

Health Services Bill 2016

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Health Services Bill 2016

A Bill for

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.**

The Parliament of Western Australia enacts as follows:

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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 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,

- 1 research and other services within the available financial
2 and other resources;
- 3 (g) to engage and support the health workforce in the
4 planning and provision of health services and teaching,
5 training, research and other services.

6 **5. Medicare principles**

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

10 **6. Terms used**

11 In this Act, unless the contrary intention appears —

12 **assets** —

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

18 **board** means a board constituted under section 71;

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

22 **breach of discipline** means a breach of discipline referred to in
23 section 161;

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

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

30 **Commission CEO** has the meaning given in section 43;

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

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1 **contracted health entity** means a non-government entity that
2 provides health services under a contract or other agreement
3 entered into with the Department CEO on behalf of the State, a
4 health service provider or the Minister;

5 **Department** means the department of the Public Service
6 principally assisting the Minister in the administration of this
7 Act;

8 **Department CEO** means the chief executive officer of the
9 Department;

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

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

- 14 (a) a reprimand;
- 15 (b) the imposition of a fine not exceeding an amount equal
16 to the amount of remuneration received by the employee
17 in respect of the last 5 days during which the employee
18 was at work as an employee before the day on which the
19 finding of the breach of discipline was made;
- 20 (c) transferring the employee to another health service
21 provider with the consent of the employing authority of
22 that health service provider;
- 23 (d) if the employee is not a chief executive, transferring the
24 employee to another office in the health service provider
25 in which the employee is employed;
- 26 (e) reduction in the monetary remuneration of the
27 employee;
- 28 (f) reduction in the level of classification of the employee;
- 29 (g) alteration of the employee's scope of practice or duties,
30 or both;
- 31 (h) dismissal;

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

- 3 (a) the chief executive of the health service provider;
4 (b) a health executive employed in the health service
5 provider;
6 (c) a person employed in the health service provider under
7 section 140;
8 (d) a person seconded to the health service provider under
9 section 136 or 142;

10 **employing authority** has the meaning given in section 103;

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

13 **Health Executive Service** means the Health Executive Service
14 mentioned in section 105;

15 **health professional** means a person who is —

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

21 **health service** has the meaning given in section 7;

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

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

26 **hospital** has the meaning given in section 8;

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

- 31 (a) counselling;
32 (b) training and development;

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- 1 (c) issuing a warning to the employee that certain conduct is
2 unacceptable or that the employee's performance is not
3 satisfactory;
- 4 (d) any other action of a similar nature;
- 5 **liabilities** means any liabilities, duties or obligations, whether
6 actual, contingent or prospective, liquidated or unliquidated or
7 whether owed alone or jointly or jointly and severally with any
8 other persons;
- 9 **member**, of a board, means a person appointed under
10 section 71(1);
- 11 **Ministerial Body** means the Health Ministerial Body established
12 by section 10;
- 13 **National Health Agreement** means —
- 14 (a) the National Health Reform Agreement between the
15 Commonwealth and the States that was agreed to by the
16 Council of Australian Governments on 2 August 2011,
17 as amended from time to time; or
- 18 (b) any agreement that replaces or supersedes that
19 agreement;
- 20 **patient** means a person who has been, is being, or will or may
21 be provided with health treatment or care;
- 22 **personal information** has the meaning given in the *Freedom of*
23 *Information Act 1992* in the Glossary clause 1;
- 24 **policy framework** means a policy framework issued under
25 section 26;
- 26 **prescribed** means prescribed by regulations made under this
27 Act;
- 28 **property** means property of every kind, whether real or
29 personal, tangible or intangible, corporeal or incorporeal, and
30 any interest in property;
- 31 **provide** includes supply or carry out;
- 32 **PSM Act** means the *Public Sector Management Act 1994*;

-
- 1 **public authority** means any of these persons or bodies —
- 2 (a) a department of the Public Service;
- 3 (b) a State agency or instrumentality;
- 4 (c) a local government or regional local government;
- 5 (d) a body (whether corporate or unincorporate), or the
- 6 holder of an office, post or position, established or
- 7 continued for a public purpose under a written law;
- 8 (e) a person or body, or a person or body within a class of
- 9 persons or bodies, prescribed for the purposes of this
- 10 paragraph;
- 11 **public health service** has the meaning given in section 7(3);
- 12 **public health service facility** means a facility at which public
- 13 health services are provided;
- 14 **public hospital** has the meaning given in section 8(6);
- 15 **relevant lands official** means —
- 16 (a) the Minister for Lands; or
- 17 (b) the Registrar of Titles; or
- 18 (c) the Registrar of Deeds and Transfers; or
- 19 (d) any other person authorised by a written law to record
- 20 and give effect to the registration of documents relating
- 21 to transaction affecting any estate or interest in land;
- 22 **rights** means any rights, powers, privileges or immunities,
- 23 whether actual, contingent or prospective;
- 24 **service agreement** has the meaning given in section 43;
- 25 **staff member**, of a health service provider, means —
- 26 (a) an employee in the health service provider;
- 27 (b) a person engaged under a contract for services by the
- 28 health service provider;
- 29 **State tax** includes —
- 30 (a) duty chargeable under the *Duties Act 2008*; and

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

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

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

6 **7. Meaning of health service and public health service**

7 (1) A **health service** is a service for maintaining, improving,
8 restoring or managing people's physical and mental health and
9 wellbeing.

10 (2) Without limiting subsection (1), a health service includes —

11 (a) a service mentioned in subsection (1) that is provided to
12 a person at a hospital or any other place;

13 (b) a service dealing with public health, including a
14 programme or activity for —

15 (i) the prevention and control of disease or sickness;
16 or

17 (ii) the prevention of injury; or

18 (iii) the protection and promotion of health;

19 (c) a support service for a service mentioned in
20 subsection (1);

21 (d) the provision of goods for a service mentioned in
22 subsection (1).

23 (3) A **public health service** is a health service provided by —

24 (a) a health service provider; or

25 (b) the Department CEO; or

26 (c) a contracted health entity under a contract or other
27 agreement entered into with the Department CEO on
28 behalf of the State, a health service provider or the
29 Minister.

- 1 (4) A public health service —
2 (a) includes a health service declared under a regulation to
3 be a public health service; and
4 (b) does not include a health service declared under a
5 regulation not to be a public health service.

6 **8. Meaning of hospital and public hospital**

- 7 (1) In this section —
8 **day hospital facility** means premises that are not attached to, or
9 are set apart from, premises mentioned in subsection (4)(a),
10 being premises at which —
11 (a) persons are provided with a health service determined
12 by the Minister under subsection (2); and
13 (b) overnight accommodation is not provided;
14 **nursing post** means a place at which a nurse is stationed and at
15 which facilities exist for medical attention but which is not
16 normally used for overnight accommodation of patients.
17 (2) The Minister may by written notice determine any health
18 service for the purposes of the definition of **day hospital facility**
19 in subsection (1).
20 (3) A determination under subsection (2) may be made —
21 (a) generally; or
22 (b) in relation to specified health services or health services
23 in a specified class; or
24 (c) by reference to a declaration or determination made
25 under any law of the State or the Commonwealth.
26 (4) Each of the following premises is a **hospital** for the purposes of
27 this Act —
28 (a) premises where medical, surgical or dental treatment, or
29 nursing care, is provided for ill or injured persons and at
30 which overnight accommodation may be provided; and
31 (b) a day hospital facility; and

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- 1 (c) a nursing post.
- 2 (5) In subsection (4) an ill person includes a person who has a
3 mental illness (as defined in the *Mental Health Act 2014*
4 section 4) but this section does not affect any requirements
5 under that Act that a person be detained at an authorised
6 hospital (as defined in section 4 of that Act) or at another place.
- 7 (6) Subject to any order made under subsection (8), each of the
8 following premises is a public hospital for the purposes of this
9 Act —
- 10 (a) a hospital controlled or managed by a health service
11 provider or the Department CEO; or
- 12 (b) a hospital declared to be a public hospital under
13 subsection (7).
- 14 (7) The Minister may by order published in the *Gazette* declare any
15 hospital to be a public hospital for the purposes of this Act.
- 16 (8) The Minister may by order published in the *Gazette* declare that
17 any hospital is not a public hospital for the purposes of this Act
18 or the *Private Hospitals and Health Services Act 1927*.
- 19 **9. Application of Act to hospital where mentally ill treated**
- 20 Where a public hospital or part of a public hospital is an
21 authorised hospital under the *Mental Health Act 2014*, this Act
22 has effect in relation to the hospital or part of the hospital, and
23 persons received or admitted into it, subject to the provisions of
24 that Act.

1 **Part 2 — The Minister**

2 **10. Ministerial Body established**

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

11 **11. Purpose and nature of Ministerial Body**

- 12 (1) The Ministerial Body is established to provide a body corporate
13 through which the Minister can perform any of the Minister's
14 functions under this Act that can more conveniently be
15 performed by a body corporate than an individual.
- 16 (2) Any acts or things done through the Ministerial Body as
17 described in subsection (1) must be regarded as —
- 18 (a) services under the control of the Department for the
19 purposes of the *Financial Management Act 2006*
20 section 52; and
- 21 (b) operations of the Department for the purposes of Part 5
22 of that Act.
- 23 (3) Despite the employment under the PSM Act of ministerial
24 officers for the purpose of assisting the Minister to perform
25 functions that the Minister performs through the Ministerial
26 Body, the Ministerial Body and those officers are not an
27 organisation for the purposes of that Act.

28 **12. Execution of documents by Ministerial Body**

- 29 (1) The Ministerial Body must have a common seal.

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- 1 (2) A document is duly executed by the Ministerial Body if —
- 2 (a) the common seal of the Ministerial Body is affixed to it
- 3 in accordance with subsections (3) and (4); or
- 4 (b) it is signed on behalf of the Ministerial Body by the
- 5 Minister; or
- 6 (c) it is signed on behalf of the Ministerial Body, as
- 7 authorised under subsection (5), by the Department CEO
- 8 or another person.
- 9 (3) The common seal of the Ministerial Body must not be affixed to
- 10 a document except as authorised by the Ministerial Body.
- 11 (4) The common seal of the Ministerial Body must be affixed to a
- 12 document in the presence of the Minister and the Minister must
- 13 sign the document to attest that the common seal was so affixed.
- 14 (5) The Ministerial Body may, by writing under its seal, authorise
- 15 the Department CEO or another person to execute deeds or
- 16 other documents on behalf of the Ministerial Body, either
- 17 generally or subject to any conditions or restrictions specified in
- 18 the authorisation.
- 19 (6) A document purporting to be executed in accordance with this
- 20 section must be presumed to be duly executed unless the
- 21 contrary is shown.
- 22 (7) A document executed by the Department CEO or another
- 23 person under this section without the common seal of the
- 24 Ministerial Body must not be regarded as a deed unless it is
- 25 executed as a deed as authorised under subsection (5).
- 26 (8) When a document is produced bearing a seal purporting to be
- 27 the common seal of the Ministerial Body, it must be presumed
- 28 that the seal is the common seal of the Ministerial Body unless
- 29 the contrary is shown.
- 30 (9) For the purposes of this Act, a facsimile of any of the following
- 31 may be used —
- 32 (a) the Ministerial Body’s common seal;

- 1 (b) the Minister's signature;
2 (c) the signature of a person authorised under subsection (5)
3 to execute deeds or other documents.
- 4 (10) A deed or other document purporting to be endorsed with such a
5 facsimile must be regarded as bearing the facsimile under
6 subsection (9) unless the contrary is shown.

7 **13. Minister's general powers**

- 8 (1) In this section —
9 *acquire* includes taking on lease or licence or in any other
10 manner in which an interest in property may be acquired;
11 *dispose of* includes disposing of by way of lease or licence or in
12 any other manner in which an interest in property may be
13 disposed of;
14 *joint arrangement* means an arrangement entered into by the
15 Minister with a health service provider for the purposes of the
16 functions of the health service provider and which involves any
17 or all of the following —
18 (a) enabling any property vested in the Ministerial Body to
19 be used for the purposes of the arrangement (*joint use*
20 *property*);
21 (b) controlling and managing the use of joint use property
22 for the purposes of the arrangement;
23 (c) sharing the use of joint use property for the purposes of
24 the arrangement.
- 25 (2) For the purposes of this Act, the Minister may —
26 (a) acquire, hold, manage, improve, develop, dispose of and
27 otherwise deal in property; and
28 (b) enter into a contract or other arrangement, including a
29 contract or arrangement for the provision of services to
30 or by a health service provider; and
31 (c) do all things necessary or convenient for the purpose of
32 carrying out joint arrangements; and

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- 1 (d) develop and turn to account any technology, software or
2 other intellectual property and apply for, hold, exploit
3 and dispose of any patent, patent rights, copyright or
4 similar rights; and
- 5 (e) provide and turn to account health education and
6 training services; and
- 7 (f) provide and turn to account advertising opportunities or
8 opportunities to participate in arrangements in the nature
9 of advertising or having a purpose similar to advertising;
10 and
- 11 (g) give effect to —
- 12 (i) any agreement entered into by the
13 Commonwealth with the State under the *Health*
14 *Insurance Act 1973* (Commonwealth); and
- 15 (ii) the relevant guidelines (if any) formulated under
16 that Act in relation to health services for the
17 purposes of the agreement.
- 18 (3) The power of the Minister to dispose of land does not extend to
19 the transfer of Crown land for an estate in fee simple.
- 20 (4) In exercising any power under this Part the Minister may act in
21 conjunction with —
- 22 (a) any person, firm or public authority; or
- 23 (b) any department of the Public Service or any agency of
24 the State or the Commonwealth.

25 **14. Minister's powers in relation to business arrangements**

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

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

23 **15. Delegation by Minister**

- 24 (1) The Minister may delegate to the Department CEO any function
25 of the Minister under another provision of this Act.
- 26 (2) Without limiting the functions that may be delegated under this
27 section, they include functions that are to be exercised or
28 performed in the course of governing the affairs of the
29 Ministerial Body under section 10(4).
- 30 (3) The delegation must be in writing signed by the Minister.

- 1 (c) recommending to the Minister the amounts that may be
2 allocated from the monies appropriated from the
3 Consolidated Account to health service providers;
- 4 (d) promoting the effective and efficient use of available
5 resources in the provision of public health services in
6 the State;
- 7 (e) carrying out certain functions of health service providers
8 as specified in service agreements pursuant to
9 section 51;
- 10 (f) managing WA health system-wide industrial relations
11 on behalf of the State, including the negotiation of
12 industrial agreements, and making applications to make
13 or vary awards;
- 14 (g) subject to subsection (3), commissioning and delivering
15 capital works and maintenance works for public health
16 service facilities;
- 17 (h) classifying, and determining the remuneration of, health
18 executives and their offices, and varying the
19 classification or remuneration;
- 20 (i) establishing the conditions of employment for
21 employees in health service providers in accordance
22 with the requirements of any binding award, order or
23 industrial agreement under the *Industrial Relations*
24 *Act 1979*;
- 25 (j) arranging for the provision of health services by
26 contracted health entities;
- 27 (k) providing support services to health service providers;
- 28 (l) overseeing, monitoring and promoting improvements in
29 the safety and quality of health services provided by
30 health service providers;
- 31 (m) monitoring the performance of health service providers,
32 and taking remedial action when performance does not
33 meet the expected standard;

1 **22. Staff who are not public servants**

2 (1) The Department CEO may, for and on behalf of the State,
3 employ and manage persons in the Department for the purposes
4 of this Act —

5 (a) as wages staff; or

6 (b) as other staff.

7 (2) Subject to any relevant award or industrial agreement, the terms
8 and conditions of employment under subsection (1)(a) or (b) are
9 to be the terms and conditions that the Department CEO
10 determines.

11 (3) A person employed under subsection (1)(a) or (b) is not a
12 person appointed under the PSM Act Part 3.

13 (4) Nothing in this section limits —

14 (a) the Department CEO's powers under the PSM Act; or

15 (b) health service providers' employment powers under this
16 Act.

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

19 (1) The Department CEO may, on behalf of the State, enter into a
20 written contract with a non-government entity for the provision
21 of health services —

22 (a) to the entity by the State; or

23 (b) by the entity to the State.

24 (2) The Department CEO may provide health services, other
25 services or facilities for any or all of the following purposes —

26 (a) to support the WA health system;

27 (b) to support a health service provider;

28 (c) to enable the co-ordinated provision of health services
29 involving more than one health service provider or on a
30 State-wide basis.

- 1 (3) The Department CEO may determine the charges, if any,
2 payable for any service or facilities provided by the Department
3 CEO under subsection (2).
- 4 (4) The Department CEO may arrange for a health service provider
5 to use the services of any officer or employee (including by way
6 of secondment to the health service provider) —
- 7 (a) in the Public Sector; or
8 (b) in a State agency or instrumentality; or
9 (c) otherwise in the service of the State.
- 10 (5) The Department CEO may arrange for a health service provider
11 to make use of the facilities of a department of the Public
12 Service or a State agency or instrumentality.
- 13 (6) An arrangement under subsection (4) or (5) must be made on
14 terms agreed to by the Department CEO, the relevant health
15 service provider and the party providing the services or
16 facilities.
- 17 (7) Nothing in this section limits the Department CEO's other
18 powers under this or any other written law.

19 **24. Delegation by Department CEO**

- 20 (1) The Department CEO may delegate any function of the
21 Department CEO under another provision of this Act to —
- 22 (a) a person employed or engaged in the Department; or
23 (b) a staff member of a health service provider.
- 24 (2) The Department CEO may delegate the function of the
25 Department CEO under section 20(1)(g) to a health service
26 provider.
- 27 (3) The delegation must be in writing signed by the Department
28 CEO.
- 29 (4) A person to whom a function is delegated under this section
30 cannot delegate that function.

