 - (a) the inquirer's preliminary findings and conclusions from conducting the inquiry; and
 - (b) any draft recommendations that the inquirer wishes to make arising from the inquiry and the reasons for those draft recommendations; and
 - [(c) *deleted*]
 - (d) any other prescribed matters.

- (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.
- (3) The Minister must cause a copy of the final report to be laid before each House of Parliament, or dealt with under section 229, within 14 sitting days after the report is given.

[Section 193 amended: No. 1 of 2023 s. 70.]

Part 15 — Changes to health service providers

Division 1 — Transfers of property between health entities

[Heading inserted: No. 1 of 2023 s. 71.]

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.

[Section 194 inserted: No. 1 of 2023 s. 71.]

Division 2 — Changes to, or abolition of, health service provider

195. Amendment of order establishing health service provider

The Minister may, by order published in the *Gazette*, amend an order made under section 32(1) by —

- (a) altering the name of the health service provider established by the order; or
- (b) altering the area in respect of which a health service provider is established; or
- (c) changing the nature of governance of a health service provider.

196. Abolition, amalgamation, merger or division of health service provider

The Minister may, by order published in the *Gazette* —

- (a) abolish a health service provider; or
- (b) amalgamate 2 or more existing health service providers and establish a new health service provider under section 32(1)(b); or
- (c) merge 2 or more existing health service providers; or
- (d) divide a health service provider and establish 2 or more new health service providers under section 32(1)(b).

197. Order may include savings and transitional provisions

An order under section 195 or 196 may contain provisions, not inconsistent with this Part or regulations made under section 205(2), of a savings or transitional nature consequent on the making of the order, including provisions with respect to the following —

- (a) the rights, obligations and liabilities of a health service provider;
- (b) the rights and interests of persons employed by a health service provider;
- (c) the continuation of legal proceedings pending by or against a health service provider.

198. Change of name

- (1) The change of name of a health service provider by order under section 195(a) does not operate —
 - (a) to create a new legal entity; or
 - (b) to prejudice or affect the identity of the body corporate constituted as a health service provider or its continuity as a health service provider; or

- (c) to affect the property, or the rights or obligations, of the health service provider; or
 - (d) to render defective any legal proceedings by or against the health service provider.
- (2) Any legal proceedings that could have been continued or commenced by or against the health service provider by its former name may be continued or commenced by or against it by its new name.

199. Board of health service provider

- (1) On the day on which the nature of the governance of a health service provider is changed by order under section 195(c) from board governed provider to chief executive governed provider, the members of the board cease to hold office.
- (2) On the day on which a board governed provider is abolished by order under section 196(a), amalgamated by order under section 196(b) or divided by order under section 196(d), the members of the board cease to hold office.
- (3) On the day on which 2 or more health service providers are merged by order under section 196(c), the members of the board of any board governed provider specified in the order as a health service provider to be abolished cease to hold office.

200. Transfer of assets, rights and liabilities

- (1) In this section —
assets does not include moneys standing to the credit of an account established under section 64 for a health service provider.
- (2) On the day on which a health service provider is abolished by order under section 196(a), each asset, right and liability of the health service provider is transferred —
 - (a) if a section 194 transfer order applies to the asset, right or liability — to the State, the Ministerial Body or the

- health service provider as specified in the section 194 transfer order; and
- (b) otherwise — to the Ministerial Body.
- (3) On the day on which 2 or more health service providers are amalgamated by order under section 196(b) —
- (a) each health service provider amalgamated by the order is abolished; and
- (b) the assets, rights and liabilities of each amalgamating health service provider are transferred to the new health service provider.
- (4) On the day on which 2 or more health service providers are merged by order under section 196(c) —
- (a) each health service provider specified in the order as a health service provider to be abolished is abolished; and
- (b) the assets, rights and liabilities of each of those health service providers are transferred to the health service provider that is specified in the order as the health service provider that is to continue.
- (5) On the day on which a health service provider is divided by order under section 196(d), each asset, right and liability of the health service provider is transferred —
- (a) if a section 194 transfer order applies to the asset, right or liability — to the State, the Ministerial Body or the health service provider as specified in the section 194 transfer order; and
- (b) otherwise — to the Ministerial Body.

[Section 200 amended: No. 1 of 2023 s. 72.]

201. Former accounts

- (1) In this section —
- former account***, in relation to a health service provider that has been abolished, divided or merged with another health service

provider, means the account established under section 64 for the health service provider;

operating account means an agency special purpose account established under the *Financial Management Act 2006* section 16.

- (2) On the day on which a health service provider is abolished by order under section 196(a) —
 - (a) any moneys standing to the credit of the health service provider's former account are to be credited to an operating account of the Department; and
 - (b) the former account is then to be closed.
- (3) On the day on which 2 or more health service providers are abolished under section 200(3)(a) as a consequence of an order under section 196(b) —
 - (a) any moneys standing to the credit of the health service providers' former accounts are to be credited to the operating account of the new health service provider established by the order; and
 - (b) the former accounts are then to be closed.
- (4) On the day on which 2 or more health service providers are merged by order under section 196(c) —
 - (a) any moneys standing to the credit of the former account of a health service provider that is specified in the order as a health service provider to be abolished are to be credited to the operating account of the health service provider that is specified in the order as the service provider that is to continue; and
 - (b) the former accounts are then to be closed.
- (5) On the day on which a health service provider is divided by order under section 196(d) —
 - (a) any moneys standing to the credit of the health service provider's former account are to be credited to the

- operating accounts of the new health service providers
as determined by the Department CEO; and
- (b) the former account is then to be closed.

Division 3 — General provisions

[202. Deleted: No. 1 of 2023 s. 73.]

203. Registration of documents

- (1) The relevant lands officials —
- (a) must take notice of this Part and any section 194 transfer order, including any schedule for the section 194 transfer order; and
 - (b) must record and register in the appropriate manner the documents necessary to show the effect of this Part and any section 194 transfer order.
- (2) The Minister must give a copy of each section 194 transfer order and any schedule for it, and any amendment to a section 194 transfer order or to a schedule for a section 194 transfer order, to each relevant lands official.

[Section 203 amended: No. 1 of 2023 s. 74.]

204. Exemption from State tax

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

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (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.

205. Transitional regulations

- (1) In this section —
 - publication day*, for regulations made under subsection (3), means the day on which the regulations are published in the *Gazette*;
 - specified* means specified or described in regulations made under subsection (3);
 - transitional matter* —
 - (a) means a matter that needs to be dealt with for the purpose of effecting a transition under this Part; and
 - (b) includes a saving or application matter.
- (2) The Governor may make regulations about the following —
 - (a) the abolition, amalgamation, merger or division of health service providers;
 - (b) changing the services to be provided by a health service provider as a consequence of the making of an order under section 195 or 196, including by transferring the services to be provided from one health service provider to another health service provider;
 - (c) any matter or thing necessary or convenient to facilitate or support a thing mentioned in paragraph (a) or (b) including —
 - (i) the transfer of staff;
 - (ii) staff entitlements;

- (iii) matters relating to contracts, agreements or other documents entered into by a health service provider, the Department CEO or the State;
 - (iv) the continuation of proceedings involving a health service provider, the Department or the State.
- (3) Without limiting subsection (2), if there is no sufficient provision in this Part or in a section 194 transfer order for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (4) Without limiting subsection (3), regulations made under that subsection may provide —
 - (a) for or with respect to the legal consequences of the differential transfer of rights, obligations or other liabilities under the same contract or other agreement to more than one transferee;
 - (b) that specified provisions of this Act —
 - (i) do not apply to or in relation to a specified matter; or
 - (ii) apply with specified modifications to or in relation to a specified matter.
- (5) If regulations made under subsection (3) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than transition day, the regulations have effect according to their terms.

- (6) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.
- (7) A regulation referred to in this section has, if the regulations so provide, effect despite any other provision of this Part.
- (8) Regulations can only be made under subsection (3) within 36 months after the making of the relevant order under section 195 or 196.

[Section 205 amended: No. 1 of 2023 s. 75.]

206. Effect of other instruments, rights and obligations

The operation of this Part, regulations made under this Part or a section 194 transfer order must not be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or

(e) as releasing or allowing the release of any surety.

[Section 206 amended: No. 1 of 2023 s. 76.]

Part 16 — Control of conduct and traffic on health service provider land

207. Term used: health service provider land

In this Part —

health service provider land means land declared under section 208(1) to be health service provider land.

208. Declaration of health service provider land

- (1) For the purposes of this Part and regulations made under this Act, the Minister may, by order published in the *Gazette*, declare any 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.
- (2) The Minister may revoke or amend an order made under subsection (1).
- (3) In proceedings for a contravention of a regulation an allegation in the prosecution notice that any place was within the boundaries of health service provider land to which the regulations applied is sufficient evidence of the fact alleged in the absence of proof to the contrary.

[Section 208 amended: No. 1 of 2023 s. 77.]

209. Regulations about conduct on, and use of, health service provider land

Without limiting section 230, the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate the following —

- (a) the maintenance of good order on health service provider land;
- (b) conduct of persons on health service provider land;
- (c) the prohibition, restriction or regulation of the admission of persons, vehicles and animals to health service provider land;
- (d) what may be brought on to health service provider land;
- (e) the appointment of authorised persons and their powers in connection with the operation and enforcement of the regulations;
- (f) the conferral on persons specified in the regulations of powers —
 - (i) to remove property from health service provider land, move property within the land, and recover attendant costs and expenses; and
 - (ii) to take possession of property on health service provider land that appears to be lost, discarded or disused and, subject to any prescribed requirements for notice to be given, to dispose of the property as if it were property of the health service provider;
- (g) the method of notifying a person alleged to have committed an offence against a regulation of the alleged offence and how it may or will be dealt with.

210. Regulations about management and control of traffic

- (1) In this section —
specified means specified in the regulations.

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- (2) Without limiting section 209 or 230, the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate the following —
 - (a) the use of vehicles on health service provider land; and
 - (b) the control, supervision and management of parking or standing areas on health service provider land.
- (3) The regulations may —
 - (a) include provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking and standing and the control of traffic generally;
 - (b) prescribe —
 - (i) fees and charges payable to a health service provider by a person using, or in respect of a vehicle occupying, a parking or standing area and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those fees; and
 - (ii) the method and means by which the fees may or must be paid and collected and recovered;
 - (c) provide for —
 - (i) the issue of permits, whether on application to a specified person or otherwise, entitling the holders of those permits to park vehicles in parking areas or elsewhere in health service provider land for periods and on other terms and conditions specified in the permits; and
 - (ii) the circumstances in which permits may be amended, suspended or revoked by a specified person;
 - (d) provide for the protection of parking and standing areas and all equipment pertaining to them against misuse,

damage, interference or attempted interference by any person;