1 (5) A person exercising or performing a function that has been
2 delegated to the person under this section is to be taken to be in
3 accordance with the terms of the delegation unless the contrary
4 is shown.

5 (6) This section does not limit the ability of the Department CEO to
6 perform a function through an officer or agent.

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

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

12 **Division 2 — Policy frameworks**

13 **26. Department CEO may issue policy frameworks**

14 (1) In this section —

15 *provision*, of health services, includes the following —

16 (a) matters that support the provision of health services,
17 including —

18 (i) the engagement of contracted health
19 professionals; and

20 (ii) private practice arrangements for health
21 professionals;

22 (b) the provision of health services by contracted health
23 entities.

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

26 (a) service coordination and integration, and efficiency and
27 effectiveness, in the provision of health services —

28 (i) between health service providers; and

29 (ii) between health service providers, the Department
30 and other service providers;

- 1 (b) the making of service agreements, other than
2 Commission service agreements made under section 45;
- 3 (c) the provision of health services;
- 4 (d) the performance and exercise of functions by health
5 service providers;
- 6 (e) financial management of health service providers;
- 7 (f) employment, and termination of employment, in health
8 service providers;
- 9 (g) the movement of employees between health service
10 providers or between a health service provider and
11 another employer —
- 12 (i) by transfer for temporary or permanent
13 employment; or
- 14 (ii) on secondment or temporary redeployment; or
- 15 (iii) for training;
- 16 (h) the management and administration of the Health
17 Executive Service;
- 18 (i) the engagement of health professionals by health service
19 providers and the conditions of engagement;
- 20 (j) investigations, inspections and audits under section 175;
- 21 (k) the management of information, including the way in
22 which information is collected, used and disclosed;
- 23 (l) any other matter in connection with the functions of the
24 Department CEO under this Act in respect of which the
25 Department CEO considers it necessary or desirable to
26 issue a policy framework.
- 27 (3) A policy framework may apply to any of the following —
- 28 (a) the health service providers specified in the policy
29 framework;
- 30 (b) all health service providers;
- 31 (c) a type of public health service facility specified in the
32 policy framework;

1 (d) a type of public health service specified in the policy
2 framework;

3 (e) a type of staff member of a health service provider.

4 (4) The Department CEO may revoke or amend a policy
5 framework.

6 (5) The Department CEO must ensure that each policy framework
7 is publicly available.

8 **27. Policy framework is binding**

9 (1) A policy framework is binding on each health service provider
10 to which it applies or relates.

11 (2) A policy framework that applies to a staff member of a health
12 service provider is binding on the staff member and the health
13 service provider.

14 **Division 3 — Department CEO directions**

15 **28. Department CEO may issue directions**

16 (1) The Department CEO may issue a direction requiring
17 compliance in relation to —

18 (a) a matter set out in a policy framework; or

19 (b) any other matter in connection with the functions of the
20 Department CEO under this Act in respect of which the
21 Department CEO considers it necessary or desirable to
22 issue directions.

23 (2) A Department CEO direction under subsection (1)(a) may apply
24 to any person or body to which the policy framework applies.

25 (3) A Department CEO direction under subsection (1)(b) may apply
26 to any person or body in relation to which the Department CEO
27 performs or exercises functions.

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Part 3 The Department CEO

Division 3 Department CEO directions

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- 1 (c) the chief executive of any chief executive governed
2 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.

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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;
 - (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 report to the Department CEO on the provision of health services by the health service provider;

1 **35. Commercial activities**

2 (1) A health service provider may earn revenue by engaging in
3 commercial activities that are not inconsistent with, and do not
4 have an adverse effect on, the performance of its other
5 functions.

6 (2) Without limiting subsection (1), a hospital service provider may
7 provide any facility under its control or management for the use
8 of a health professional to carry out a health service or other
9 service.

10 (3) The provision of a facility under subsection (2) may be on such
11 terms and conditions, including the payment of charges, as the
12 health service provider determines from time to time.

13 (4) When engaging, or proposing to engage, in a commercial
14 activity, a health service provider must ensure that —

15 (a) the activity is consistent with its service agreements and
16 any relevant policy framework; and

17 (b) the activity is likely to be of benefit to the WA health
18 system.

19 (5) A health service provider may perform its functions under this
20 section in the State or elsewhere.

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

24 **36. General powers**

25 (1) In this section —

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

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

- 1 (4) Subsection (3) does not limit subsection (2) or any of the health
2 service provider's other powers.
- 3 (5) The health service provider may —
- 4 (a) make any gift for a charitable purpose or any other
5 purpose of benefit to the community or a section of the
6 community; or
- 7 (b) make any ex gratia payment that it considers to be in the
8 health service provider's interest; or
- 9 (c) accept any gift, bequest or other payment if it is
10 absolute, or subject to conditions that the health service
11 provider would be able to satisfy.

12 **37. Restrictions on power to dispose of land**

- 13 (1) In this section —
- 14 **health service land** means —
- 15 (a) land vested in a health service provider under this Act;
16 or
- 17 (b) land acquired by a health service provider.
- 18 (2) The power of a health service provider to dispose of land does
19 not extend to the transfer of Crown land for an estate in fee
20 simple.
- 21 (3) A health service provider must have the Minister's written
22 agreement before it disposes of health service land.

23 **38. Transactions that require agreement or approval**

- 24 (1) In this section —
- 25 **health service provider's liability** means the amount or value of
26 the consideration or the amount to be paid or received by the
27 health service provider, ascertained as at the time when the
28 transaction is entered into;

- 1 **transaction** means —
- 2 (a) the exercise of a power conferred by section 36(3)(c) in
- 3 relation to a business arrangement; or
- 4 (b) a transaction for which the health service provider's
- 5 liability exceeds the prescribed amount.
- 6 (2) An amount for the purpose of paragraph (b) of the definition of
- 7 **transaction** in subsection (1) may be prescribed by regulations
- 8 made on the recommendation of the Treasurer.
- 9 (3) Despite section 36, a health service provider must have the
- 10 Minister's written agreement before it enters into a transaction
- 11 that is not exempt under section 39.
- 12 (4) The Minister must obtain the Treasurer's approval before giving
- 13 a written agreement under subsection (3).

14 **39. Exemptions from section 38**

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

24 **40. Delegation**

- 25 (1) A health service provider may delegate any function of the
- 26 health service provider under another provision of this Act to —
- 27 (a) a member of the health service provider's board; or
- 28 (b) a committee; or
- 29 (c) a staff member of the health service provider.

- 1 (2) The delegation must be in writing executed by the health service
2 provider.
- 3 (3) A person or committee to whom a function is delegated under
4 this section cannot delegate that function.
- 5 (4) A person or committee exercising or performing a function that
6 has been delegated to the person or committee under this section
7 is to be taken to do so in accordance with the terms of the
8 delegation unless the contrary is shown.
- 9 (5) This section does not limit the ability of a health service
10 provider to perform a function through an officer or agent.
- 11 **41. Execution of documents by health service provider**
- 12 (1) A health service provider must have a common seal.
- 13 (2) A document is duly executed by a board governed provider if —
14 (a) the common seal of the provider is affixed to it in
15 accordance with subsections (4) and (5); or
16 (b) it is signed on behalf of the provider by a person or
17 persons authorised to do so under subsection (7).
- 18 (3) A document is duly executed by a chief executive governed
19 provider if —
20 (a) the common seal of the provider is affixed to it in
21 accordance with subsections (4) and (6); or
22 (b) it is signed on behalf of the provider by a person or
23 persons authorised to do so under subsection (8).
- 24 (4) The common seal of a health service provider must not be
25 affixed to any document except as authorised by the health
26 service provider.
- 27 (5) The common seal of a board governed provider must be affixed
28 to a document in the presence of the chairperson of the board
29 and another member of the board, or the chairperson and a
30 person employed in the provider, and each of them must sign
31 the document to attest that the common seal was so affixed.

1 (13) A deed or document purporting to be endorsed with a facsimile
2 mentioned in subsection (12) must be regarded as bearing the
3 facsimile under that subsection unless the contrary is shown.

4 **42. Contract formalities**

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

11 (2) The making or variation of a contract in accordance with
12 subsection (1) is effectual in law and binds the health service
13 provider and other parties to the contract.

14 (3) Subsection (1) does not prevent a health service provider from
15 making, varying or discharging the contract under its common
16 seal.

1 **Division 2 — Commission service agreements**

2 **44. Head agreement between Department CEO and**
3 **Commission CEO**

4 (1) The Department CEO may enter into an agreement (a *head*
5 *agreement*) with the Commission CEO concerning the making
6 of Commission service agreements during the period to which
7 the head agreement relates.

8 (2) The head agreement must state —

9 (a) the system-wide funding caps and performance
10 standards that apply to the provision of Commission
11 health services; and

12 (b) the role, responsibilities and accountability of the
13 Department CEO in relation to the provision of
14 Commission health services; and

15 (c) the role, responsibilities and accountability of the
16 Commission CEO as a purchaser of Commission health
17 services; and

18 (d) the action to be taken if the terms of a Commission
19 service agreement are not agreed.

20 (3) The Commission CEO and health service providers must give
21 effect to the head agreement when entering into or amending a
22 Commission service agreement.

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

25 (1) The Commission CEO and a mental health service provider may
26 enter into a service agreement for the provision of mental health
27 services by the mental health service provider.

28 (2) The Commission CEO and an alcohol and drug health service
29 provider may enter into a service agreement for the provision of
30 alcohol and drug health services by the alcohol and drug health
31 service provider.

- 1 (3) The service agreement must state the following —
- 2 (a) the mental health services or alcohol and drug health
- 3 services (the *services*) to be provided to the State by the
- 4 mental health service provider or alcohol and drug
- 5 health service provider (the *provider*);
- 6 (b) the teaching, training and research in support of the
- 7 provision of the services to be provided by the provider;
- 8 (c) the funding to be provided to the provider for the
- 9 provision of the services, including the way in which the
- 10 funding is to be provided;
- 11 (d) the performance measures and operational targets for the
- 12 provision of the services by the provider;
- 13 (e) how the evaluation and review of results in relation to
- 14 the performance measures and operational targets is to
- 15 be carried out;
- 16 (f) the performance data and other data to be provided by
- 17 the provider to the Commission CEO and the
- 18 Department CEO, including how, and how often, the
- 19 data is to be provided;
- 20 (g) any other matter the Commission CEO considers
- 21 relevant to the provision of the services by the provider.
- 22 (4) A Commission service agreement is binding on the Commission
- 23 CEO and the provider.

24 **Division 3 — Service agreements generally**

25 **46. Department CEO and health service provider must enter**

26 **into service agreement**

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

- 1 (2) The Department CEO and a health service provider must enter
2 into a service agreement for the provision of health services by
3 the health service provider.
- 4 (3) The service agreement must state the following —
- 5 (a) the health services to be provided to the State by the
6 health service provider;
- 7 (b) the teaching, training and research in support of the
8 provision of health services to be provided;
- 9 (c) the funding to be provided to the health service provider
10 for the provision of the services, including the way in
11 which the funding is to be provided;
- 12 (d) the performance measures and operational targets for the
13 provision of the services by the health service provider;
- 14 (e) how the evaluation and review of results in relation to
15 the performance measures and operational targets is to
16 be carried out;
- 17 (f) the performance data and other data to be provided by
18 the health service provider to the Department CEO,
19 including how, and how often, the data is to be
20 provided;
- 21 (g) any other matter the Department CEO considers relevant
22 to the provision of the services by the health service
23 provider.
- 24 (4) A service agreement entered into under subsection (2) is binding
25 on the Department CEO and the health service provider.

26 **47. Department CEO may decide on terms of service agreement**

- 27 (1) This section applies if the Department CEO and a health service
28 provider cannot agree on some or all of the terms of a service
29 agreement that is not a Commission service agreement —
- 30 (a) for the first agreement after the health service provider is
31 established — by a prescribed date; or

- 1 (b) for a service agreement that is to replace an existing
2 service agreement — at least one month before the
3 expiry of the existing agreement.
- 4 (2) If the Department CEO and the health service provider cannot
5 agree on a term of a service agreement, the Department CEO
6 must decide the term and advise the health service provider of
7 the decision.
- 8 (3) A term decided under this section by the Department CEO must
9 be included in the service agreement.
- 10 **48. General provisions about service agreements**
- 11 (1) Without limiting section 45(3) or 46(3), a service agreement
12 may —
- 13 (a) deal with the matters stated in section 45(3) or 46(3)
14 relating to funding provided by the Commonwealth,
15 without the Commonwealth being a party to the
16 agreement; and
- 17 (b) state the circumstances in which the health service
18 provider (the *first provider*) may agree with another
19 health service provider to provide services for the first
20 provider.
- 21 (2) A health service provider is authorised to enter into an
22 agreement with the first provider to provide services to the first
23 provider in the circumstances stated in the relevant service
24 agreement.
- 25 (3) Negotiations for a service agreement that is not a Commission
26 service agreement must be conducted in accordance with the
27 relevant policy framework.
- 28 (4) Negotiations for a Commission service agreement must be
29 conducted in accordance with the head agreement referred to in
30 section 44.

1 **49. Term of service agreement**

2 (1) A service agreement must be for a term of not longer than
3 one year.

4 (2) A service agreement that is not a Commission service
5 agreement must cover the forecast period set out in the relevant
6 policy framework.

7 **50. Procedure to amend service agreement**

8 (1) If a party to a service agreement wants to amend the terms of a
9 service agreement, the party that wants to amend the agreement
10 must give written notice of the proposed amendment to the
11 other party.

12 (2) If the parties cannot agree on a term of the amendment, the
13 Department CEO or Commission CEO, as the case requires,
14 must decide the term and advise the health service provider of
15 the decision.

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

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

20 (1) A service agreement may provide that the Department CEO,
21 through the Department, will perform functions of the health
22 service provider that are specified in the agreement for a period
23 specified in the agreement (the *transfer period*).

24 (2) Despite any other provision of this Act or any other written law,
25 during the transfer period —

26 (a) the Department CEO may perform the functions
27 mentioned in subsection (1) as if the Department CEO
28 were the health service provider; and

29 (b) the health service provider is not required to perform the
30 functions mentioned in subsection (1).

1 (3) The Department CEO has power to do all things that are
2 necessary or convenient to be done for or in connection with the
3 performance of the functions mentioned in subsection (1) during
4 the transfer period.

5 **52. Review and report on service agreements**

6 (1) A health service provider must report the results of the service
7 provider's performance under a service agreement during the
8 year covered by the service agreement within 3 months after the
9 end of that year.

10 (2) The report must be given to the Department CEO and, if the
11 report relates to a Commission service agreement, to the
12 Commission CEO.

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

17 **53. Other agreements for provision of services**

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

1 (5) A health service provider does not have the authority to charge
2 fees for the provision of non-chargeable health services.

3 **56. Minister may fix fees and charges**

4 (1) In this section —
5 *specified* means specified in the order.

6 (2) The Minister may, by order published in the *Gazette* —

7 (a) fix a scale of fees and charges for the provision of health
8 services by health service providers; and

9 (b) provide that no fees or charges are payable in respect
10 of —

11 (i) a specified health service or class of health
12 service; or

13 (ii) a health service rendered to a specified class of
14 patient; or

15 (iii) a health service in respect of any specified public
16 hospital or class of public hospital.

17 (3) The Minister may amend or revoke an order made under
18 subsection (2).

19 (4) The order may adopt by reference any scale of fees or charges
20 (as in force at a particular time or as in force from time to time)
21 fixed or determined by a Commonwealth authority or body.

22 (5) An adoption under subsection (4) may be wholly or in part and
23 with or without modification.

24 (6) The order may —

25 (a) define classes of patient and classes of service; and

26 (b) adopt for the purposes of referring to a class of patient
27 or class of service any definition in any law of the
28 Commonwealth; and

29 (c) discriminate between classes of patient and classes of
30 service and according to the circumstances in which a

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- 1 service is provided and in respect of the class of patient
2 to whom it is provided; and
- 3 (d) fix different fees and charges according to the public
4 hospital or class of public hospital in which or on behalf
5 of which a service or class of service is provided; and
- 6 (e) provide that the charges for any health services provided
7 in respect of any specified class of patient at or by a
8 public hospital are to be of an amount determined by the
9 Minister or another specified person according to the
10 cost of providing the health service.

11 (7) An order made under subsection (2) is subsidiary legislation for
12 the purposes of the *Interpretation Act 1984*.

13 (8) The *Interpretation Act 1984* section 42 applies to an order made
14 under subsection (2) as if the order were a regulation.

15 **57. Liability of persons for health service fees and charges**

16 (1) A fee or charge imposed under section 55 is payable by or on
17 behalf of the person who received the health service.

18 (2) A health service provider may waive, or refund, the whole or
19 any part of a fee or charge.

20 **58. Regulations about payment by compensable persons**

21 (1) In this section —

22 *claimant*, in relation to compensation, means the person seeking
23 compensation either on the person's own behalf or on behalf of
24 another person;

25 *compensable person* means —

26 (a) an individual who is entitled to receive or has received a
27 compensation payment in respect of an injury; or

28 (b) if the individual has died — the individual's estate;

29 *compensation* has the meaning given by the regulations;

30 *injury* includes an illness or disease.