- (e) regulate the parking and standing of vehicles in any parking or standing area and prohibit any person from parking or standing any vehicle in a parking area or standing area otherwise than in accordance with the regulations;
- (f) require persons in charge of vehicles within health service provider land to obey the orders and directions of specified persons or members of specified classes of persons given for the purpose of controlling traffic;
- (g) provide for the display, erection or marking of signs for the purposes of the regulations;
- (h) prohibit, or empower a specified person by the display, erection or marking of a sign referred to in paragraph (g) to prohibit —
 - (i) the use of a parking area for a purpose other than a specified purpose; or
 - (ii) the parking of a vehicle in a parking area by a person other than a specified person or a member of a specified class of persons;
- (i) exempt, or empower a specified person to exempt, any person or vehicle or class of person or class of vehicle from complying with any regulation prohibiting or restricting the parking or standing of vehicles generally or otherwise;
- (j) prescribe the following —
 - (i) the circumstances under which a staff member of a health service provider may remove a vehicle or cause it to be removed from a parking or standing area or from any other area within health service provider land to a specified place, whether within health service provider land or not;

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- (ii) any further powers in relation to the removal;
- (iii) the scale of fees to be paid to the health service provider to recover the vehicle from that place;
- (iv) the circumstances in which the health service provider may hold the vehicle until the prescribed fees are paid to the health service provider;
- (k) prohibit the driving of vehicles in any part of health service provider land at a speed in excess of that specified in respect of that part by a regulation or by any sign referred to in paragraph (g);
- (l) prescribe evidentiary provisions in relation to speed measuring equipment and the use of that equipment;
- (m) prohibit the removal by any person other than the driver of a vehicle in respect of which an offence against a regulation is alleged to have been committed of any notice relating to that offence affixed to the vehicle or left in or on the vehicle by a person authorised under the regulations to leave the notice.

211. Requirement to leave health service provider land

- (1) In this section —

authorised person means a person appointed under regulations mentioned in section 209(e);

reasonably suspects has the meaning given in the *Criminal Investigation Act 2006* section 4.

- (2) This section applies if an authorised person —

- (a) finds a person being disorderly or creating a disturbance;
or
- (b) reasonably suspects that a person has just been disorderly or created a disturbance; or

- (c) reasonably suspects that a person's presence may pose a threat to the safety of anyone else on or leaving health service provider land; or
 - (d) reasonably suspects that a person is on health service provider land without lawful justification or excuse; or
 - (e) reasonably suspects that a person is on health service provider land in contravention of a regulation or is otherwise contravening a regulation.
- (3) The authorised person may direct the person to leave the health service provider land or part of the health service provider land.
- (4) A person given a direction under subsection (3) must comply with the direction.

Penalty for this subsection: a fine of \$5 000.

212. Proceedings and payment of penalties

- (1) In this section —

provider offence means an offence under section 211(4) or regulations mentioned in section 209 or 210;

responsible provider, in relation to a provider offence, means the health service provider in which the land on which the offence occurred is vested or that has care, control and management of the land.

- (2) Proceedings for a provider offence may be commenced in the name of the responsible provider by the chief executive of the responsible provider or a person authorised to do so by the chief executive.
- (3) In any proceedings no proof is required of the authorisation of a person under subsection (2), but an averment in a prosecution notice that the person is so authorised is to be taken to be proved in the absence of proof to the contrary.

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- (4) Subsection (2) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.
- (5) A pecuniary penalty recovered in respect of a provider offence must be paid to the responsible provider.

Part 17 — Information

Division 1 — General

213. **Terms used**

In this Part —

disability has the meaning given in the *Disability Services Act 1993* section 3;

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
 - (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;

health information management system means a system referred to in section 214(1);

information policy framework means a policy framework issued under section 26(2)(k);

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.

[Section 213 amended: No. 1 of 2023 s. 78.]

214. Health information management systems

- (1) The Department CEO is to establish and maintain systems for the collection, receipt, storage and disclosure of, and access to, health information.
- (2) A health information management system is to be controlled and maintained in accordance with an information policy framework.
- (3) Information in a health information management system is held on behalf of the State.
- (4) An information policy framework may provide for the following —
 - (a) the receipt and storage of health information collected by a health service provider, the Department CEO or contracted health entity;
 - (b) access to that health information;
 - (c) circumstances in which that health information may be used.

215. Information held in health information management system

- (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.
- (1) The following health information must be held in a health information management system —
 - (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;
- (b) health information collected by a contracted health
entity to the extent that the health information —
- (i) relates to the provision of a public health service;
and
- (ii) is provided to the health service provider or the
Department CEO in connection with the
provision of that service;
- (c) health information provided in response to a request
made under section 218(2).
- (2) The Department CEO may, for purposes relating to the
provision of public health services and in accordance with the
information policy framework, permit any of the following to
have access to any health information that is held in a health
information management system —
- (a) an employee in the Department;
- (b) a staff member of a health service provider;
- (c) a staff member of a contracted health entity.

[Section 215 amended: No. 1 of 2023 s. 79.]

Division 2 — Disclosure of information

216. Collection, use and disclosure of information by Department CEO

The Department CEO may, in accordance with the regulations,
collect, use and disclose information, including health
information, for any of the following purposes —

- (a) the administration or enforcement of this Act;
- (b) the management of health service providers;

- (c) the planning for, provision, monitoring and evaluation of public health services;
- (d) health related research, whether that research is conducted by persons who are staff members of a health service provider or persons employed or engaged in the Department or other persons.

[Section 216 amended: No. 1 of 2023 s. 80.]

217. Disclosure of information by health service provider

- (1) In this section —

relevant information means health information that, in the opinion of the chief executive of a health service provider, is or is likely to be relevant to any of the following —

- (a) the treatment or care of a patient who has been, is being, or will or may be, provided with a health service by the health service provider;
 - (b) the health, safety or wellbeing of a patient who has been, is being, or will or may be, provided with a health service by the health service provider.
- (2) The chief executive of a health service provider may, in accordance with the regulations, disclose relevant information about a patient of the health service provider to any person who, in the opinion of the chief executive, has a sufficient interest in the treatment, care, health, safety or wellbeing of the patient.

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
 - (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.

[Section 217 amended: No. 1 of 2023 s. 81.]

218. Requesting information

- (1) In this section —
external provider —
 - (a) includes —
 - (i) a contracted health entity;

- (ii) an individual, a group of individuals or a body (whether corporate or unincorporate) that provides a service specifically for people who have or may have an illness or disability, wholly or partly from funds paid to the individual, group or body by or on behalf of the State;

but

- (b) does not include a person who is the carer under the *Carers Recognition Act 2004* section 5 of a person who has or may have an illness or disability;

interstate authority means —

- (a) a department of the Public Service of the Commonwealth, another State or a Territory; or
- (b) an agency or instrumentality of the Commonwealth, another State or a Territory; or
- (c) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued in existence for a public purpose under a law of the Commonwealth, another State or a Territory;

relevant information means information (including personal information) that, in the opinion of the Department CEO, is or is likely to be relevant to any of the following —

- (a) the administration or enforcement of this Act;
- (b) the management of health service providers;
- (c) the planning for, provision, monitoring and evaluation of public health services;
- (d) health related research, whether that research is conducted by persons who are staff members of a health service provider or persons employed or engaged in the Department or other persons.

- (2) The Department CEO may request any of these persons or bodies to disclose relevant information to the Department CEO —
- (a) a public authority;
 - (b) an interstate authority;
 - (c) an external provider.

Division 3 — Confidentiality

219. Confidentiality

- (1) A person must not (whether directly or indirectly) collect, use or disclose any information obtained by the person because of —
- (a) the person's office, position, employment or engagement under or for the purposes of this Act; or
 - (b) any disclosure made to the person under this Act, including in response to a request made under section 218(2).

Penalty for this subsection: a fine of \$5 000.

- (2) Subsection (1) does not apply in relation to the collection, use or disclosure of statistical or other information that is not personal information.
- (3) A person does not commit an offence under subsection (1) if the collection, use or disclosure of the information is authorised under section 220(1).

220. Authorised collection, use or disclosure of information

- (1) For the purposes of this Act, the collection, use or disclosure of information is authorised if the information is collected, used or disclosed in good faith in any of these circumstances —
- (a) for the purpose of, or in connection with, performing a function under this Act or another written law;
 - (b) for the purposes of section 215 or Division 2;

- (c) otherwise under this Act, including in response to a request made under section 61 or 218(2);
 - (d) under another law;
 - (e) to a court or other person or body acting judicially in the course of proceedings before the court or other person or body;
 - (f) under an order of a court or other person or body acting judicially;
 - (g) for the purposes of the investigation of a suspected offence or disciplinary matter or the conduct of proceedings against a person for an offence or disciplinary matter;
 - (h) if the information collected, used or disclosed is personal information — with the consent of the individual, or each individual, to whom the personal information relates;
 - (i) any other circumstances prescribed for this subsection.
- (2) Subsection (1)(e) and (f) apply subject to section 178(2).
- (3) If the collection, use or disclosure of information is authorised under subsection (1) —
- (a) no civil or criminal liability is incurred in respect of the collection, use or disclosure; and
 - (b) the collection, use or disclosure is not to be regarded as —
 - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
 - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
 - (iii) unprofessional conduct.

221. Regulations relating to information

The regulations may include provisions about the following —

- (a) the circumstances in which information may be disclosed under this Part;
- (b) the conditions subject to which information may be disclosed under this Part;
- (c) the receipt, use and storage of information disclosed under this Part;
- (d) the restriction of access to information disclosed under this Part;
- (e) the maximum period for which information disclosed under this Part may be retained;
- (f) the circumstances in which information disclosed under this Part must be destroyed.

Part 18 — Miscellaneous

Division 1 — Legal proceedings

222. Commencement of prosecutions

- (1) Except as provided in section 212(2), proceedings for an offence under this Act may be commenced in the name of the Department CEO by the Department CEO or a person authorised to do so by the CEO.
- (2) In any proceedings no proof is required of the authorisation of a person under subsection (1), but an averment in a prosecution notice that the person is so authorised is to be taken to be proved in the absence of proof to the contrary.
- (3) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

223. Appointments and signatures taken to be proved

- (1) In any proceedings the appointments of the following are, unless the contrary is shown, to be taken to be proved —
 - (a) the Department CEO;
 - (b) a chief executive;
 - (c) a member of the board of a health service provider;
 - (d) the chairperson of a health service provider;
 - (e) a member of a committee.
- (2) In any proceedings, the signatures of the persons mentioned in subsection (1) are, in the absence of proof to the contrary, to be taken to be proved.

224. Documentary evidence of certain matters

- (1) In this section —
specified means specified in the relevant certificate.