- 1 (2) The regulations may —
- 2 (a) specify the circumstances in which payment for the
- 3 provision of health services by a health service provider
- 4 may be recovered by the health service provider from
- 5 compensation paid or payable to a compensable person;
- 6 and
- 7 (b) specify the manner in which the payment is to be
- 8 apportioned if —
- 9 (i) liability for the injury is apportioned in a
- 10 judgment or settlement; or
- 11 (ii) a component of the compensation is specified to
- 12 be for expenses that have already been incurred;
- 13 and
- 14 (c) require the chief executive of the health service provider
- 15 to give notice to prescribed persons of the intention to
- 16 recover the payment; and
- 17 (d) require prescribed persons to give information to the
- 18 chief executive of the health service provider about
- 19 matters related to the claim for compensation and the
- 20 health services that have been provided to the claimant;
- 21 and
- 22 (e) specify the manner in which it is to be determined
- 23 whether or not a health service was provided in the
- 24 course of treatment of, or as a result of, the injury the
- 25 claimant claims to have suffered; and
- 26 (f) provide for the recovery of the payment from the
- 27 claimant, or insurers or other compensation payers; and
- 28 (g) provide for the recovery of payments that are not made
- 29 in accordance with the regulations.
- 30 (3) The regulations may apply irrespective of whether the health
- 31 services were provided before or after it is determined that the
- 32 person to whom the health services were provided is a
- 33 compensable person.

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- 1 (4) A reference in this section, or regulations made under this
2 section, to a person receiving a compensation payment includes
3 a reference to another person receiving it on behalf of, or at the
4 direction of, the first person.
- 5 (5) If a claimant is seeking compensation on behalf of another
6 person —
- 7 (a) references in this section, or regulations made under this
8 section, to health services provided to the claimant are
9 taken to be references to health services provided to the
10 individual who is claimed to have suffered the injury;
11 and
- 12 (b) references in this section, or regulations made under this
13 section, to the claimant’s injury are taken to be
14 references to the injury in question.

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

- 16 (1) Subject to subsection (2), a health service provider may
17 determine, impose and collect a fee or charge for —
- 18 (a) the provision of services other than health services;
19 (b) the provision or use of goods and materials other than
20 goods and materials that are part of a health service;
21 (c) the use of facilities other than facilities that are part of a
22 health service.
- 23 (2) If a fee or charge is prescribed under section 230(2)(c) in
24 respect of a matter referred to in subsection (1)(a), (b) or (c)
25 (including in relation to a matter referred to in
26 section 210(3)(b)(i)), a health service provider cannot impose a
27 fee or charge that differs from the prescribed fee or charge.
- 28 (3) Nothing in this section limits the powers of a health service
29 provider to enter into an agreement to provide services, goods or
30 facilities under section 35 or 36.

1 **Part 7 — Accountability and financial provisions**

2 **Division 1 — Accountability**

3 **60. Minister may give directions**

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

23 **61. Minister to have access to information**

- 24 (1) In this section —
- 25 *document* includes any tape, disk or other device or medium on
26 which information is recorded or stored;
- 27 *information* means information specified, or of a description
28 specified, by the Minister that relates to the functions of a health
29 service provider.

- 1 (2) The Minister is entitled —
- 2 (a) to have information in the possession of a health service
- 3 provider; and
- 4 (b) if the information is in or on a document, to have, and
- 5 make and retain copies of, that document.
- 6 (3) For the purposes of subsection (2), the Minister may —
- 7 (a) request the health service provider to furnish
- 8 information to the Minister; and
- 9 (b) request the health service provider to give the Minister
- 10 access to information; and
- 11 (c) for the purposes of paragraph (b) make use of the
- 12 employees in the health service provider to obtain the
- 13 information and furnish it to the Minister.
- 14 (4) The health service provider must comply with a request under
- 15 subsection (3) and make employees and facilities available to
- 16 the Minister for the purposes of subsection (3)(c).
- 17 (5) This section does not entitle the Minister to have personal
- 18 information unless —
- 19 (a) disclosure of the information is required by some other
- 20 written law; or
- 21 (b) the information is about an individual who consents to
- 22 the Minister having the information; or
- 23 (c) the information is for the purpose of enabling or
- 24 assisting the Minister to respond to or deal with a
- 25 complaint or query made by the individual; or
- 26 (d) the information is for the purpose of enabling or
- 27 assisting the Minister to —
- 28 (i) prepare for, answer, respond to or deal with a
- 29 question asked or matter raised by a member of
- 30 Parliament, whether in a House of Parliament or
- 31 otherwise; or

1 (2) Money received by the health service provider is to be credited
2 to, and money paid by the health service provider is to be
3 debited to, the Account.

4 (3) Subsection (2) does not apply in respect of money for specific
5 purposes or held on trust that the health service provider is
6 obliged to credit to a separate agency special purpose account
7 established under the *Financial Management Act 2006*
8 section 16.

9 **65. Health service provider's funds**

10 (1) Subject to subsection (2), the funds available for the purpose of
11 enabling a health service provider to perform or exercise its
12 functions under this or any other Act consist of money that is,
13 under this Act or any other Act, lawfully received by or made
14 available to, the health service provider.

15 (2) Where any money has been accepted by the health service
16 provider upon trust or lawful condition, the health service
17 provider must apply the money in accordance with the trust or
18 condition and is authorised by this section to do so.

19 **66. Notice of financial difficulty**

20 (1) If the board of a board governed provider or the chief executive
21 of a chief executive governed provider forms the opinion that
22 the health service provider is unable to, or will be unlikely to be
23 able to, satisfy any of its financial obligations from the financial
24 resources available or likely to be available to it at the time the
25 financial obligation is due, the board or chief executive must
26 notify the Department CEO.

27 (2) The notice must be in writing, giving reasons for the opinion of
28 the board or chief executive.

29 (3) The Department CEO must forward the notice to the Minister.

- 1 (4) Within 7 days of receipt of the notice, the Minister must —
- 2 (a) confer with the Treasurer and the health service provider
- 3 for the purpose of determining what action is required to
- 4 ensure that the health service provider is able to satisfy
- 5 the relevant financial obligation when it is due; and
- 6 (b) initiate such action as is required to ensure that the
- 7 health service provider is able to satisfy the relevant
- 8 financial obligation when it is due.
- 9 (5) For the purposes of subsection (4) the Minister may give the
- 10 health service provider a direction under section 60 requiring
- 11 the health service provider to cease or limit the performance or
- 12 exercise of any function.

13 **67. Department CEO's power to require financial information**

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

23 **68. Various documents exempt from duty**

24 The following documents are exempt from duty under the

25 *Duties Act 2008* —

- 26 (a) receipts given by and on behalf of the Department or a
- 27 health service provider in relation to a public hospital;
- 28 (b) declarations required or authorised under this Act in
- 29 relation to a public hospital;
- 30 (c) agreements entered into under this Act in relation to a
- 31 public hospital.

1 **69. Local governments may fund health services**

2 (1) In this section —

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

6 (2) A local government has power to expend and apply, or to enter
7 into an agreement to expend and apply, a portion of its general
8 rates for any of the following —

9 (a) in subsidising health services;

10 (b) in or towards the construction or acquisition,
11 establishment, and maintenance of premises for the
12 provision of health services;

13 (c) in subsidising a district nursing scheme;

14 (d) in contributing towards a subsidy or providing a subsidy
15 to secure the services of a medical practitioner.

16 (3) Despite subsection (2) —

17 (a) the maximum portion of the general rates to be
18 expended or applied under that subsection is 10% of the
19 average annual amount received by the local
20 government from general rates during the last 2 financial
21 years preceding the year in which the amount is
22 expended or applied; and

23 (b) an agreement under that subsection is not valid if it
24 purports to bind the local government to expend or
25 apply in any year a sum exceeding 10% of the average
26 annual amount received by it from general rates during
27 the last 2 financial years preceding the year in which the
28 undertaking was given.

29 (4) The term of an agreement entered into for the purposes of
30 subsection (2) must not exceed 5 years.

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

1 **Part 8 — Administration of health service providers**

2 **Division 1 — Governance**

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

5 (1) If an order made under section 32(1)(d) specifies that a health
6 service provider is to be a board governed provider —

7 (a) the health service provider must have a board; and

8 (b) the board —

9 (i) is the governing body of the health service
10 provider; and

11 (ii) in the name of the health service provider, is to
12 perform or exercise the functions of the health
13 service provider under this Act or any other
14 written law.

15 (2) If an order made under section 32(1)(d) specifies that a health
16 service provider is to be a chief executive governed provider —

17 (a) the health service provider must not have a board; and

18 (b) the chief executive —

19 (i) is the governing body of the health service
20 provider; and

21 (ii) in the name of the health service provider, is to
22 perform or exercise the functions of the health
23 service provider under this Act or any other
24 written law.

25 **Division 2 — Boards**

26 **Subdivision 1 — Constitution and procedures**

27 **71. Constitution of health service provider's board**

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

- 1 (2) Before appointing a member the Minister must seek and have
2 regard to the recommendation of the Department CEO.
- 3 (3) The Minister must ensure that —
- 4 (a) at least 3 members are health professionals, and at least
5 2 of them are practising health professionals; and
- 6 (b) each other member has a relevant qualification needed
7 to enable the health service provider’s functions under
8 this Act to be effectively performed.
- 9 (4) In subsection (3)(a) —
- 10 ***practising health professional*** means a person who —
- 11 (a) is a health professional registered under the *Health*
12 *Practitioner Regulation National Law (Western*
13 *Australia)*, other than as a student; and
- 14 (b) is currently directly or indirectly providing care or
15 treatment to persons.
- 16 (5) A relevant qualification for the purposes of subsection (3)(b) is
17 one or more of the following —
- 18 (a) expertise and experience in health management,
19 business management, financial management or human
20 resource management;
- 21 (b) legal expertise;
- 22 (c) expertise and experience in the provision of clinical or
23 other health services;
- 24 (d) expertise and experience in primary health care;
- 25 (e) expertise in the education and training of health
26 professionals;
- 27 (f) knowledge and experience of the community serviced
28 by the health service provider;
- 29 (g) any other background, skills, expertise, knowledge or
30 experience that will enable the effective performance of
31 the health service provider’s functions.

- 1 (6) The following persons are not eligible to be appointed as
2 members of a health service provider's board —
- 3 (a) a staff member of the health service provider;
- 4 (b) an employee in the Department;
- 5 (c) an employee in the department of the Public Service
6 principally assisting in the administration of the *Mental*
7 *Health Act 2014*;
- 8 (d) an employee in the department of the Public Service
9 principally assisting in the administration of the *Alcohol*
10 *and Other Drugs Act 1974*.

11 **72. Chairperson and deputy chairperson**

- 12 (1) The Minister must designate —
- 13 (a) a member of a board to be the chairperson of the board;
- 14 and
- 15 (b) another member to be deputy chairperson of the board.
- 16 (2) A member of a board may be designated as the chairperson or
17 deputy chairperson at the same time as the person is appointed
18 as a member or at any time after the person is appointed as a
19 member.
- 20 (3) Subject to this Subdivision, the chairperson or deputy
21 chairperson holds office for the term, ending not later than the
22 term of appointment as a member, stated in the instrument of
23 designation as chairperson or deputy chairperson.
- 24 (4) A vacancy arises in the office of chairperson or deputy
25 chairperson of a board if the person holding the office —
- 26 (a) resigns office by written resignation given to the
27 Minister; or
- 28 (b) ceases to be a member of the board.
- 29 (5) A person resigning the office of chairperson or deputy
30 chairperson of a board may continue to be a member of the
31 board.

1 **73. Deputy chairperson acting as chairperson**

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

11 **74. Alternate members**

- 12 (1) In this section —
13 *cause* includes —
- 14 (a) illness; and
15 (b) absence; and
16 (c) the operation of section 81(1).
- 17 (2) If a member of a board other than the chairperson is unable for
18 any cause to act as a member, the Minister may appoint another
19 person as an alternate member to act temporarily in the
20 member's place.
- 21 (3) If the deputy chairperson of a board is unable for any cause to
22 act in the place of the chairperson at a meeting —
- 23 (a) the members present may elect one of their number to
24 act as chairperson; and
25 (b) subsection (2) applies as if the member elected were
26 absent from the meeting.
- 27 (4) While acting in accordance with the appointment the alternate
28 member is to be taken to be, and to have any entitlement of, a
29 member.

- 1 (5) An act or omission of an alternate member cannot be questioned
2 on the ground that the occasion for the appointment or acting
3 had not arisen or had ceased.

4 **75. Remuneration and allowances**

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

8 **76. Term of office**

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

22 **77. Casual vacancies**

- 23 (1) In this section —
24 ***misconduct*** includes conduct that renders the member of a
25 board unfit to hold office as a member even though the conduct
26 does not relate to a duty of the office.
- 27 (2) The office of a member of a board becomes vacant if the
28 member —
- 29 (a) dies, resigns or is removed from office under this
30 section; or

- 1 (b) is, according to the *Interpretation Act 1984* section 13D,
2 a bankrupt or a person whose affairs are under
3 insolvency laws; or
- 4 (c) is convicted of an offence punishable by imprisonment
5 for more than 12 months; or
- 6 (d) is convicted of an offence under section 80(1).
- 7 (3) A member of a board may at any time resign from office by
8 written resignation given to the Minister.
- 9 (4) The Minister may remove a member of a board from office on
10 the grounds of —
- 11 (a) neglect of duty; or
- 12 (b) misconduct or incompetence; or
- 13 (c) mental or physical incapacity, other than temporary
14 illness, impairing the performance of the member's
15 duties; or
- 16 (d) absence, without leave, from 3 consecutive board
17 meetings of which the member has had notice.

18 **78. Leave of absence**

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

21 **Subdivision 2 — Impartiality and disclosure of material**
22 **personal interest**

23 **79. Members must act in public interest**

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

1 **80. Disclosure of material personal interest**

2 (1) A member of a board who has a material personal interest in a
3 matter being considered or about to be considered by the board
4 must, as soon as possible after the relevant facts have come to
5 the member's knowledge, disclose the nature of the interest at a
6 meeting of the board.

7 Penalty for this subsection: a fine of \$25 000.

8 (2) A member of a committee who has a material personal interest
9 in a matter being considered or about to be considered by the
10 committee must, as soon as possible after the relevant facts have
11 come to the member's knowledge, disclose the nature of the
12 interest at a committee meeting.

13 Penalty for this subsection: a fine of \$25 000.

14 (3) Subsection (2) applies to a person who is a member of the
15 committee and also a member of the board even though the
16 person has already disclosed the nature of the interest at a board
17 meeting.

18 (4) A disclosure under subsection (1) or (2) must be recorded in the
19 minutes of the meeting.

20 **81. Voting by interested member**

21 (1) A member of a board or a committee who has a material
22 personal interest in a matter being considered or about to be
23 considered by the board or the committee —

24 (a) must not vote, whether at a meeting or otherwise, on the
25 matter; and

26 (b) must not be present while the matter is being considered
27 at the meeting.

28 (2) A reference in subsection (1)(a) or (b) to a matter includes a
29 reference to a proposed resolution under section 82 in respect of
30 the matter, whether relating to that member or a different
31 member.

1 **82. Section 81 may be declared inapplicable**

2 Section 81 does not apply if —

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

15 **83. Quorum where section 81 applies**

- 16 (1) Despite section 86, if a member of a board is disqualified under
17 section 81 in relation to a matter, a quorum is present during the
18 consideration of the matter if at least half the number of
19 members who are entitled to vote on any motion that may be
20 moved at the meeting in relation to the matter are present.
- 21 (2) The Department CEO may deal with a matter insofar as the
22 Board cannot deal with it because of subsection (1).

23 **84. Minister may declare sections 81 and 83 inapplicable**

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

1

Subdivision 3 — Meetings

2

85. Holding meetings

3

(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.

4

5

6

(2) A special meeting of a board may at any time be convened by its chairperson.

7

8

86. Quorum

9

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

10

11

87. Procedure at meetings

12

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

13

14

88. Voting

15

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

16

17

(2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

18

19

(3) A question is resolved according to how a majority of the votes are cast.

20

21

89. Holding meetings remotely

22

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.

23

24

25

1 and the terms of any delegation under which the committee is
2 acting.

3 **93. Remuneration and allowances**

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

7 **Division 3 — Appointment of advisers to board, administrators,**
8 **dismissal of board**

9 **94. Terms used**

10 In this Division —

11 *administrator* means an administrator appointed under
12 section 99;

13 *adviser* means an adviser appointed under section 95.

14 **95. Minister may appoint advisers to boards**

15 (1) The Minister may appoint a person to be an adviser to a board if
16 the Minister considers that the adviser may assist the board to
17 improve the performance of —

18 (a) the board; or

19 (b) the health service provider governed by the board.

20 (2) The Minister must not appoint more than 2 persons to be
21 advisers to a board at the same time.

22 (3) In deciding whether to appoint an adviser to a board, the
23 Minister may have regard to the performance of the board or the
24 health service provider governed by the board in relation to the
25 following —

26 (a) the safety and quality of health services being provided
27 by the health service provider;

- 1 (b) the way in which the health service provider is
2 complying with a service agreement for the health
3 service provider;
4 (c) the financial management of the health service provider.

5 **96. Terms and conditions of appointment as adviser**

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

13 **97. Functions of advisers**

- 14 (1) The functions of an adviser to a board are —
15 (a) to attend board meetings; and
16 (b) to provide information and advice to the board to assist
17 it in performing its functions under this Act; and
18 (c) to advise the Minister and the Department CEO on any
19 matter relating to the performance of the board or the
20 health service provider governed by the board.
- 21 (2) An advisor to a board is not a member of the board but
22 sections 80(1) and 81(1)(b) apply to an adviser as if the adviser
23 were a member of the board.

24 **98. Obligations of board in relation to advisers**

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

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Part 8 Administration of health service providers

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

s. 99

1 (b) to provide information and advice to the board during
2 meetings.

3 **99. Minister may appoint administrator for health service**
4 **provider**

5 (1) In this section —

6 *qualified person* means a person the Minister considers has the
7 necessary qualifications and experience to administer a health
8 service provider.