- (2) A certificate purporting to be signed by the Department CEO or a chief executive and stating any of the following matters is, unless the contrary is shown, proof of the matter —
- (a) a specified document is one of the following things made, given, issued or kept under this Act —
 - (i) a policy framework, direction or requirement;
 - (ii) an appointment, notice or decision;
 - (iii) a record or report, or an extract from a record or report;
 - (b) a specified document is a copy of a thing mentioned in paragraph (a);
 - (c) on a specified day, or during a specified period, an appointment as an authorised person under regulations mentioned in section 209(e) was, or was not, in force for a specified person;
 - (d) on a specified day a specified person was given a specified document under this Act;
 - (e) on a specified day a specified requirement was made of, or a specified direction was given to, a specified person;
 - (f) a specified amount is payable by a specified person under this Act and has not been paid.

225. Evidence Act 1906 not affected

This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

Division 2 — Miscellaneous

226. Protection from liability for persons exercising functions

- (1) An action in tort does not lie against a person other than a health service provider for any thing that the person has done, in good faith, in the performance or purported performance of a function under this Act.

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither a health service provider nor the State is relieved of any liability that it might have for another person having done any thing as described in that subsection.
- (4) In this section, a reference to the doing of any thing includes a reference to the omission to do any thing.

227. Minister and health service providers not required to be registered

Despite any written law requiring the registration of a person who provides a health service, the Minister or a health service provider —

- (a) may provide the health service even though the Minister or health service provider is not registered under that written law; and
- (b) does not commit an offence by providing the health service.

228. Modifications for purposes of *Workers' Compensation and Injury Management Act 1981* Part IV Division 2

- (1) In this section —
health service employee has the same meaning as *employee* has in section 6;

injury or hearing loss means —

- (a) an injury suffered by a health service employee; or
- (b) a noise induced hearing loss suffered by a health service employee that is not an injury,

in respect of which compensation has been paid or is payable under the WCIM Act by or on behalf of the State, or would have been so payable but for section 22 of that Act;

WCIM Act means the *Workers' Compensation and Injury Management Act 1981*.

- (2) For the purposes of the application of the WCIM Act Part IV Division 2 —
- (a) the awarding of damages against a health service provider independently of the WCIM Act in respect of an injury or hearing loss suffered by a health service employee is to be taken to be the awarding of damages against the State; and
 - (b) any negligence or other tort by the health service provider that caused the injury or hearing loss is to be taken to be the negligence or other tort of the State; and
 - (c) any prohibition under that Division against the awarding of damages in respect of the injury or hearing loss is to be taken to be a prohibition against the awarding of the damages against either or both of the State and the health service provider; and
 - (d) any conditions or limitations that apply under that Division in relation to the awarding of damages in respect of the injury or hearing loss, or to the amount of the damages, are to be taken to be conditions or limitations that apply to the awarding of the damages against either or both of the State and the health service provider or to the amount of the damages.

229. Laying documents before House of Parliament not sitting

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
- (a) when the Minister is ready to act, a House of Parliament is not sitting; and

- (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

230. Regulations — general power

- (1) The Governor may make regulations prescribing matters —
 - (a) required or permitted by this Act to be prescribed: or
 - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate the following —
 - (a) the procedure to be followed at, or in connection with, an inquiry under Part 14;
 - (b) the seizure or forfeiture of items under this Act;
 - (c) fees and charges payable under this Act and the recovery of those fees and charges;
 - (d) the verification by statutory declaration of information or documents given under this Act;
 - (e) the review by the State Administrative Tribunal of a decision made under this Act.
- (3) The regulations may provide that contravention of a regulation is an offence and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$10 000.

- (4) A regulation may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.

231. Regulations may adopt codes or legislation

- (1) In this section —

code means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;

subsidiary legislation includes rules, regulations, instructions, local laws and by-laws.

- (2) Regulations may adopt, either wholly or in part or with modifications —

- (a) any code; or
- (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

- (3) The adoption may be by —

- (a) incorporating the code or subsidiary legislation in the regulations; or
- (b) incorporating the code or subsidiary legislation by reference.

- (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.
- (5) If regulations adopt the code or subsidiary legislation by reference at a particular date, when the regulations are made or without reference to a particular date, the Department CEO must —
 - (a) ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time that have been adopted, is available, without charge, for public inspection; and
 - (b) publish a notice in the *Gazette* giving details of where those documents may be inspected or obtained.

[Section 231 amended: No. 1 of 2023 s. 82.]

Division 3 — Review of Act

232. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act —
 - (a) as soon as is practicable after the expiry of the period of 5 years beginning on the day on which this section comes into operation; and

- (b) after that, at intervals of not more than 5 years.
- (2) The Minister must —
 - (a) prepare a report based on each review; and
 - (b) cause it to be laid before each House of Parliament, or dealt with under section 229, within 14 days after it is prepared.