9 (2) This section applies —

10 (a) if the members of a health service provider's board are
11 dismissed under section 102; or

12 (b) if at any other time there are no members of a health
13 service provider's board; or

14 (c) if, in the case of a board governed provider, a board has
15 not been appointed.

16 (3) The Minister may appoint the Department CEO, the chief
17 executive of the health service provider or another qualified
18 person to administer the health service provider.

19 **100. Terms and conditions of appointment as administrator**

20 (1) An administrator is entitled to be paid remuneration and
21 allowances determined by the Minister on the recommendation
22 of the Public Sector Commissioner.

23 (2) The Minister may revoke the appointment of an administrator
24 for any reason before the term of appointment expires, either to
25 appoint a different person as administrator or to appoint new
26 members of a board of the health service provider.

27 (3) The regulations may make provision with respect to
28 administrators.

1 **101. Role of administrator**

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

10 **102. Minister may dismiss all members of board**

- 11 (1) The Minister may, at any time, dismiss all the members of the
12 board of a health service provider.
- 13 (2) If the Minister acts under subsection (1) all of the offices of the
14 members become vacant.
- 15 (3) The Minister may act under subsection (1) only if the Minister
16 is satisfied that —
- 17 (a) the health service provider has failed to perform its
18 functions effectively; or
- 19 (b) the health service provider has negligently or wilfully
20 failed to comply with a service agreement; or
- 21 (c) the health service provider has failed to comply with a
22 direction given by the Minister under section 60.
- 23 (4) No compensation is payable to a member of the board in
24 relation to the dismissal of the member from the board under
25 this section.

1 **Part 9 — Health service provider employment**

2 **Division 1 — Preliminary**

3 **103. Term used: employing authority**

4 (1) In this Part —

5 *employing authority* means —

6 (a) in relation to a chief executive — the Department CEO;

7 (b) in relation to a health executive employed in a health
8 service provider —

9 (i) if the health service provider is a board governed
10 provider — the board;

11 (ii) if the health service provider is a chief executive
12 governed provider — the chief executive;

13 (c) in relation to a health service provider or an employee
14 (other than a chief executive or a health executive) in the
15 health service provider, the chief executive or board on
16 whom the power to employ or engage employees is
17 conferred.

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

21 **104. Application of PSM Act**

22 (1) Unless otherwise specified in this Act or by the regulations, the
23 PSM Act applies to administration and management, human
24 resource management and conduct of health service providers
25 and employees under this Act.

26 (2) For the purposes of subsection (1) the PSM Act applies as if —

27 (a) a reference in that Act to an employee were a reference
28 to an employee as defined in section 6;

1 (b) a reference in that Act to an employing authority were a
2 reference to an employing authority as defined in
3 section 103.

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

5 **Division 2 — Health Executive Service**

6 **Subdivision 1 — Composition**

7 **105. Composition of Health Executive Service**

8 (1) The Health Executive Service comprises —

- 9 (a) the chief executives of health service providers; and
10 (b) the persons holding offices that are for the time being
11 the subject of a determination under subsection (2).

12 (2) The Department CEO may make a written determination that an
13 office in a health service provider is an executive office.

14 (3) The Department CEO may revoke or amend a determination
15 made under subsection (2).

16 **Subdivision 2 — Chief executives**

17 **106. Chief executive**

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

22 **107. Functions and powers of chief executive**

- 23 (1) Subject to Department CEO directions and, in the case of a
24 board governed provider, the control of the board, a chief
25 executive has —
26 (a) the functions and powers conferred on a chief employee
27 under the PSM Act; and

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Part 9 Health service provider employment

Division 2 Health Executive Service

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- 1 (b) the functions and powers mentioned in subsections (2)
2 and (3).
- 3 (2) The chief executive of a health service provider has the
4 following functions —
- 5 (a) to manage the day-to-day operations of the health
6 service provider;
- 7 (b) in the case of a board governed provider, to advise the
8 board in relation to the functions of the provider under
9 this Act and other written laws;
- 10 (c) to ensure that advice and information is available to the
11 health service provider so that informed decisions can be
12 made;
- 13 (d) to cause health service provider decisions to be
14 implemented;
- 15 (e) to be responsible for the employment, management,
16 supervision, transfer, direction and dismissal of other
17 employees of the health service provider;
- 18 (f) to perform any other function specified or delegated by
19 the health service provider or imposed under this Act or
20 any other written law as a function to be performed by
21 the chief executive.
- 22 (3) Subject to Department CEO directions and, in the case of a
23 board governed provider, to the control of the board, a chief
24 executive may do all things that are necessary or convenient to
25 be done for or in connection with the performance of the
26 functions of a chief executive.
- 27 (4) In performing the functions of a chief executive of a health
28 service provider, the chief executive must use best endeavours
29 to attain performance objectives agreed with the Department
30 CEO and, in the case of a board governed provider, the board.

1 **108. Appointment of chief executive**

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

12 **109. Procedure for appointment of chief executive**

- 13 (1) If —
- 14 (a) there is a vacancy or an impending vacancy in the office
15 of a chief executive of a health service provider; and
- 16 (b) it is not intended to fill the vacancy by transferring a
17 chief executive to that office under section 116, or
18 temporarily by directing an employee to act in the office
19 under section 117,
- 20 the Department CEO must act under this section to enable the
21 filling of the vacancy or impending vacancy.
- 22 (2) In the case of a vacancy or impending vacancy in the office of a
23 chief executive of a board governed provider, the Department
24 CEO must, for the purposes of subsection (1), invite the board
25 of the provider to inform the Department CEO of any matters
26 that it wishes the Department CEO to take into account in
27 recommending a person for appointment to the office referred to
28 in subsection (1).
- 29 (3) The Department CEO must give notice of the vacancy or
30 impending vacancy in the manner the Department CEO thinks

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- 1 sufficient to enable suitably qualified persons to apply for the
2 office.
- 3 (4) The Department CEO must cause applicants for the office to be
4 examined, but nothing in this section requires the examination
5 of all the applicants.
- 6 (5) The Department CEO —
- 7 (a) may seek advice from such sources as the Department
8 CEO considers relevant; and
- 9 (b) if the appointment is to the office of chief executive of a
10 board governed provider, may invite the chairperson of
11 the board to assist the Department CEO to decide on the
12 person or persons suitable for appointment to the office;
13 and
- 14 (c) may invite any other persons the Department CEO
15 thinks fit to assist the Department CEO to decide on the
16 person or persons suitable for appointment to the office.
- 17 (6) Any person invited to assist the Department CEO may take part
18 in the examination of applicants or in the deliberations of the
19 Department CEO on the matter or in both.
- 20 (7) In deciding on a person to be appointed as a chief executive of a
21 health service provider, the Department CEO must have regard
22 to the need for the appointment of a person who —
- 23 (a) is able to discharge the specific responsibilities placed
24 on the chief executive; and
- 25 (b) will foster a spirit of service to the community in staff
26 members of the health service provider; and
- 27 (c) will promote effectiveness and efficiency in the health
28 service provider; and
- 29 (d) will be a responsible manager of the health service
30 provider; and

- 1 (e) will maintain appropriate standards of conduct and
2 integrity among staff members of the health service
3 provider.

4 **110. Remuneration and leave entitlements**

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

10 **111. Contract of employment**

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

15 **112. Appointment of health service provider employee or public**
16 **service officer**

- 17 (1) If a person was —
18 (a) an employee in a health service provider; or
19 (b) a public service officer,
20 immediately before appointment as a chief executive, the person
21 retains all existing and accrued rights on appointment as if
22 service as the chief executive were a continuation of service as
23 that employee or officer.
- 24 (2) If a person was a chief executive immediately before
25 appointment as a public service officer, the person retains all
26 existing and accrued rights on appointment as if service as a
27 public service officer were a continuation of service as a chief
28 executive.

1 **113. Reappointment of chief executive**

- 2 (1) If the contract of employment of a chief executive of a health
3 service provider is about to expire and the chief executive has
4 notified the Department CEO that the chief executive wishes to
5 be reappointed, the Department CEO must —
- 6 (a) reappoint the chief executive to the relevant office for
7 and on behalf of the State; or
- 8 (b) notify the chief executive that the chief executive will
9 not be reappointed.
- 10 (2) Before making a decision under subsection (1) in relation to the
11 chief executive of a board governed provider, the Department
12 CEO must invite the board of the provider to inform the
13 Department CEO of any matters that it wishes the Department
14 CEO to take into account in making the decision.
- 15 (3) The term for which a person is reappointed to be the chief
16 executive of a health service provider must be fixed in the
17 instrument of appointment and must not be longer than 5 years.
- 18 (4) If the Department CEO notifies the chief executive that the
19 chief executive will not be reappointed, the vacancy or
20 impending vacancy must be filled in accordance with
21 section 108.

22 **114. Performance criteria for chief executive and review of**
23 **performance**

- 24 (1) The chief executive of a health service provider must enter into
25 an agreement with the Department CEO and, in the case of a
26 board governed provider, the chairperson of the board
27 concerning the performance criteria to be met by the chief
28 executive during the period to which the agreement relates.
- 29 (2) The agreement must be entered into —
- 30 (a) on appointment under section 108(1); and
- 31 (b) at any time when required to do so under a Department
32 CEO direction.

- 1 (3) The performance agreement is not legally enforceable.
- 2 (4) The performance of the chief executive of a health service
3 provider must be reviewed, at least annually, by the Department
4 CEO and, in the case of the chief executive of a board governed
5 provider, the chairperson of the board.
- 6 (5) The review must have regard to the agreed performance criteria
7 for the office and any other relevant matter.

8 **115. Removal from office**

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

14 **116. Transfer from office**

- 15 (1) The Department CEO may at any time transfer a chief executive
16 from —
- 17 (a) the office of chief executive to —
- 18 (i) another office of chief executive that is vacant
19 and that is at the same level of classification as,
20 or at a lower level of classification than, the
21 first-mentioned office; or
- 22 (ii) the performance of other functions in a health
23 service provider;
- 24 or
- 25 (b) the performance of other functions in a health service
26 provider to an office of chief executive that is vacant
27 and that is at the same level of classification as, or at a
28 lower level of classification than, the office from which
29 the chief executive was transferred to the performance
30 of those functions.

- 1 (2) Before transferring a chief executive the Department CEO must
2 consult —
- 3 (a) if the chief executive to whom the proposed transfer
4 relates is located in a board governed provider — with
5 the board; and
- 6 (b) if the provider of destination is a board governed
7 provider — with the board; and
- 8 (c) with the chief executive to whom the proposed transfer
9 relates.
- 10 (3) In subsection (2)(b) —
- 11 ***provider of destination*** means —
- 12 (a) the health service provider to an office in which the
13 chief executive is proposed to be transferred; or
- 14 (b) the health service provider to the performance of other
15 functions in which the chief executive is proposed to be
16 transferred.
- 17 (4) Subject to the provisions of this Act relating to the management
18 of the redeployment and redundancy of employees, a chief
19 executive who is transferred under subsection (1) retains for the
20 remainder of the term of the chief executive’s contract of
21 employment a level of classification equal to the highest level of
22 classification of any office previously occupied by the chief
23 executive during that period.
- 24 (5) The transfer of a chief executive under this section does not
25 affect the term of the chief executive’s contract of employment.

26 **117. Acting chief executive**

- 27 (1) The Department CEO may direct an employee to act in the
28 office of a chief executive —
- 29 (a) during a vacancy in the office; or
- 30 (b) during a period when the person holding the office is, or
31 is expected to be absent or for any reason unable to
32 perform the functions of the office.

- 1 (2) The Department CEO must specify in the direction the period,
2 not exceeding 12 months, for which the employee can act.
- 3 (3) The Department CEO may cancel the direction at any time.
- 4 (4) Before giving a direction under subsection (1) in respect of the
5 office of a chief executive of a board governed provider, the
6 Department CEO must consult with the board.
- 7 (5) An employee directed under subsection (1) to act in an office —
8 (a) must comply with the direction; and
9 (b) has, while acting in the office, all the powers and
10 functions of the office.
- 11 (6) The validity of anything done by or in relation to a person
12 purporting to act under this section cannot be called into
13 question on the ground that —
14 (a) the occasion for the person to act had not arisen or had
15 ceased; or
16 (b) there is a defect or irregularity in the direction.

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

- 19 (1) In this section, a reference to the employment of a chief
20 executive is a reference to —
21 (a) the appointment of, or failure to appoint, a person to a
22 vacant office of chief executive; or
23 (b) the removal, retirement, termination of employment or
24 other cessation of office of a chief executive; or
25 (c) any disciplinary proceedings or action taken under
26 Part 10 or 11 against a chief executive; or
27 (d) the remuneration or terms and conditions of
28 employment of a chief executive.
- 29 (2) The employment of a chief executive, or any matter, question or
30 dispute relating to any such employment, is not an industrial
31 matter for the purposes of the *Industrial Relations Act 1979*.

- 1 (3) Subsection (2) applies whether or not any person has been
2 appointed to a vacant office of chief executive.
- 3 (4) An award, order or industrial agreement under the *Industrial*
4 *Relations Act 1979*, whether made or registered, as the case
5 requires, before or after the commencement of this section, does
6 not have effect insofar as it relates to the employment of a chief
7 executive.
- 8 (5) Subsection (4) does not prevent a contract of employment of a
9 chief executive from applying any provision of an award, order
10 or industrial agreement under the *Industrial Relations Act 1979*
11 to the employment of the chief executive.
- 12 (6) An appeal does not lie under the *Industrial Relations Act 1979*
13 in relation to the employment of a chief executive.
- 14 (7) No proceedings for an order in the nature of prohibition,
15 certiorari or mandamus or for a declaration or injunction or for
16 any other relief lie in respect of —
- 17 (a) the appointment of, or failure to appoint, a person to a
18 vacant office of chief executive; or
- 19 (b) the reappointment of, or failure to reappoint, a chief
20 executive; or
- 21 (c) the entitlement or non-entitlement of a person to be so
22 appointed or reappointed.
- 23 (8) Nothing in this section prevents a person from raising with the
24 Department CEO a complaint concerning the employment of a
25 chief executive.

26 **119. Delegation**

- 27 (1) A chief executive of a health service provider may delegate any
28 function of the chief executive under another provision of this
29 Act to —
- 30 (a) a staff member in the health service provider or another
31 health service provider;

- 1 (5) The appointment must be to the level of classification
2 determined by the employing authority of the health
3 executive —
4 (a) in accordance with the relevant policy framework; and
5 (b) as being appropriate to the functions to be performed by
6 the person appointed.

7 **122. Reappointment of health executive**

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

13 **123. Transfer of health executives**

- 14 (1) The employing authority of a health service provider may at any
15 time transfer a health executive of the health service provider
16 from the health executive's office, or the performance of any
17 functions in the Health Executive Service, to —
18 (a) another office of health executive that is vacant; or
19 (b) the performance of other functions in a health service
20 provider.
- 21 (2) An employing authority must, before transferring a health
22 executive under subsection (1) from one health service provider
23 to another health service provider —
24 (a) obtain the consent of the employing authority of the
25 health service provider to which the health executive is
26 proposed to be transferred; and
27 (b) consult with the health executive proposed to be
28 transferred.
- 29 (3) Subject to the provisions of this Act relating to the management
30 of the redeployment and redundancy of employees, a health
31 executive may only be transferred under subsection (1) at the

1 level of classification which the health executive had
2 immediately before the transfer.

3 (4) If the office to which a health executive is transferred under
4 subsection (1)(a) is an office, or the functions to the
5 performance of which a health executive is transferred under
6 subsection (1)(b) are functions, in a different health service
7 provider, the employing authority of that health service provider
8 becomes the employing authority of the health executive.

9 (5) On the transfer of a health executive under subsection (1), the
10 employing authority of the health service provider to which that
11 transfer takes place is substituted for the employing authority of
12 the health service provider from which that transfer takes place
13 as a party to the contract of employment of the health executive.

14 (6) The transfer of a health executive under subsection (1) does not
15 affect the term of the health executive's contract of
16 employment.

17 **124. Performance assessment**

18 (1) The performance of a health executive must be reviewed, at
19 least annually, by the employing authority of the health
20 executive.

21 (2) The review must have regard to the agreed performance criteria
22 for the office and any other relevant matter.

23 **125. Termination of contract of employment by employing
24 authority**

25 (1) A health executive's contract of employment may be terminated
26 before its expiry on the expiry of not less than 4 weeks' notice
27 of termination given to the health executive by the health
28 executive's employing authority.

29 (2) An employing authority may, in lieu of 4 weeks' notice of
30 termination, pay the health executive a prescribed amount.