Part 19 — Transitional and savings matters

Division 1 — Interpretation

233. Terms used

In this Part unless the contrary intention appears —

hospital board —

- (a) means a board constituted under the HHS Act section 15; and
- (b) except in Division 2, includes the Minister in relation to any public hospital controlled by the Minister under the HHS Act section 7;

HHS Act means the *Hospitals and Health Services Act 1927* as in force immediately before transition day;

LA Act means the *Land Administration Act 1997*;

Minister for Lands means the Minister as defined in the LA Act section 3(1);

operating account means an agency special purpose account established under the *Financial Management Act 2006* section 16;

relevant successor means —

- (a) in relation to a function of a hospital board that becomes a function of a health service provider on transition day — the health service provider;
- (b) in relation to a function of a hospital board that becomes a function of the Department CEO on transition day — the Department CEO;
- (c) in relation to assets and liabilities assigned to a health service provider by section 237 — the health service provider;
- (d) in relation to assets and liabilities assigned to the Ministerial Body by section 237 — the Ministerial Body;

statutory transition —

- (a) means the transition from the provisions of the HHS Act to this Act; and
- (b) includes the transition from hospital boards to a relevant successor;

this Part includes regulations made under section 256;

transfer order means an order made under section 238;

transition day means the day on which section 234 comes into operation.

Division 2 — Boards and ministerial control

234. Boards abolished and Minister ceases to control hospitals

On transition day —

- (a) each hospital board constituted under the HHS Act section 15 is abolished and the members of each hospital board go out of office; and
- (b) the Minister ceases to have management and control of any hospital under the HHS Act section 7.

235. Immunity continues

Despite the abolition of the hospital boards, and removal of ministerial control and management, by section 234, if a hospital board or the Minister had the benefit of any immunity in respect of an act, matter or thing done or omitted before transition day, that immunity continues on and after transition day in that respect for the benefit of a relevant successor so far as the act, matter or thing is within the relevant successor's functions.

Division 3 — Hospital boards' assets, rights and liabilities

236. Division does not apply to land reserved under the *Queen Elizabeth II Medical Centre Act 1966*

Nothing in this Division applies to land that forms part of the reserve under the *Queen Elizabeth II Medical Centre Act 1966*.

237. Transfer to health service provider or Ministerial Body

- (1) On transition day —
 - (a) the assets of a hospital board specified in a transfer order are assigned to and become assets of the health service provider specified in the order; and
 - (b) the rest of the assets of each hospital board are assigned to and become assets of the Ministerial Body.
- (2) On transition day —
 - (a) the liabilities of a hospital board specified in a transfer order are assigned to and become liabilities of the health service provider specified in the order; and
 - (b) the rest of the liabilities of each hospital board are assigned to and become liabilities of the Ministerial Body.
- (3) On transition day the Ministerial Body is substituted for the hospital board as a party to any proceedings specified in a transfer order.
- (4) On and after transition day, any agreement or instrument specified in a transfer order has effect as if references to the Ministerial Body were substituted, in accordance with the order, for references to a hospital board.
- (5) On and after transition day, any proceedings or remedy that might have been commenced by or against, or might have been available to or against, a hospital board in relation to the assets

and liabilities assigned by subsections (1) and (2) may be commenced by or against, or are available to or against —

- (a) a health service provider in the case of assets and liabilities assigned to the health service provider by subsections (1)(a) and (2)(a); and
 - (b) the Ministerial Body in the case of assets and liabilities assigned by subsections (1)(b) and (2)(b).
- (6) On and after transition day, an act or omission done or omitted in relation to the assets and liabilities assigned by subsections (1) and (2) before the assignment by, to or in respect of a hospital board is, to the extent that the act or omission has any effect, to be taken to have been done or omitted by, to or in respect of —
- (a) the health service provider in the case of the assets and liabilities assigned to the health service provider by subsections (1)(a) and (2)(a); and
 - (b) the Ministerial Body in the case of assets and liabilities assigned by subsections (1)(b) and (2)(b).
- (7) This section does not apply to —
- (a) moneys standing to the credit of an operating account of a hospital board; or
 - (b) Crown land to which section 240 applies.

238. Transfer orders

- (1) To facilitate the statutory transition, the Minister may, by order published in the *Gazette* (a **transfer order**), specify all or any of the following —
- (a) assets and liabilities of a hospital board that are to be assigned to a health service provider by operation of section 237;
 - (b) proceedings in which the Ministerial Body is to be substituted for a hospital board as a party by operation of section 237;

- (c) agreements and instruments that, by operation of section 237, are to have effect as if references to the Ministerial Body were substituted, in accordance with the order, for references in the agreements and instruments to a hospital board.
- (2) A transfer order may also deal with any matter that is incidental or supplementary to a matter to which subsection (1) relates and the transfer order has effect accordingly.
- (3) A transfer order may specify things by reference to one 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 for a transfer order is to be taken to be specified in the transfer order.
- (5) A thing may be specified in a transfer order by describing the class to which it belongs.
- (6) Before a transfer order 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.
- (7) To the extent to which a schedule for a 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.
- (8) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (6) or (7) was not complied with.
- (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.
- (10) The Minister may, by order published in the *Gazette*, amend a transfer order or a schedule for a transfer order.

- (11) A transfer order, or an amendment to a transfer order or to a schedule for a transfer order, can only be made before transition day.

239. Correction of errors in transfer orders

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a schedule for a transfer order.
- (2) An order made under subsection (1) may have effect on and after transition day.
- (3) To the extent that an order made under subsection (1) has effect before the day of its publication in the *Gazette*, section 237 does not operate as a result of the order so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the day of its publication.