1 **129. Content of contract of employment**

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

13 **130. Termination of contract of employment by executive**

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

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

- 22 If the employing authority of an executive does not propose to
23 reappoint the executive, the employing authority must —
24 (a) notify the executive of that fact not less than 4 weeks
25 before the expiry of the executive's contract of
26 employment; or
27 (b) pay the executive in lieu of that period of notice an
28 amount —
29 (i) not exceeding the maximum amount prescribed;
30 and

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

4 **132. Right of return for certain executives**

5 (1) In this section —

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

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

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

16 (a) was employed for an indefinite period in a department
17 or organisation (the *originating place of employment*);
18 or

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

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

25 (a) may be made in the first contract of employment entered
26 into by the executive, but, unless made in that contract,
27 cannot be made in any subsequent contract of
28 employment for the same or another office in the Health
29 Executive Service; and

30 (b) is revoked if that election is not again made by the
31 executive in a subsequent contract of employment; and

32 (c) may be revoked by the executive by notice in writing
33 delivered to the executive's employing authority; and

- 1 (d) if revoked, cannot be made again.
- 2 (4) An executive who has elected to retain a right of return is
3 entitled to employment in the executive's originating place of
4 employment at the same level of classification as the executive
5 held immediately before ceasing to be employed for an
6 indefinite period within the meaning of subsection (2)(a) or (b),
7 as the case requires, if the executive —
- 8 (a) ceases to be an executive otherwise than by reason of
9 the revocation of a determination under section 105(3);
10 and
- 11 (b) in the case of —
- 12 (i) a chief executive, is not reappointed to the same
13 or another office of chief executive or to the
14 performance of other functions in the Health
15 Executive Service; or
- 16 (ii) a health executive, is not reappointed to the same
17 or another office of health executive or to the
18 performance of other functions in a health
19 service provider.
- 20 (5) A person is not entitled to a right of return if the person's
21 employment in the Public Sector was terminated, or the person
22 was dismissed, under this Act for substandard performance or
23 breach of discipline.
- 24 (6) An employee dismissed under Part 10 is, for the purposes of
25 subsection (5), to be taken to have been dismissed for breach of
26 discipline.
- 27 (7) This section does not prevent the application of the provisions
28 of this Act relating to the management of the redeployment and
29 redundancy of employees to a person who is employed in a
30 health service provider, department or organisation under a right
31 of return.
- 32 (8) Nothing in this section affects the entitlement of any executive
33 under another written law to employment in a department or
34 organisation in accordance with that written law.

1 **133. Compensation if executive has no right of return**

2 (1) This section applies to a person —

3 (a) who ceases to be an executive, otherwise than by reason
4 of —

5 (i) the revocation of a determination under
6 section 105(3); or

7 (ii) termination of employment in the Public Sector,
8 or dismissal, under this Act for substandard
9 performance or breach of discipline,

10 before the executive's contract of employment expires
11 by effluxion of time; and

12 (b) who does not have a right of return within the meaning
13 of section 132.

14 (2) An employee dismissed under Part 10 is, for the purposes of
15 subsection (1)(a)(ii), to be taken to have been dismissed for
16 breach of discipline.

17 (3) A person to whom this section applies is entitled to such
18 compensation, if any, as the Department CEO determines by
19 reference to the remuneration to which that person is entitled for
20 a particular period ending immediately before the day referred
21 to in subsection (4).

22 (4) The maximum compensation payable to a person under this
23 section is an amount equal to the remuneration to which the
24 person is entitled for the period of one year ending immediately
25 before the day on which the person ceased to be an executive in
26 the manner specified in subsection (1)(a).

27 **134. Repayment of compensation**

28 (1) In this section —

29 ***prescribed period*** means a period prescribed for the purposes of
30 this section that commences on the payment of compensation to
31 a person under section 133.

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

18 **135. Election to take compensation instead of right of return**

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

26 **136. Secondment of executive**

- 27 (1) In this section —
28 *relevant employer* means —
29 (a) the employing authority of a department or organisation;
30 or

- 1 (b) an employer outside the Public Sector.
- 2 (2) The employing authority of an executive may enter into an
3 arrangement in writing with a relevant employer for the
4 secondment of the executive to perform functions or services
5 for, or duties in the service of, the relevant employer during the
6 period specified in the arrangement.
- 7 (3) An employing authority must not act under subsection (2)
8 unless —
- 9 (a) the employing authority considers it to be in the public
10 interest to do so; and
- 11 (b) the executive concerned consents.
- 12 **137. Vacation of office of executive**
- 13 (1) The office of an executive becomes vacant if —
- 14 (a) the executive dies; or
- 15 (b) in the case of a chief executive, the chief executive is
16 removed from the office under section 115; or
- 17 (c) the executive completes a term and is not reappointed;
18 or
- 19 (d) the executive is dismissed, or retires, under this Act; or
- 20 (e) the employment of the executive is terminated under this
21 Act; or
- 22 (f) the executive resigns by written resignation given —
- 23 (i) in the case of a chief executive, to the
24 Department CEO; or
- 25 (ii) in the case of a health executive, to the
26 employing authority of the executive's health
27 service provider,
- 28 and the Department CEO or that employing authority, as
29 the case requires, accepts that resignation; or

- 1 **141. Transfers between health service providers or between**
2 **health services providers and the Department**
- 3 (1) If the employing authority of a health service provider considers
4 it to be in the best interests of the health service provider or the
5 WA health system to do so, the employing authority may —
- 6 (a) transfer an employee in the health service provider from
7 one office in the health service provider to another office
8 in that health service provider; or
- 9 (b) transfer an employee in the health service provider from
10 an office in the health service provider to an office in
11 another health service provider.
- 12 (2) If the employing authority of the Department and the employing
13 authority of a health service provider consider it to be in the best
14 interests of the WA health system to do so —
- 15 (a) the employing authority of the Department may transfer
16 an employee in the Department from an office in the
17 Department to an office in the health service provider;
18 and
- 19 (b) the employing authority of the health service provider
20 may transfer an employee in the health service provider
21 from an office in the health service provider to an office
22 in the Department.
- 23 (3) A transfer under subsection (1) or (2) must be —
- 24 (a) at the same or equivalent level of classification; and
25 (b) to an office —
- 26 (i) for which the employee possesses requisite
27 qualifications; and
- 28 (ii) the functions of which are appropriate to the
29 employee’s level of classification.

- 1 (4) An employing authority cannot transfer an employee under
2 subsection (1)(b) or (2) unless —
- 3 (a) the transfer complies with the relevant policy
4 framework; and
- 5 (b) the employing authority of the health service provider to
6 which the employee is to be transferred or, if the
7 employee is to be transferred to the Department, the
8 Department CEO, has approved the transfer; and
- 9 (c) the employee to be transferred has been consulted.
- 10 (5) On the transfer of an employee under subsection (1)(b) or (2) —
- 11 (a) the office from which the employee was transferred
12 becomes vacant; and
- 13 (b) the employing authority of the health service provider to
14 which the employee was transferred or, if the employee
15 was transferred to the Department, the Department
16 CEO —
- 17 (i) becomes the employing authority of the
18 employee; and
- 19 (ii) is substituted for the employing authority of the
20 health service provider from which the employee
21 was transferred as a party to any contract of
22 employment of the employee.
- 23 (6) If the employee is employed on contract, the transfer has effect
24 despite anything in the contract under which the employee is
25 transferred.

26 **142. Secondment of employee**

- 27 (1) In subsection (3) —
- 28 ***relevant employer*** means —
- 29 (a) the employing authority of a department or organisation;
30 or
- 31 (b) an employer outside the Public Sector.

- 1 (2) A chief executive of a health service provider may arrange with
2 another employer for an employee of that other employer to
3 perform duties in the service of the health service provider for
4 the purposes of this Act.
- 5 (3) A chief executive of a health service provider may enter into an
6 arrangement with a relevant employer for the secondment of an
7 employee in the health service provider to perform functions or
8 services for, or duties in the service of, the relevant employer
9 during the period specified in the arrangement.
- 10 (4) A chief executive must not act under subsection (3) unless —
11 (a) the chief executive considers it to be in the public
12 interest to do so; and
13 (b) the employee concerned consents.

14 **143. Contracts for services**

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

1 **Part 10 — Criminal and misconduct matters**
2 **concerning employees**

3 **144. Terms used**

4 In this Part —

5 *responsible authority* means —

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

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

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

- 17 (1) A staff member who is charged with having committed, or is
18 convicted or found guilty of, a serious offence must, within
19 7 days of the charge being laid or the conviction, report that fact
20 in writing to the staff member's responsible authority.
- 21 (2) A staff member who has a misconduct finding made against
22 them under the *Health Practitioner Regulation National Law*
23 (*Western Australia*) must, within 7 days of receiving notice of
24 the finding —
- 25 (a) report that fact to the staff member's responsible
26 authority; and
- 27 (b) provide the person to whom the report is made with a
28 copy of the finding.

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

5 **146. Further reporting and notification**

6 (1) A staff member's responsible authority must report any conduct
7 of the staff member that the responsible authority suspects on
8 reasonable grounds constitutes or may constitute professional
9 misconduct or unsatisfactory professional performance under
10 the *Health Practitioner Regulation National Law (Western*
11 *Australia)* to —

12 (a) the professional board or authority that deals with the
13 registration of the staff member as a health practitioner;
14 and

15 (b) the Department CEO.

16 (2) A staff member's responsible authority must, on becoming
17 aware that the staff member has been charged with having
18 committed, or has been convicted or found guilty of, a serious
19 offence, report the staff member's charge, conviction or the
20 finding of guilt to the Department CEO.

21 (3) The Department CEO may, if the Department CEO considers it
22 appropriate to do so for the protection of a health service
23 provider's patients, notify a health service provider or any other
24 person or body of a report received under subsection (1) or (2).

25 (4) A notification under subsection (3) may be made in such form
26 as the Department CEO considers appropriate.

27 (5) The duty of a person to make a report under subsection (1)
28 or (2) must be complied with, and the Department CEO may
29 give a notification under subsection (3), despite —

30 (a) the provisions of any other Act, whether enacted before
31 or after this Act; or

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

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

- 17 (1) An employee's employing authority may suspend the employee
18 from duty during any period for which —
- 19 (a) the registration of an employee as a registered health
20 practitioner is suspended under the *Health Practitioner*
21 *Regulation National Law (Western Australia)*; or
22 (b) conditions are imposed on the registration of an
23 employee as a registered health practitioner under the
24 *Health Practitioner Regulation National Law (Western*
25 *Australia)* that, in the opinion of the employee's
26 employing authority, are inconsistent with any of the
27 inherent requirements of the terms of employment of the
28 employee; or
29 (c) conditions are imposed on the registration of an
30 employee as a registered health practitioner under the
31 *Health Practitioner Regulation National Law (Western*
32 *Australia)* that, in the opinion of the employee's
33 employing authority, the health service provider in

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1 which the health practitioner is employed will be unable
2 to accommodate for operational reasons.

3 (2) An employing authority who has suspended an employee from
4 duty under this section may at any time remove or vary the
5 terms of the suspension.

6 **148. Suspending employee pending decision in relation to serious**
7 **offence**

8 (1) If an employee is charged with having committed a serious
9 offence, the employing authority of the employee may suspend
10 the employee from duty.

11 (2) Subject to subsection (3), a suspension arising from a charge
12 referred to in subsection (1) has effect until the criminal charge
13 or any action that the employing authority is considering taking
14 under section 150 has been finalised.

15 (3) The employing authority may at any time remove or vary the
16 terms of the suspension.

17 **149. Salary during suspension**

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

20 (2) If —

21 (a) an employee suspended under section 147 does not
22 successfully appeal under the *Health Practitioner*
23 *Regulation National Law (Western Australia)* against
24 the action taken under that Act as mentioned in
25 section 147(1)(a) or (b); or

26 (b) an employee suspended under section 148 is convicted
27 or found guilty of the offence concerned,

28 any salary withheld under subsection (1) is forfeited to the State
29 unless the employing authority otherwise directs.

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

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

- 6 (1) If —
- 7 (a) the registration of an employee as a registered health
8 practitioner is suspended under the *Health Practitioner*
9 *Regulation National Law (Western Australia)*; or
- 10 (b) conditions are imposed on the registration of an
11 employee as a registered health practitioner under the
12 *Health Practitioner Regulation National Law (Western*
13 *Australia)* that, in the opinion of the employee's
14 employing authority, are inconsistent with any of the
15 inherent requirements of the terms of employment of the
16 employee; or
- 17 (c) conditions are imposed on the registration of an
18 employee as a registered health practitioner under the
19 *Health Practitioner Regulation National Law (Western*
20 *Australia)* that, in the opinion of the employee's
21 employing authority, the health service provider in
22 which the health practitioner is employed will be unable
23 to accommodate for operational reasons,
- 24 the employee's employing authority may take such disciplinary
25 action or improvement action, or both disciplinary action and
26 improvement action, as the employing authority considers
27 appropriate (having regard to section 151) with respect to the
28 employee.

- 29 (2) An employing authority cannot take action under
30 subsection (1) —
- 31 (a) until all rights of appeal under the *Health Practitioner*
32 *Regulation National Law (Western Australia)* against

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- 1 the action taken under that Act have lapsed or been
2 exhausted; or
- 3 (b) if the employee successfully appeals under the *Health*
4 *Practitioner Regulation National Law (Western*
5 *Australia)* against the action taken under that Act.
- 6 (3) Despite the *Sentencing Act 1995* section 11, if an employee is
7 convicted or found guilty of a serious offence the employing
8 authority may take such disciplinary action or improvement
9 action, or both disciplinary action and improvement action, as
10 the employing authority considers appropriate (having regard to
11 section 151) with respect to the employee.
- 12 (4) Before any disciplinary action or improvement action is taken
13 with respect to an employee under this section, the employee
14 must be given an opportunity to make a submission in relation
15 to the action that the employing authority is considering taking.
- 16 (5) A decision of an employing authority to take disciplinary action
17 or improvement action with respect to an employee may be
18 carried into effect at any time.

19 **151. Protection of patients to be paramount consideration**

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

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

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

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

4 **153. Appeals and referrals**

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

1 **Part 11 — Substandard performance and**
2 **disciplinary matters**

3 **Division 1 — General**

4 **154. Application and effect of Part**

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

10 **155. Application of Part in respect of former employees**

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

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

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

7 (2) Nothing in this Part limits the power of an employing authority
8 to take other action against an employee under Part 10 or under
9 any other law.

10 **157. Inconsistent provisions, instruments and contracts**

11 (1) In this section —

12 *industrial instrument* means an award, industrial agreement or
13 order made under the *Industrial Relations Act 1979*, including a
14 General Order made under section 50 of that Act, whether made
15 before, on or after the commencement of this section.

16 (2) The provisions of this Part prevail, to the extent of any
17 inconsistency, over any other provision of this Act.

18 (3) The provisions of this Part and any regulations made for the
19 purposes of this Part prevail, to the extent of any inconsistency,
20 over any industrial instrument.

21 (4) The provisions of this Part and any regulations made for the
22 purposes of this Part prevail, to the extent of any inconsistency,
23 over the terms and conditions applying to an employee's
24 employment under a contract of employment or agreement with
25 the employee, whether entered into or renewed before, on or
26 after the commencement of this section.

27 **Division 2 — Substandard performance**

28 **158. What is substandard performance**

29 (1) For the purposes of this Division, the performance of an
30 employee is substandard if and only if the employee does not, in

1 the performance of the functions that the employee is required
2 to perform, attain or sustain a standard that a person may
3 reasonably be expected to attain or sustain in the performance of
4 those functions.

5 (2) Without limiting the generality of the matters to which regard
6 may be had for the purpose of determining whether or not the
7 performance of an employee is substandard, regard —

8 (a) must be had —

9 (i) to any written selection criteria or job
10 specifications applicable to; and

11 (ii) to any duty statement describing; and

12 (iii) to any written work standards or instructions
13 relating to the manner of performance of,

14 the functions the employee is required to perform; and

15 (b) may be had —

16 (i) to any written selection criteria or job
17 specifications applicable to; and

18 (ii) to any duty statement describing; and

19 (iii) to any written work standards or instructions
20 relating to the manner of performance of,

21 functions similar to those functions.

22 **159. Powers in relation to substandard performance**

23 (1) Subject to subsection (2), if an employee's employing authority
24 is of the opinion that the performance of the employee is
25 substandard, the employing authority may —

26 (a) withhold for such period as the employing authority
27 thinks fit an increment of remuneration otherwise
28 payable to the employee; or

29 (b) reduce the level of classification of the employee; or

30 (c) terminate the employment in the health service provider
31 of the employee.

- 1 committed a breach of discipline, the employing authority
2 may —
- 3 (a) decide to deal with the matter as a disciplinary matter
4 under this Division in accordance with the relevant
5 regulations; or
- 6 (b) decide that it is appropriate —
- 7 (i) to take improvement action with respect to the
8 employee; or
- 9 (ii) to take no action.

10 **163. Dealing with disciplinary matter**

- 11 (1) In dealing with a disciplinary matter under this Division an
12 employing authority —
- 13 (a) must proceed with as little formality and technicality as
14 this Division, the relevant regulations and the
15 circumstances of the matter permit; and
- 16 (b) is not bound by the rules of evidence; and
- 17 (c) may, subject to this Division and the relevant
18 regulations, determine the procedure to be followed.
- 19 (2) Even though an employing authority decides to act under
20 section 162(a), the employing authority may, at any stage of the
21 process, decide instead that it is appropriate —
- 22 (a) to take improvement action with respect to the
23 employee; or
- 24 (b) that no further action be taken.
- 25 (3) After dealing with a matter as a disciplinary matter under this
26 Division —
- 27 (a) if the employing authority finds that the employee has
28 committed a section 173(2) breach of discipline, the
29 employing authority must take disciplinary action by
30 dismissing the employee; and

-
- 1 (b) if the employing authority finds that the employee has
2 committed a breach of discipline that is not a
3 section 173(2) breach of discipline, the employing
4 authority must decide —
- 5 (i) to take disciplinary action, or both disciplinary
6 action and improvement action, with respect to
7 the employee; or
- 8 (ii) to take improvement action with respect to the
9 employee; or
- 10 (iii) that no further action is to be taken.
- 11 **164. Action against employee pending decision on breach of**
12 **discipline**
- 13 (1) If an employing authority has decided to act under
14 section 162(a) in relation to an employee, the employing
15 authority may, in accordance with the relevant regulations —
- 16 (a) suspend the employee on full pay, partial pay or without
17 pay; or
- 18 (b) alter the employee's scope of practice or duties.
- 19 (2) Subject to subsection (3) a suspension or alteration arising from
20 a decision referred to in subsection (1) has effect until a decision
21 is made under section 163(2) or (3) or 166 in respect of the
22 suspected breach.
- 23 (3) The employing authority may at any time remove, or vary the
24 terms of, the suspension or alteration.
- 25 (4) Unless the employing authority otherwise directs, any pay
26 withheld under subsection (1) is forfeited to the State if it is
27 decided to take disciplinary action with respect to the employee
28 for the breach of discipline.
- 29 (5) An employee is entitled to have any pay of the employee that is
30 withheld under subsection (1) and not forfeited under
31 subsection (4) restored to the employee.