240. Reserves

- (1) This section applies to —
- (a) any Crown land that, immediately before transition day, was a reserve under the LA Act section 41 for which a hospital board was the management body under the LA Act section 46(1); and
 - (b) any Crown land that, immediately before transition day was a reserve for the endowment of a public hospital under the HHS Act section 12.
- (2) On transition day —
- (a) Crown land to which this section applies is to be taken to be a reserve under the LA Act section 41 for the purposes of this Act; and

- (b) the Ministerial Body is to be taken to be the management body of the reserve under the LA Act section 46(1).
- (3) For the purposes of section 241 and the purposes of the LA Act —
 - (a) subsection (2)(a) must be treated as if it were an order made under the LA Act section 51 changing the purpose of the reserve; and
 - (b) subsection (2)(b) must be treated as if it were —
 - (i) an order made under the LA Act section 50(1)(a) revoking the management order placing the care, control and management of the reserve with the hospital board and specifying that any interests that existed in, or any caveats that existed in respect of, the reserve immediately before transition day continue to exist in respect of the reserve on and after transition day; and
 - (ii) a management order made under the LA Act section 46(1) placing the care, control and management of the reserve with the Ministerial Body 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 transition day.

241. Registration of documents

- (1) The relevant lands officials —
 - (a) must take notice of this Part and any transfer order, including any schedule for the transfer order; and
 - (b) must record and register in the appropriate manner the documents necessary to show the effect of this Part and any transfer order.

- (2) The Minister must give a copy of each transfer order and any schedule for it, and any amendment to a transfer order or to a schedule for a transfer order, to each relevant lands official.

242. Hospital boards to complete necessary transactions

- (1) If an asset or liability of a hospital board cannot be properly assigned to a health service provider or the Ministerial Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
- (a) the hospital board is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to a health service provider or the Ministerial Body in accordance with this Division; and
 - (b) the hospital board must take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to a health service provider or the Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is to be assigned to a health service provider or the Ministerial Body under this Division does not affect the duty of the accountable authority of the hospital board under the *Financial Management Act 2006*.
- (3) Despite section 234, a hospital board continues in existence as a corporate body for the purpose of performing the functions described in subsection (1).
- (4) The hospital board must perform those functions through a person appointed by the Minister.
- (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (6) The hospital boards as continued by this section have the powers that are necessary or convenient for the purposes of this section.

243. Exemption from State tax

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

244. Operating accounts of hospital boards

- (1) In this section —

former account means the operating account of a hospital board.
- (2) On transition day, moneys standing to the credit of a former account must be credited in amounts determined in writing by the Minister to either or both of the following accounts —
 - (a) an operating account of a specified health service provider;
 - (b) an operating account of the Department.
- (3) The former account must be closed after moneys are credited under subsection (2).

- (4) Moneys referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former account arising before transition day; and
 - (b) for the purposes of the health service provider or the Department, as the case requires.
- (5) An operating account to which moneys are credited under subsection (2) must be credited as directed in writing by the Minister with any money payable to the former accounts before transition day that is paid on or after that day.
- (6) On and after transition day, any agreement, instrument or other document that contains a reference to any of the former accounts has effect as if the reference were to the relevant operating account to which moneys are credited under subsection (2).
- (7) If there is any doubt as to which is the relevant operating account for the purposes of subsection (6), the Minister will determine the relevant operating account.

Division 4 — Staff

245. Employees of hospital boards

- (1) In this section —
existing employee means a person employed by a hospital board immediately before transition day.
- (2) The Department CEO must, before transition day —
 - (a) determine that an existing employee is to be employed in a specified health service provider on and from transition day; or
 - (b) determine that an existing employee is to be employed in the Department on and from transition day.
- (3) The Department CEO must notify each existing employee of the determination made in respect of the employee.

- (4) A notification under subsection (3) —
 - (a) if the determination changes the employment location or status of the existing employee — must be given in writing to the existing employee; or
 - (b) otherwise — may be given by notice in writing addressed to a class of existing employees.
- (5) An existing employee given a notice under subsection (3) is, on and after transition day, to be taken to be employed under this Act as an employee in the health service provider or employed under the PSM Act or under section 22 as an employee in the Department, as is specified in the notice.

246. Preservation of rights

- (1) This section applies in relation to an existing employee to whom section 245 applies.
- (2) Except as otherwise agreed by an employee, the change from employment by a hospital board to employment in a health service provider or the Department does not —
 - (a) affect the employee's pay as defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
 - (b) affect the employee's existing or accrued rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the employee's service.
- (3) For the purposes of subsection (2)(d), the person's service with the hospital board is to be taken to have been service in the health service provider or Department, as the case requires.

Division 5 — Continuation of certain things

247. Completion of things done

Anything commenced to be done by a hospital board before transition day may be continued on and after transition day by a relevant successor so far as the doing of the thing is within the relevant successor's functions.

248. Continuing effect of things done

- (1) This section applies in relation to an act or omission done or omitted before transition day by, to or in respect of a hospital board to the extent that the act or omission —
 - (a) has force or significance; and
 - (b) is not governed by another provision of this Part.
- (2) On and after transition day, the act or omission is to be taken to have been done or omitted by, to or in respect of a relevant successor so far as the act or omission relates to the relevant successor's functions.

249. Agreements, instruments, proceedings and remedies generally

- (1) Subsection (2) applies to any agreement or instrument to which section 237 does not apply.
- (2) On and after transition day, any agreement or instrument that contains a reference to a hospital board has effect as if the reference were to a relevant successor so far as the reference relates to the relevant successor's functions, unless the context otherwise requires.
- (3) Subsection (4) applies in relation to any proceedings or remedy to which section 237 does not apply.
- (4) On and after transition day, any proceedings or remedy that might have been commenced or continued by or against, or

might have been available to or against, a hospital board may be commenced or continued by or against, or is available to or against, a relevant successor so far as the proceedings or remedy are in respect of an act, matter or thing that is within the relevant successor's functions.