1 **165. Special disciplinary inquiries**

2 (1) The Department CEO may at any time before a decision is made
3 under section 162(b) or 163(2) or (3) in respect of a suspected
4 breach of discipline direct that a special disciplinary inquiry be
5 held into the suspected breach.

6 (2) A direction under subsection (1) may be made on the request of
7 the employing authority of the employee suspected to have
8 committed the breach of discipline or on the initiative of the
9 Department CEO.

10 (3) Sections 185 to 192 apply to and in relation to a person holding
11 a special disciplinary inquiry and to a special disciplinary
12 inquiry as if references in those sections to an inquirer and to an
13 inquiry were references to the person holding the special
14 disciplinary inquiry and to the special disciplinary inquiry,
15 respectively.

16 (4) Without limiting subsection (1), a person holding a special
17 disciplinary inquiry may have regard to any information
18 elicited, or findings made, in another special disciplinary
19 inquiry, or in an investigation, inspection or audit under Part 13
20 or an inquiry under Part 14.

21 (5) A person who holds a special disciplinary inquiry must, at the
22 conclusion of the inquiry —

23 (a) make a finding that the employee —

24 (i) has committed a section 173(2) breach of
25 discipline; or

26 (ii) has committed a breach of discipline other than a
27 section 173(2) breach of discipline; or

28 (iii) has not committed a breach of discipline;

29 and

30 (b) prepare a report on the conduct and finding of the
31 special disciplinary inquiry; and

-
- 1 (c) if the finding is that the employee has committed a
2 breach of discipline other than a section 173(2) breach
3 of discipline, include in the report a recommendation as
4 to any disciplinary action and improvement action that
5 should be taken by the employing authority; and
6 (d) provide the employing authority and the Department
7 CEO with a copy of the report.

8 **166. Consequence of report of special disciplinary inquiry**

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

- 11 (a) in the case of a finding that the employee has committed
12 a section 173(2) breach of discipline, take disciplinary
13 action by dismissing the employee; or
14 (b) in the case of a finding that the employee has committed
15 a breach of discipline other than a section 173(2) breach
16 of discipline —
17 (i) decide to take disciplinary action or
18 improvement action, or both disciplinary action
19 and improvement action, in relation to the
20 employee in accordance with the
21 recommendation in the report; or
22 (ii) decline to accept the recommendation in the
23 report and decide to take such other disciplinary
24 action or improvement action, or both
25 disciplinary action and improvement action, in
26 relation to the employee as could have been
27 recommended in the report;
28 or
29 (c) in the case of a finding that no breach of discipline was
30 committed by the employee, notify the employee of that
31 finding and that no further action will be taken in the
32 matter.

1 **167. Notification of outcome of disciplinary matter**

2 (1) The employing authority of an employee must notify the
3 employee —

4 (a) whether or not the employee has been found under this
5 Division to have committed any breach of discipline
6 alleged against the employee; and

7 (b) if such a finding has been made against the employee,
8 what action has been taken under this Division in
9 relation to the employee.

10 (2) The employing authority of an employee must notify the
11 Department CEO if —

12 (a) the employee has been found under this Division to have
13 committed any breach of discipline alleged against the
14 employee; and

15 (b) the disciplinary action ordered was dismissal, or the
16 employing authority is of the opinion that the breach of
17 discipline could result in a serious risk to the safety of
18 patients.

19 (3) A notification under subsection (1) or (2) must be given in
20 writing within 30 days of the finding being made.

21 (4) The Department CEO may notify any employing authority of
22 the employee of the matters notified under subsection (2).

23 **168. Termination of other employment if employee is dismissed**

24 (1) Any employing authority of an employee may, after receiving
25 notification under section 167(4) that the employee has been
26 dismissed by disciplinary action under this Part by another
27 employing authority of the employee, terminate the employment
28 of the employee.

29 (2) An employing authority —

30 (a) must not terminate the employment of an employee
31 under subsection (1) earlier than the prescribed period

- 1 after receiving notification under section 167(4) in
2 respect of the employee; and
- 3 (b) must comply with the relevant policy framework when
4 acting under subsection (1).
- 5 (3) If the employment of an employee is terminated under
6 subsection (1), the contract of employment of the employee is
7 terminated.

8 **169. Payment and recovery of fine**

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

13 **170. When disciplinary action can be taken**

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

17 **Division 4 — Appeals and referrals**

18 **171. Terms used**

19 In this section —
20 **government officer** has the meaning given in the *Industrial*
21 *Relations Act 1979* section 80C;
22 **Industrial Commission** has the meaning given to **Commission**
23 in the *Industrial Relations Act 1979* section 7(1).

24 **172. Certain decisions and findings may be appealed or referred**

- 25 (1) In this section —
26 **disciplinary decision or finding** means —
27 (a) a decision made under section 159(1)(b) or (c); or

- 1 (b) a finding made in the exercise of a power under
2 section 165(5)(a)(ii); or
- 3 (c) a decision made under section 147, 148 or 164 to
4 suspend a government officer or other employee on
5 partial pay or without pay; or
- 6 (d) a decision to take disciplinary action made under
7 section 150(1), 163(3)(b) or 166(b); or
- 8 (e) a decision to terminate the employment of a government
9 officer or other employee under section 168(1).
- 10 (2) Subject to sections 118 and 173, an employee or former
11 employee who —
- 12 (a) is, or was, a government officer; and
- 13 (b) is aggrieved by a disciplinary decision or finding made
14 in respect of the government officer,
- 15 may appeal against that decision or finding to the Industrial
16 Commission constituted by a Public Service Appeal Board
17 appointed under the *Industrial Relations Act 1979* Part IIA
18 Division 2.
- 19 (3) A Public Service Appeal Board has jurisdiction to hear and
20 determine an appeal under subsection (2) in accordance with the
21 *Industrial Relations Act 1979* Part IIA Division 2.
- 22 (4) Despite the *Industrial Relations Act 1979* section 29, but subject
23 to section 173, an employee or former employee who —
- 24 (a) is not a government officer; and
- 25 (b) is aggrieved by a disciplinary decision or finding made
26 in respect of the employee,
- 27 may refer the decision or finding to the Industrial Commission
28 as if the decision or finding were an industrial matter that could
29 be so referred under the *Industrial Relations Act 1979*, and that
30 Act applies to and in relation to that decision accordingly.
- 31 (5) A referral under subsection (4) must be made within the
32 prescribed period after the making of the decision or finding.

- 1 (6) If it appears to the Industrial Commission or the Public Service
2 Appeal Board that the employing authority failed to comply
3 with the relevant policy framework or the rules of procedural
4 fairness in making the decision or finding the subject of a
5 referral or appealed against, the Industrial Commission or
6 Public Service Appeal Board —
- 7 (a) is not required to determine the reference or allow the
8 appeal solely on that basis and may proceed to decide
9 the reference or appeal on its merits; or
- 10 (b) may quash the decision or finding and remit the matter
11 back to the employing authority with directions as to the
12 stage at which the disciplinary process in relation to the
13 matter is to be recommenced by the employing authority
14 if the employing authority continues the disciplinary
15 process.

16 **173. Referrals in relation to directions that are lawful orders**

- 17 (1) A reference in this section to an applied section is a reference to
18 that section of the PSM Act as applied under Part 12.
- 19 (2) A direction referred to in applied section 94(2)(b) or (3)(c)(i) is
20 a lawful order for the purposes of section 161(a) if —
- 21 (a) the direction is given to the employee concerned in
22 accordance with the relevant regulations referred to in
23 applied section 94; and
- 24 (b) the direction is upheld by the Industrial Commission on
25 a referral under applied section 95(2), or if the period
26 referred to in applied section 95(3) has expired without
27 that direction having been so referred.
- 28 (3) Nothing in subsection (2) limits the meaning of lawful order in
29 section 161(a).
- 30 (4) Despite the *Industrial Relations Act 1979* section 29(1), but
31 subject to section 118, an employee or former employee —
- 32 (a) against whom proceedings have been taken under this
33 Part for a suspected breach of discipline arising out of

- 1 alleged disobedience to, or disregard of, a direction
2 which is by virtue of subsection (2) a lawful order for
3 the purposes of section 161(a); and
- 4 (b) who is aggrieved by —
- 5 (i) a decision made under section 164 to suspend the
6 employee on partial pay or without pay; or
- 7 (ii) a finding made in respect of the person referred
8 to in section 163(3)(a), 165(5)(a)(i) or 166(a),
- 9 may refer the decision or finding referred to in paragraph (b) to
10 the Industrial Commission as if that decision or finding were an
11 industrial matter that could be so referred under that Act.
- 12 (5) The *Industrial Relations Act 1979* applies to and in relation to
13 that decision or finding referred under subsection (4) as if the
14 decision were an industrial matter referred to the Industrial
15 Commission in accordance with that Act.
- 16 (6) In exercising its jurisdiction under this section in relation to a
17 direction consisting of a lawful order referred to in
18 subsection (2), the Industrial Commission must confine itself to
19 determining whether or not that direction has been, or is capable
20 of having been, complied with.

1 **Part 12 — Redeployment and redundancy**
2 **of employees**

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

5 (1) The PSM Act Part 6 applies, with the changes set out in
6 subsection (2) and any other necessary changes, to and in
7 respect of health service providers and employees in health
8 service providers.

9 (2) For the purposes of subsection (1) the following changes
10 apply —

11 (a) section 173(2) of this Act applies in the place of the
12 PSM Act section 94(4);

13 (b) the reference in the PSM Act section 95(1) definition of
14 **section 94 decision** to “a lawful order by virtue of
15 section 94(4)” is to be read as “a lawful order by virtue
16 of the *Health Services Act 2016* section 173(2)”.

17 (3) The regulations may modify the operation of regulations made
18 for the purposes of the PSM Act Part 6 in relation to their
19 application to and in respect of health service providers and
20 employees in health service providers.

1 **Part 13 — Investigations, inspections and audits**

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

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

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

12 **176. Procedures**

13 Subject to the policy framework mentioned in section 26(2)(j)
14 and this Part, the Department CEO may determine the
15 procedures to be followed in connection with investigations,
16 inspections and audits under this Part.

17 **177. Powers of Department CEO**

18 (1) In this section —

19 ***confidential information*** means any information that —

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

23 ***record*** includes any record of information, irrespective of how
24 the information is recorded or stored or able to be recovered and
25 includes —

- 26 (a) anything from which images, sounds or writings can be
27 reproduced, with or without the aid of anything else; and
28 (b) anything on which information is recorded or stored,
29 whether electronically, magnetically, mechanically or by
30 some other means.

- 1 (2) For the purposes of section 175, the Department CEO may enter
2 the premises of a health service provider (including any hospital
3 or other facility controlled or managed by the health service
4 provider) to investigate any matters relating to the operation or
5 administration of the health service provider.
- 6 (3) On entering premises under this section the Department CEO
7 may do any one or more of the following —
- 8 (a) inspect the premises;
- 9 (b) generally make any investigation or inquiry that is
10 relevant to the operation or administration of the health
11 service provider;
- 12 (c) examine any records of the health service provider,
13 including records containing confidential information,
14 that are relevant to the Department CEO's functions;
- 15 (d) make copies of records referred to in paragraph (c) or
16 any part of them and, for that purpose, take away and
17 retain any of those records or any part of them for any
18 time that may be reasonably necessary;
- 19 (e) require a person in or about the premises to provide
20 information or answer questions in connection with the
21 Department CEO's functions;
- 22 (f) require any person to produce any record or other thing
23 in the possession or under the control of the person that
24 relates to, or that the Department CEO believes on
25 reasonable grounds relates to, the operation or
26 administration of the health service provider;
- 27 (g) require the owner or occupier of the premises to provide
28 the Department CEO with such assistance and facilities
29 as is or are reasonably necessary to enable the
30 Department CEO to exercise functions under this
31 section.

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1 **178. Incriminating information or answers**

2 (1) An individual is not excused from complying with a
3 requirement under section 177(3) to provide information or
4 answer questions, or to produce any document or thing, on the
5 ground that the information, answer, document or thing might
6 tend to incriminate the individual or make the individual liable
7 to a penalty.

8 (2) However, any information or answer provided, or document or
9 thing produced, by an individual in compliance with a
10 requirement under section 177(3) is not admissible in evidence
11 in any criminal proceedings against the individual, other than
12 proceedings for an offence under section 181.

13 **179. Liability for complying with requirement**

14 (1) A person must comply with a requirement under section 177(3)
15 to provide information or answer questions, or to produce any
16 document or thing, despite the provisions of any other written
17 law.

18 (2) No civil or criminal liability is incurred as a result of
19 compliance with a requirement under section 177(3).

20 (3) Compliance with a requirement under section 177(3) is not to be
21 regarded as —

- 22 (a) a breach of any duty of confidentiality or secrecy
23 imposed by law; or
24 (b) a breach of professional ethics or standards or any
25 principles of conduct applicable to the person's
26 employment; or
27 (c) unprofessional conduct.

1 **180. Failure to comply with requirement**

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

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

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

10 **181. False information**

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

15 Penalty: a fine of \$10 000.

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

8 **185. Procedure**

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

20 **186. Hearings**

- 21 (1) The inquirer may hold hearings for the purposes of an inquiry.
22 (2) Hearings must be held in public.
23 (3) However, the inquirer may direct that a hearing, or any part of a
24 hearing, be held in private if the inquirer is satisfied that it is
25 desirable to do so because of the confidential nature of any
26 evidence or matter or for any other reason.
27 (4) The inquirer has a discretion as to whether any person may
28 appear at a hearing in person or be represented by another
29 person.

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1 **187. Inquirer’s powers**

- 2 (1) For the purposes of an inquiry, the inquirer (if the Department
3 CEO) —
- 4 (a) may, by written notice, require the attendance of a
5 person at a place and time specified in the notice; and
- 6 (b) may, by written notice, require a person to produce at a
7 place and time specified in the notice a document that is
8 in the possession or under the control of that person; and
- 9 (c) may inspect any document produced and retain it for
10 any reasonable period that the inquirer thinks fit, and
11 may make copies of it or any of its contents; and
- 12 (d) may require a person to take an oath or make an
13 affirmation and may administer an oath or affirmation to
14 a person; and
- 15 (e) may require a person to answer any question put to that
16 person.
- 17 (2) For the purposes of an inquiry, the inquirer (if not the
18 Department CEO) has whichever of the powers set out in
19 subsection (1) that the statement in writing required by
20 section 184(1)(c) states that the inquirer is to have for that
21 purpose.
- 22 (3) A person required by a notice under this section to attend or to
23 produce a document is entitled to be paid the prescribed
24 allowances (if any) for the person’s travelling and other
25 expenses.

26 **188. Failure to comply with requirements of notice**

- 27 (1) A person must not, without lawful excuse, refuse or fail to
28 attend as required by a notice under section 187(1)(a).
29 Penalty for this subsection: a fine of \$10 000.

1 (2) A person must not, without lawful excuse, refuse or fail to
2 produce a document as required by a notice under
3 section 187(1)(b).

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

5 (3) A person must not, without lawful excuse, refuse or fail to be
6 sworn or make an affirmation when required to do so under
7 section 187(1)(d).

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

9 (4) A person must not, without lawful excuse, refuse or fail to
10 answer a question when required to do so under
11 section 187(1)(e).

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

13 **189. Incriminating answers or documents**

14 (1) It is not a lawful excuse for the purposes of section 188 for an
15 individual to refuse to answer a question or produce a document
16 on the ground that the answer or the document might tend to
17 incriminate the individual or make the individual liable to a
18 penalty.

19 (2) However, an answer given or a document produced by an
20 individual in compliance with a requirement under section 187
21 is not admissible in evidence in any criminal proceedings
22 against the individual, other than proceedings for an offence
23 under section 191.

24 **190. Disruption of inquiry**

25 (1) A person must not wilfully insult an inquirer when the inquirer
26 is conducting an inquiry.

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

28 (2) A person must not wilfully interrupt or wilfully obstruct the
29 conduct of an inquiry.

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

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1 **191. False information**

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

5 Penalty: a fine of \$10 000.

6 **192. Protection for certain purposes**

7 (1) A person (the *informant*) is not liable in any way for any loss or
8 damage suffered by another person because the informant has
9 given information or produced a document, in good faith, to an
10 inquirer for the purposes of an inquiry.

11 (2) An action in tort does not lie against an inquirer, or any person
12 acting under the direction of an inquirer, for anything the
13 inquirer or person has done or omitted to do, in good faith, for
14 the purposes of an inquiry or an inquirer's report under
15 section 193.

16 (3) Nothing in this section limits section 220 or 226.

17 **193. Reports**

18 (1) As soon as is practicable after completing an inquiry, the
19 inquirer must —

20 (a) prepare a written report relating to the inquiry; and

21 (b) give the report to each health service provider to which
22 the inquiry relates; and

23 (c) notify the health service provider that the health service
24 provider may provide comments on the report to the
25 inquirer with 28 days after receiving the report.

26 (2) The report must include —

27 (a) the inquirer's findings and conclusions from conducting
28 the inquiry; and

- 1 (b) any recommendations that the inquirer wishes to make
2 arising from the inquiry and the reasons for those
3 recommendations; and
4 (c) any comments on the report received by the inquirer
5 under subsection (1)(c); and
6 (d) any other prescribed matters.
- 7 (3) The Minister must cause a copy of the report to be laid before
8 each House of Parliament, or dealt with under section 229,
9 within 14 sitting days after the report is given.