Division 6 — Quadriplegic Centre

250. Terms used

In this section —

new body corporate means the body corporate mentioned in section 251(2);

old body corporate means the body corporate established by the corporate name the Quadriplegic Centre Board under the HHS Act section 15.

251. Quadriplegic Centre continued

- (1) The public hospital known as the Quadriplegic Centre is to be taken to have been declared by order under section 32(1) to be a health service area.
- (2) A body corporate is to be taken to have been established by order under section 32(1) as a board governed provider for the Quadriplegic Centre and to have been assigned the corporate name Quadriplegic Centre.
- (3) The new body corporate is a continuation of, and the same legal entity as, the old body corporate.
- (4) Subsections (1) and (2) have effect and may be treated as if they were orders under section 32(1).
- (5) The assets, rights and liabilities of or in relation to the old body corporate continue as assets, rights and liabilities of or in relation to the new body corporate.

- (6) If in a written law or other document or instrument there is —
- (a) a reference to the old body corporate; or
 - (b) a reference that is read and construed as a reference to the old body corporate,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the new body corporate.

252. Quadriplegic Centre board members

On and after transition day a person who was a member of the Quadriplegic Centre board, as constituted under the HHS Act section 15 immediately before transition day —

- (a) is to be taken to have been appointed as a member of the board of the Quadriplegic Centre under section 71(1); and
- (b) subject to this Act, holds that office for the remainder of the period for which the person was appointed to the Quadriplegic Centre board constituted under the HHS Act.

253. Staff members

- (1) In this section —
- existing employee*** means a person employed under the HHS Act section 19 by the old body corporate immediately before transition day.
- (2) An existing employee is, on and after transition day, to be taken to be employed under this Act as an employee in the new body corporate.
- (3) A person who was engaged under the HHS Act section 19 by the old body corporate immediately before transition day is to be taken to be engaged by the new body corporate under this Act.

254. Preservation of rights

- (1) Except as otherwise agreed by an employee, the change from employment by the old body corporate to employment in the new body corporate does not —
 - (a) affect the employee's pay as defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
 - (b) affect the employee's existing or accrued rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the employee's service.
- (2) For the purposes of subsection (1)(d), the person's service with the old body corporate is to be taken to have been service in the new body corporate.

255. Transfer of contracts for services

A person engaged by the old body corporate under a contract for services that is in force immediately before transition day, is to be taken to have been engaged, on and from transition day, by the new body corporate on the same terms and conditions, for the remainder of the duration of the contract.

Division 7 — Other matters

256. Transitional regulations

- (1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter —

- (a) means a matter that needs to be dealt with for the purpose of effecting the statutory transition; and
 - (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part or in a transfer order for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than transition day, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.

- (6) Regulations can only be made under subsection (2) within 36 months after the day on which this Act receives the Royal Assent.

257. Effect of other instruments, rights and obligations

The operation of this Part or a transfer order must not be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

258. Interpretation Act 1984 not affected

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the repeal of an enactment by Part 20, 21 or 22.

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

[Heading inserted: No. 1 of 2023 s. 83.]

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

[Heading inserted: No. 1 of 2023 s. 83.]

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).

[Section 259 inserted: No. 1 of 2023 s. 83.]

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).

[Section 260 inserted: No. 1 of 2023 s. 83.]

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).

[Section 261 inserted: No. 1 of 2023 s. 83.]

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.

- (6) This section does not limit section 260.

[Section 262 inserted: No. 1 of 2023 s. 83.]

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.
- (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).

[Section 263 inserted: No. 1 of 2023 s. 83.]

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.

[Section 264 inserted: No. 1 of 2023 s. 83.]

Division 2 — Transitional provisions about reserves on eligible Crown land

[Heading inserted: No. 1 of 2023 s. 84.]

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.

[Section 265 inserted: No. 1 of 2023 s. 84.]

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.

[Section 266 inserted: No. 1 of 2023 s. 84.]

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.

[Section 267 inserted: No. 1 of 2023 s. 84.]

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.

[Section 268 inserted: No. 1 of 2023 s. 84.]

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.

[Section 269 inserted: No. 1 of 2023 s. 84.]

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.

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- (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.

[Section 270 inserted: No. 1 of 2023 s. 84.]

[Parts 21 and 22 deleted: No. 1 of 2023 s. 85.]

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Notes

This is a compilation of the *Health Services Act 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Health Services Act 2016</i> ¹	11 of 2016	26 May 2016	s. 1 and 2: 26 May 2016 (see s. 2(a)); s. 6, 7, 32, 238, 244 and 245: 15 Jun 2016 (see s. 2(b) and <i>Gazette</i> 14 Jun 2016 p. 1819); Act other than s. 1, 2, 6, 7, 32, 238, 244, 245, 301(2), (3), (6) and (7) and 307(j): 1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 17	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
<i>Procurement Act 2020</i> Pt. 10 Div. 4	24 of 2020	19 Jun 2020	22 Jul 2020 (see s. 2(b) and SL 2020/122)
<i>Health Services Amendment Act 2023</i> Pt. 2	1 of 2023	22 Feb 2023	1 Jul 2023 (see s. 2(b) and SL 2023/103 cl. 2)

Other notes

- ¹ The *Health Services Act 2016* s. 301(2), (3), (6) and (7) and 307(j) had not come into operation when those provisions were deleted by the *Health Services Amendment Act 2023* s. 85.

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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