1 **Part 15 — Changes to health service providers**

2 **Division 1 — Transfer of assets, rights and liabilities**

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

4 (1) In this section —

5 *associated interest* means a lease, easement, occupancy right,
6 contract, agreement, asset, liability, licence, instrument or other
7 right, function or obligation associated with an interest in land
8 transferred under subsection (2)(a) or (b);

9 *earlier transfer order* includes an earlier transfer order under
10 section 238.

11 (2) The Minister may, by order published in the *Gazette* (a *transfer*
12 *order*) —

13 (a) transfer an interest in land, or any other asset, right or
14 liability, held by the State or the Ministerial Body to a
15 health service provider;

16 (b) transfer an interest in land, or any other asset, right or
17 liability, held by a health service provider to the State,
18 the Ministerial Body or another health service provider;

19 (c) transfer or grant, to the State, the Ministerial Body or a
20 health service provider, an associated interest;

21 (d) vary an associated interest held by the State, the
22 Ministerial Body or a health service provider.

23 (3) A transfer order may specify things by reference to one or more
24 schedules that —

25 (a) need not be published in the *Gazette*; but

26 (b) must be available for public inspection.

27 (4) Anything specified in a schedule for a transfer order is to be
28 taken to be specified in the transfer order.

29 (5) A thing may be specified in a transfer order by describing the
30 class to which it belongs.

- 1 (6) Before a transfer order relating to an interest in land or an
2 associated interest is made specifying anything by reference to a
3 schedule, the Minister must consult with each relevant lands
4 official about the form and content of the schedule.
- 5 (7) To the extent to which a schedule for a transfer order relates to
6 the functions of the Registrar of Titles, the schedule must be in a
7 form that meets the requirements of the Registrar.
- 8 (8) A transfer order may amend an earlier transfer order or a
9 schedule for a transfer order, or a further transfer order may be
10 made, to correct an error in an earlier transfer order or schedule
11 for a transfer order.
- 12 (9) A transfer order may contain provisions of a savings or
13 transitional nature consequent on the making of the order.
- 14 (10) A thing done by, under or for the purposes of this Division is
15 not invalid merely because subsection (6) or (7) was not
16 complied with.

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

19 **195. Amendment of order establishing health service provider**

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

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

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

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

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

11 **197. Order may include savings and transitional provisions**

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

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

23 **198. Change of name**

24 (1) The change of name of a health service provider by order under
25 section 195(a) does not operate —

- 26 (a) to create a new legal entity; or
27 (b) to prejudice or affect the identity of the body corporate
28 constituted as a health service provider or its continuity
29 as a health service provider; or
30 (c) to affect the property, or the rights or obligations, of the
31 health service provider; or

1 (d) to render defective any legal proceedings by or against
2 the health service provider.

3 (2) Any legal proceedings that could have been continued or
4 commenced by or against the health service provider by its
5 former name may be continued or commenced by or against it
6 by its new name.

7 **199. Board of health service provider**

8 (1) On the day on which the nature of the governance of a health
9 service provider is changed by order under section 195(c) from
10 board governed provider to chief executive governed provider,
11 the members of the board cease to hold office.

12 (2) On the day on which a board governed provider is abolished by
13 order under section 196(a), amalgamated by order under
14 section 196(b) or divided by order under section 196(d), the
15 members of the board cease to hold office.

16 (3) On the day on which 2 or more health service providers are
17 merged by order under section 196(c), the members of the board
18 of any board governed provider specified in the order as a health
19 service provider to be abolished cease to hold office.

20 **200. Transfer of assets, rights and liabilities**

21 (1) In this section —
22 *assets* does not include moneys standing to the credit of an
23 account established under section 64 for a health service
24 provider.

25 (2) On the day on which a health service provider is abolished by
26 order under section 196(a), each asset, right and liability of the
27 health service provider is transferred —

28 (a) if a transfer order made under section 194 applies to the
29 asset, right or liability — to the State, the Ministerial
30 Body or the health service provider as specified in the
31 transfer order; and

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- 1 (b) otherwise — to the Ministerial Body.
- 2 (3) On the day on which 2 or more health service providers are
3 amalgamated by order under section 196(b) —
- 4 (a) each health service provider amalgamated by the order
5 is abolished; and
- 6 (b) the assets, rights and liabilities of each amalgamating
7 health service provider are transferred to the new health
8 service provider.
- 9 (4) On the day on which 2 or more health service providers are
10 merged by order under section 196(c) —
- 11 (a) each health service provider specified in the order as a
12 health service provider to be abolished is abolished; and
- 13 (b) the assets, rights and liabilities of each of those health
14 service providers are transferred to the health service
15 provider that is specified in the order as the health
16 service provider that is to continue.
- 17 (5) On the day on which a health service provider is divided by
18 order under section 196(d), each asset, right and liability of the
19 health service provider is transferred —
- 20 (a) if a transfer order made under section 194 applies to the
21 asset, right or liability — to the State, the Ministerial
22 Body or the health service provider as specified in the
23 transfer order; and
- 24 (b) otherwise — to the Ministerial Body.

25 **201. Former accounts**

- 26 (1) In this section —
- 27 *former account*, in relation to a health service provider that has
28 been abolished, divided or merged with another health service
29 provider, means the account established under section 64 for the
30 health service provider;

- 1 ***operating account*** means an agency special purpose account
2 established under the *Financial Management Act 2006*
3 section 16.
- 4 (2) On the day on which a health service provider is abolished by
5 order under section 196(a) —
- 6 (a) any moneys standing to the credit of the health service
7 provider's former account are to be credited to an
8 operating account of the Department; and
9 (b) the former account is then to be closed.
- 10 (3) On the day on which 2 or more health service providers are
11 abolished under section 200(3)(a) as a consequence of an order
12 under section 196(b) —
- 13 (a) any moneys standing to the credit of the health service
14 providers' former accounts are to be credited to the
15 operating account of the new health service provider
16 established by the order; and
17 (b) the former accounts are then to be closed.
- 18 (4) On the day on which 2 or more health service providers are
19 merged by order under section 196(c) —
- 20 (a) any moneys standing to the credit of the former account
21 of a health service provider that is specified in the order
22 as a health service provider to be abolished are to be
23 credited to the operating account of the health service
24 provider that is specified in the order as the service
25 provider that is to continue; and
26 (b) the former accounts are then to be closed.
- 27 (5) On the day on which a health service provider is divided by
28 order under section 196(d) —
- 29 (a) any moneys standing to the credit of the health service
30 provider's former account are to be credited to the
31 operating accounts of the new health service providers
32 as determined by the Department CEO; and

1 (b) the former account is then to be closed.

2 **Division 3 — General provisions**

3 **202. Term used: transfer order**

4 In this Division —

5 *transfer order* has the meaning given in section 194(2).

6 **203. Registration of documents**

7 (1) The relevant lands officials —

8 (a) must take notice of this Part and any transfer order,
9 including any schedule for the transfer order; and

10 (b) must record and register in the appropriate manner the
11 documents necessary to show the effect of this Part and
12 any transfer order.

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

16 **204. Exemption from State tax**

17 (1) State tax is not payable in relation to —

18 (a) anything that occurs by operation of this Part; or

19 (b) anything done (including a transaction entered into or an
20 instrument or document of any kind made, executed,
21 lodged or given) under this Part, or to give effect to this
22 Part, or for a purpose connected with or arising out of
23 giving effect to this Part.

24 (2) The Minister may certify in writing that —

25 (a) a specified thing occurred by operation of this Part; or

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

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

4 **205. Transitional regulations**

5 (1) In this section —

6 *publication day*, for regulations made under subsection (3),
7 means the day on which the regulations are published in the
8 *Gazette*;

9 *specified* means specified or described in regulations made
10 under subsection (3);

11 *transitional matter* —

- 12 (a) means a matter that needs to be dealt with for the
13 purpose of effecting a transition under this Part; and
14 (b) includes a saving or application matter.

15 (2) The Governor may make regulations about the following —

- 16 (a) the abolition, amalgamation, merger or division of
17 health service providers;
- 18 (b) changing the services to be provided by a health service
19 provider as a consequence of the making of an order
20 under section 195 or 196, including by transferring the
21 services to be provided from one health service provider
22 to another health service provider;
- 23 (c) any matter or thing necessary or convenient to facilitate
24 or support a thing mentioned in paragraph (a) or (b)
25 including —
- 26 (i) the transfer of staff;
- 27 (ii) staff entitlements;
- 28 (iii) matters relating to contracts, agreements or other
29 documents entered into by a health service
30 provider, the Department CEO or the State;

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- 1 (iv) the continuation of proceedings involving a
2 health service provider, the Department or the
3 State.
- 4 (3) Without limiting subsection (2), if there is no sufficient
5 provision in this Part or in a transfer order for dealing with a
6 transitional matter, the Governor may make regulations
7 prescribing matters —
- 8 (a) required to be prescribed for the purpose of dealing with
9 the transitional matter; or
- 10 (b) necessary or convenient to be prescribed for the purpose
11 of dealing with the transitional matter.
- 12 (4) Without limiting subsection (3), regulations made under that
13 subsection may provide —
- 14 (a) for or with respect to the legal consequences of the
15 differential transfer of rights, obligations or other
16 liabilities under the same contract or other agreement to
17 more than one transferee;
- 18 (b) that specified provisions of this Act —
- 19 (i) do not apply to or in relation to a specified
20 matter; or
- 21 (ii) apply with specified modifications to or in
22 relation to a specified matter.
- 23 (5) If regulations made under subsection (3) provide that a specified
24 state of affairs is to be taken to have existed, or not to have
25 existed, on and after a day that is earlier than publication day
26 but not earlier than transition day, the regulations have effect
27 according to their terms.
- 28 (6) If regulations contain a provision referred to in subsection (5),
29 the provision does not operate so as —
- 30 (a) to affect in a manner prejudicial to any person (other
31 than the State or an authority of the State) the rights of
32 that person existing before publication day for those
33 regulations; or

1 (b) to impose liabilities on a person (other than the State or
2 an authority of the State) in respect of an act done or
3 omission made before publication day for those
4 regulations.

5 (7) A regulation referred to in this section has, if the regulations so
6 provide, effect despite any other provision of this Part.

7 (8) Regulations can only be made under subsection (3) within
8 36 months after the making of the relevant order under
9 section 195 or 196.

10 **206. Effect of other instruments, rights and obligations**

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

13 (a) as a breach of contract or confidence or otherwise as a
14 civil wrong; or

15 (b) as a breach of any contractual provision prohibiting,
16 restricting or regulating the assignment or transfer of
17 assets, rights or liabilities or the disclosure of
18 information; or

19 (c) as giving rise to any remedy by a party to an instrument,
20 or as causing or permitting the termination of any
21 instrument, because of a change in the beneficial or legal
22 ownership of any assets, rights or liabilities; or

23 (d) as causing any contract or instrument to be void or
24 otherwise unenforceable; or

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

- 1 (d) what may be brought on to health service provider land;
2 (e) the appointment of authorised persons and their powers
3 in connection with the operation and enforcement of the
4 regulations;
5 (f) the conferral on persons specified in the regulations of
6 powers —
7 (i) to remove property from health service provider
8 land, move property within the land, and recover
9 attendant costs and expenses; and
10 (ii) to take possession of property on health service
11 provider land that appears to be lost, discarded or
12 disused and, subject to any prescribed
13 requirements for notice to be given, to dispose of
14 the property as if it were property of the health
15 service provider;
16 (g) the method of notifying a person alleged to have
17 committed an offence against a regulation of the alleged
18 offence and how it may or will be dealt with.

19 **210. Regulations about management and control of traffic**

- 20 (1) In this section —
21 *specified* means specified in the regulations.
22 (2) Without limiting section 209 or 230, the regulations may
23 provide for, authorise, prescribe, require, prohibit, restrict or
24 otherwise regulate the following —
25 (a) the use of vehicles on health service provider land; and
26 (b) the control, supervision and management of parking or
27 standing areas on health service provider land.
28 (3) The regulations may —
29 (a) include provisions as to speed, manner of driving, class
30 of vehicles, routes, entrances and exits, one-way traffic,
31 noise, parking and standing and the control of traffic
32 generally;

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- 1 (b) prescribe —
 - 2 (i) fees and charges payable to a health service
 - 3 provider by a person using, or in respect of a
 - 4 vehicle occupying, a parking or standing area
 - 5 and exempting any person or vehicle or class of
 - 6 person or class of vehicle from paying all or any
 - 7 of those fees; and
 - 8 (ii) the method and means by which the fees may or
 - 9 must be paid and collected and recovered;
- 10 (c) provide for —
 - 11 (i) the issue of permits, whether on application to a
 - 12 specified person or otherwise, entitling the
 - 13 holders of those permits to park vehicles in
 - 14 parking areas or elsewhere in health service
 - 15 provider land for periods and on other terms and
 - 16 conditions specified in the permits; and
 - 17 (ii) the circumstances in which permits may be
 - 18 amended, suspended or revoked by a specified
 - 19 person;
- 20 (d) provide for the protection of parking and standing areas
- 21 and all equipment pertaining to them against misuse,
- 22 damage, interference or attempted interference by any
- 23 person;
- 24 (e) regulate the parking and standing of vehicles in any
- 25 parking or standing area and prohibit any person from
- 26 parking or standing any vehicle in a parking area or
- 27 standing area otherwise than in accordance with the
- 28 regulations;
- 29 (f) require persons in charge of vehicles within health
- 30 service provider land to obey the orders and directions
- 31 of specified persons or members of specified classes of
- 32 persons given for the purpose of controlling traffic;
- 33 (g) provide for the display, erection or marking of signs for
- 34 the purposes of the regulations;

-
- 1 (h) prohibit, or empower a specified person by the display,
2 erection or marking of a sign referred to in paragraph (g)
3 to prohibit —
- 4 (i) the use of a parking area for a purpose other than
5 a specified purpose; or
- 6 (ii) the parking of a vehicle in a parking area by a
7 person other than a specified person or a member
8 of a specified class of persons;
- 9 (i) exempt, or empower a specified person to exempt, any
10 person or vehicle or class of person or class of vehicle
11 from complying with any regulation prohibiting or
12 restricting the parking or standing of vehicles generally
13 or otherwise;
- 14 (j) prescribe the following —
- 15 (i) the circumstances under which a staff member of
16 a health service provider may remove a vehicle
17 or cause it to be removed from a parking or
18 standing area or from any other area within
19 health service provider land to a specified place,
20 whether within health service provider land or
21 not;
- 22 (ii) any further powers in relation to the removal;
- 23 (iii) the scale of fees to be paid to the health service
24 provider to recover the vehicle from that place;
- 25 (iv) the circumstances in which the health service
26 provider may hold the vehicle until the
27 prescribed fees are paid to the health service
28 provider;
- 29 (k) prohibit the driving of vehicles in any part of health
30 service provider land at a speed in excess of that
31 specified in respect of that part by a regulation or by any
32 sign referred to in paragraph (g);
- 33 (l) prescribe evidentiary provisions in relation to speed
34 measuring equipment and the use of that equipment;

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- 1 (m) prohibit the removal by any person other than the driver
2 of a vehicle in respect of which an offence against a
3 regulation is alleged to have been committed of any
4 notice relating to that offence affixed to the vehicle or
5 left in or on the vehicle by a person authorised under the
6 regulations to leave the notice.

7 **211. Requirement to leave health service provider land**

8 (1) In this section —

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

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

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

14 (a) finds a person being disorderly or creating a disturbance;
15 or

16 (b) reasonably suspects that a person has just been
17 disorderly or created a disturbance; or

18 (c) reasonably suspects that a person's presence may pose a
19 threat to the safety of anyone else on or leaving health
20 service provider land; or

21 (d) reasonably suspects that a person is on health service
22 provider land without lawful justification or excuse; or

23 (e) reasonably suspects that a person is on health service
24 provider land in contravention of a regulation or is
25 otherwise contravening a regulation.

26 (3) The authorised person may direct the person to leave the health
27 service provider land or part of the health service provider land.

28 (4) A person given a direction under subsection (3) must comply
29 with the direction.

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

1 **212. Proceedings and payment of penalties**

2 (1) In this section —

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

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

9 (2) Proceedings for a provider offence may be commenced in the
10 name of the responsible provider by the chief executive of the
11 responsible provider or a person authorised to do so by the chief
12 executive.

13 (3) In any proceedings no proof is required of the authorisation of a
14 person under subsection (2), but an averment in a prosecution
15 notice that the person is so authorised is to be taken to be proved
16 in the absence of proof to the contrary.

17 (4) Subsection (2) does not limit the ability of a person to
18 commence or conduct the prosecution of an offence if the
19 person has authority at law to do so.

20 (5) A pecuniary penalty recovered in respect of a provider offence
21 must be paid to the responsible provider.

1 **Part 17 — Information**

2 **Division 1 — General**

3 **213. Terms used**

4 In this Part —

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

7 **health information** means —

8 (a) information, or an opinion, that is also personal
9 information, about —

10 (i) the health (at any time) of an individual; or

11 (ii) a disability (at any time) of an individual; or

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

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

16 or

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

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

21 **information policy framework** means a policy framework
22 issued under section 26(2)(k).

23 **214. Health information management systems**

24 (1) The Department CEO is to establish and maintain systems for
25 the collection, receipt, storage and disclosure of, and access to,
26 health information.

27 (2) A health information management system is to be controlled
28 and maintained in accordance with an information policy
29 framework.

- 1 (3) Information in a health information management system is held
2 on behalf of the State.
- 3 (4) An information policy framework may provide for the
4 following —
- 5 (a) the receipt and storage of health information collected
6 by a health service provider, the Department CEO or
7 contracted health entity;
- 8 (b) access to that health information;
- 9 (c) circumstances in which that health information may be
10 used.

11 **215. Information held in health information management system**

- 12 (1) The following health information must be held in a health
13 information management system —
- 14 (a) health information collected by a health service provider
15 or the Department CEO;
- 16 (b) health information collected by a contracted health
17 entity to the extent that the health information —
- 18 (i) relates to the provision of a public health service;
19 and
- 20 (ii) is provided to the health service provider or the
21 Department CEO in connection with the
22 provision of that service;
- 23 (c) health information provided in response to a request
24 made under section 218(2).
- 25 (2) The Department CEO may, for purposes relating to the
26 provision of public health services and in accordance with the
27 information policy framework, permit any of the following to
28 have access to any health information that is held in a health
29 information management system —
- 30 (a) an employee in the Department;
- 31 (b) a staff member of a health service provider;

1 (c) a staff member of a contracted health entity.

2 **Division 2 — Disclosure of information**

3 **216. Disclosure of information by Department CEO**

4 The Department CEO may, in accordance with the regulations,
5 disclose health information for any of these purposes —

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

14 **217. Disclosure of information by health service provider**

15 (1) In this section —

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

- 19 (a) the treatment or care of a patient who has been, is being,
20 or will or may be, provided with a health service by the
21 health service provider;
22 (b) the health, safety or wellbeing of a patient who has been,
23 is being, or will or may be, provided with a health
24 service by the health service provider.

25 (2) The chief executive of a health service provider may, in
26 accordance with the regulations, disclose relevant information
27 about a patient of the health service provider to any person who,
28 in the opinion of the chief executive, has a sufficient interest in
29 the treatment, care, health, safety or wellbeing of the patient.

1 **218. Requesting information**

2 (1) In this section —

3 *external provider* —

4 (a) includes —

5 (i) a contracted health entity;

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

12 but

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

16 *interstate authority* means —

17 (a) a department of the Public Service of the
18 Commonwealth, another State or a Territory; or

19 (b) an agency or instrumentality of the Commonwealth,
20 another State or a Territory; or

21 (c) a body (whether corporate or unincorporate), or the
22 holder of an office, post or position, established or
23 continued in existence for a public purpose under a law
24 of the Commonwealth, another State or a Territory;

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

28 (a) the administration or enforcement of this Act;

29 (b) the management of health service providers;

30 (c) the planning for, provision, monitoring and evaluation
31 of public health services;

- 1 (d) health related research, whether that research is
2 conducted by persons who are staff members of a health
3 service provider or persons employed or engaged in the
4 Department or other persons.
- 5 (2) The Department CEO may request any of these persons or
6 bodies to disclose relevant information to the Department
7 CEO —
- 8 (a) a public authority;
9 (b) an interstate authority;
10 (c) an external provider.

11 **Division 3 — Confidentiality**

12 **219. Confidentiality**

- 13 (1) A person must not (whether directly or indirectly) collect, use or
14 disclose any information obtained by the person because of —
- 15 (a) the person's office, position, employment or
16 engagement under or for the purposes of this Act; or
17 (b) any disclosure made to the person under this Act,
18 including in response to a request made under
19 section 218(2).
- 20 Penalty for this subsection: a fine of \$5 000.
- 21 (2) Subsection (1) does not apply in relation to the collection, use or
22 disclosure of statistical or other information that is not personal
23 information.
- 24 (3) A person does not commit an offence under subsection (1) if the
25 collection, use or disclosure of the information is authorised
26 under section 220(1).

1 **220. Authorised collection, use or disclosure of information**

- 2 (1) For the purposes of this Act, the collection, use or disclosure of
3 information is authorised if the information is collected, used or
4 disclosed in good faith in any of these circumstances —
- 5 (a) for the purpose of, or in connection with, performing a
6 function under this Act or another written law;
 - 7 (b) for the purposes of section 215 or Division 2;
 - 8 (c) otherwise under this Act, including in response to a
9 request made under section 61 or 218(2);
 - 10 (d) under another law;
 - 11 (e) to a court or other person or body acting judicially in the
12 course of proceedings before the court or other person or
13 body;
 - 14 (f) under an order of a court or other person or body acting
15 judicially;
 - 16 (g) for the purposes of the investigation of a suspected
17 offence or disciplinary matter or the conduct of
18 proceedings against a person for an offence or
19 disciplinary matter;
 - 20 (h) if the information collected, used or disclosed is
21 personal information — with the consent of the
22 individual, or each individual, to whom the personal
23 information relates;
 - 24 (i) any other circumstances prescribed for this subsection.
- 25 (2) Subsection (1)(e) and (f) apply subject to section 178(2).
- 26 (3) If the collection, use or disclosure of information is authorised
27 under subsection (1) —
- 28 (a) no civil or criminal liability is incurred in respect of the
29 collection, use or disclosure; and

- 1 (b) the collection, use or disclosure is not to be regarded
2 as —
- 3 (i) a breach of any duty of confidentiality or secrecy
4 imposed by law; or
- 5 (ii) a breach of professional ethics or standards or
6 any principles of conduct applicable to a
7 person's employment; or
- 8 (iii) unprofessional conduct.

9 **221. Regulations relating to information**

10 The regulations may include provisions about the following —

- 11 (a) the circumstances in which information may be
12 disclosed under this Part;
- 13 (b) the conditions subject to which information may be
14 disclosed under this Part;
- 15 (c) the receipt, use and storage of information disclosed
16 under this Part;
- 17 (d) the restriction of access to information disclosed under
18 this Part;
- 19 (e) the maximum period for which information disclosed
20 under this Part may be retained;
- 21 (f) the circumstances in which information disclosed under
22 this Part must be destroyed.

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

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

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

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

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

- 21 (1) In this section —
- 22 *health service employee* has the same meaning as *employee* has
23 in section 6;
- 24 *injury or hearing loss* means —
- 25 (a) an injury suffered by a health service employee; or
- 26 (b) a noise induced hearing loss suffered by a health service
27 employee that is not an injury,
- 28 in respect of which compensation has been paid or is payable
29 under the WCIM Act by or on behalf of the State, or would
30 have been so payable but for section 22 of that Act;

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

3 (2) For the purposes of the application of the WCIM Act Part IV
4 Division 2 —

5 (a) the awarding of damages against a health service
6 provider independently of the WCIM Act in respect of
7 an injury or hearing loss suffered by a health service
8 employee is to be taken to be the awarding of damages
9 against the State; and

10 (b) any negligence or other tort by the health service
11 provider that caused the injury or hearing loss is to be
12 taken to be the negligence or other tort of the State; and

13 (c) any prohibition under that Division against the awarding
14 of damages in respect of the injury or hearing loss is to
15 be taken to be a prohibition against the awarding of the
16 damages against either or both of the State and the
17 health service provider; and

18 (d) any conditions or limitations that apply under that
19 Division in relation to the awarding of damages in
20 respect of the injury or hearing loss, or to the amount of
21 the damages, are to be taken to be conditions or
22 limitations that apply to the awarding of the damages
23 against either or both of the State and the health service
24 provider or to the amount of the damages.

25 **229. Laying documents before House of Parliament not sitting**

26 (1) If a provision of this Act requires the Minister to cause a
27 document to be laid before each House of Parliament, or be
28 dealt with under this section, within a period and —

29 (a) when the Minister is ready to act, a House of Parliament
30 is not sitting; and

- 1 (b) the Minister is of the opinion that the House will not sit
2 during that period,
- 3 the Minister must transmit a copy of the document to the Clerk
4 of that House.
- 5 (2) A copy of a document transmitted to the Clerk of a House is to
6 be regarded as having been laid before that House.
- 7 (3) The laying of a copy of a document that is regarded as having
8 occurred under subsection (2) is to be recorded in the Minutes,
9 or Votes and Proceedings, of the House on the first sitting day
10 of the House after the Clerk received the copy.
- 11 **230. Regulations — general power**
- 12 (1) The Governor may make regulations prescribing matters —
- 13 (a) required or permitted by this Act to be prescribed: or
14 (b) necessary or convenient to be prescribed for giving
15 effect to this Act.
- 16 (2) Without limiting subsection (1), the regulations may provide
17 for, authorise, prescribe, require, prohibit, restrict or otherwise
18 regulate the following —
- 19 (a) the procedure to be followed at, or in connection with,
20 an inquiry under Part 14;
- 21 (b) the seizure or forfeiture of items under this Act;
- 22 (c) fees and charges payable under this Act and the recovery
23 of those fees and charges;
- 24 (d) the verification by statutory declaration of information
25 or documents given under this Act;
- 26 (e) the review by the State Administrative Tribunal of a
27 decision made under this Act.
- 28 (3) The regulations may provide that contravention of a regulation
29 is an offence and may provide for the offence to be punishable
30 on conviction by a penalty not exceeding a fine of \$10 000.

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

3 **231. Regulations may adopt codes or legislation**

4 (1) In this section —

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

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

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

12 (a) any code; or

13 (b) any subsidiary legislation made, determined or issued
14 under any other Act or under any Act of the
15 Commonwealth, another State or a Territory.

16 (3) The adoption may be by —

17 (a) incorporating the code or subsidiary legislation in the
18 regulations; or

19 (b) incorporating the code or subsidiary legislation by
20 reference.

21 (4) If regulations adopt a code or subsidiary legislation by
22 reference, then, unless the regulations specify that a particular
23 text is adopted —

24 (a) the code or subsidiary legislation is adopted as existing
25 or in force when the regulations are made; and

26 (b) any amendments made to the code or subsidiary
27 legislation after the regulations are made have no legal
28 effect as part of the regulations unless they are
29 specifically adopted by later regulations or a later
30 amendment to the regulations.

1 **Part 19 — Transitional and savings matters**

2 **Division 1 — Interpretation**

3 **233. Terms used**

4 In this Part unless the contrary intention appears —

5 ***hospital board*** —

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

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

13 ***LA Act*** means the *Land Administration Act 1997*;

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

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

19 ***relevant successor*** means —

- 20 (a) in relation to a function of a hospital board that becomes
21 a function of a health service provider on transition
22 day — the health service provider;
- 23 (b) in relation to a function of a hospital board that becomes
24 a function of the Department CEO on transition day —
25 the Department CEO;
- 26 (c) in relation to assets and liabilities assigned to a health
27 service provider by section 237 — the health service
28 provider;
- 29 (d) in relation to assets and liabilities assigned to the
30 Ministerial Body by section 237 — the Ministerial
31 Body;

1 **statutory transition** —

2 (a) means the transition from the provisions of the HHS Act
3 to this Act; and

4 (b) includes the transition from hospital boards to a relevant
5 successor;

6 **this Part** includes regulations made under section 256;

7 **transfer order** means an order made under section 238;

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

10 **Division 2 — Boards and ministerial control**

11 **234. Boards abolished and Minister ceases to control hospitals**

12 On transition day —

13 (a) each hospital board constituted under the HHS Act
14 section 15 is abolished and the members of each hospital
15 board go out of office; and

16 (b) the Minister ceases to have management and control of
17 any hospital under the HHS Act section 7.

18 **235. Immunity continues**

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

1 **Division 3 — Hospital boards' assets, rights and liabilities**

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

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

6 **237. Transfer to health service provider or Ministerial Body**

7 (1) On transition day —

8 (a) the assets of a hospital board specified in a transfer order
9 are assigned to and become assets of the health service
10 provider specified in the order; and

11 (b) the rest of the assets of each hospital board are assigned
12 to and become assets of the Ministerial Body.

13 (2) On transition day —

14 (a) the liabilities of a hospital board specified in a transfer
15 order are assigned to and become liabilities of the health
16 service provider specified in the order; and

17 (b) the rest of the liabilities of each hospital board are
18 assigned to and become liabilities of the Ministerial
19 Body.

20 (3) On transition day the Ministerial Body is substituted for the
21 hospital board as a party to any proceedings specified in a
22 transfer order.

23 (4) On and after transition day, any agreement or instrument
24 specified in a transfer order has effect as if references to the
25 Ministerial Body were substituted, in accordance with the order,
26 for references to a hospital board.

27 (5) On and after transition day, any proceedings or remedy that
28 might have been commenced by or against, or might have been
29 available to or against, a hospital board in relation to the assets

- 1 (c) agreements and instruments that, by operation of
2 section 237, are to have effect as if references to the
3 Ministerial Body were substituted, in accordance with
4 the order, for references in the agreements and
5 instruments to a hospital board.
- 6 (2) A transfer order may also deal with any matter that is incidental
7 or supplementary to a matter to which subsection (1) relates and
8 the transfer order has effect accordingly.
- 9 (3) A transfer order may specify things by reference to one or more
10 schedules that —
- 11 (a) need not be published in the *Gazette*; but
12 (b) must be available for public inspection.
- 13 (4) Anything specified in a schedule for a transfer order is to be
14 taken to be specified in the transfer order.
- 15 (5) A thing may be specified in a transfer order by describing the
16 class to which it belongs.
- 17 (6) Before a transfer order is made specifying anything by reference
18 to a schedule, the Minister must consult with each relevant lands
19 official about the form and content of the schedule.
- 20 (7) To the extent to which a schedule for a transfer order relates to
21 the functions of the Registrar of Titles, the schedule must be in a
22 form that meets the requirements of the Registrar.
- 23 (8) A thing done by, under or for the purposes of this Part is not
24 invalid merely because subsection (6) or (7) was not complied
25 with.
- 26 (9) The fact that a previous transfer order has been made does not
27 prevent a further transfer order from being made.
- 28 (10) The Minister may, by order published in the *Gazette*, amend a
29 transfer order or a schedule for a transfer order.

- 1 (b) the Ministerial Body is to be taken to be the
2 management body of the reserve under the LA Act
3 section 46(1).
- 4 (3) For the purposes of section 241 and the purposes of the
5 LA Act —
- 6 (a) subsection (2)(a) must be treated as if it were an order
7 made under the LA Act section 51 changing the purpose
8 of the reserve; and
- 9 (b) subsection (2)(b) must be treated as if it were —
- 10 (i) an order made under the LA Act section 50(1)(a)
11 revoking the management order placing the care,
12 control and management of the reserve with the
13 hospital board and specifying that any interests
14 that existed in, or any caveats that existed in
15 respect of, the reserve immediately before
16 transition day continue to exist in respect of the
17 reserve on and after transition day; and
- 18 (ii) a management order made under the LA Act
19 section 46(1) placing the care, control and
20 management of the reserve with the Ministerial
21 Body subject to any conditions (with the changes
22 necessary to take account of differences as to the
23 purpose and management body) to which the
24 management order referred to in subparagraph (i)
25 was subject immediately before transition day.

26 **241. Registration of documents**

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

1 **243. Exemption from State tax**

- 2 (1) State tax is not payable in relation to —
- 3 (a) anything that occurs by operation of this Part; or
- 4 (b) anything done (including a transaction entered into or an
- 5 instrument or document of any kind made, executed,
- 6 lodged or given) under this Part, or to give effect to this
- 7 Part, or for a purpose connected with or arising out of
- 8 giving effect to this Part.
- 9 (2) The Minister may certify in writing that —
- 10 (a) a specified thing occurred by operation of this Part; or
- 11 (b) a specified thing was done under this Part, or to give
- 12 effect to this Part, or for a purpose connected with or
- 13 arising out of giving effect to this Part.
- 14 (3) For all purposes and in all proceedings, a certificate under
- 15 subsection (2) is sufficient evidence of the matters it certifies
- 16 unless the contrary is shown.

17 **244. Operating accounts of hospital boards**

- 18 (1) In this section —
- 19 *former account* means the operating account of a hospital
- 20 board.
- 21 (2) On transition day, moneys standing to the credit of a former
- 22 account must be credited in amounts determined in writing by
- 23 the Minister to either or both of the following accounts —
- 24 (a) an operating account of a specified health service
- 25 provider;
- 26 (b) an operating account of the Department.
- 27 (3) The former account must be closed after moneys are credited
- 28 under subsection (2).

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

Division 4 — Staff

18
19 **245. Employees of hospital boards**

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

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

12 **246. Preservation of rights**

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

1 **Division 5 — Continuation of certain things**

2 **247. Completion of things done**

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

7 **248. Continuing effect of things done**

8 (1) This section applies in relation to an act or omission done or
9 omitted before transition day by, to or in respect of a hospital
10 board to the extent that the act or omission —

11 (a) has force or significance; and

12 (b) is not governed by another provision of this Part.

13 (2) On and after transition day, the act or omission is to be taken to
14 have been done or omitted by, to or in respect of a relevant
15 successor so far as the act or omission relates to the relevant
16 successor's functions.

17 **249. Agreements, instruments, proceedings and remedies**
18 **generally**

19 (1) Subsection (2) applies to any agreement or instrument to which
20 section 237 does not apply.

21 (2) On and after transition day, any agreement or instrument that
22 contains a reference to a hospital board has effect as if the
23 reference were to a relevant successor so far as the reference
24 relates to the relevant successor's functions, unless the context
25 otherwise requires.

26 (3) Subsection (4) applies in relation to any proceedings or remedy
27 to which section 237 does not apply.

28 (4) On and after transition day, any proceedings or remedy that
29 might have been commenced or continued by or against, or
30 might have been available to or against, a hospital board may be

1 commenced or continued by or against, or is available to or
2 against, a relevant successor so far as the proceedings or remedy
3 are in respect of an act, matter or thing that is within the
4 relevant successor's functions.

5 **Division 6 — Quadriplegic Centre**

6 **250. Terms used**

7 In this section —

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

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

13 **251. Quadriplegic Centre continued**

14 (1) The public hospital known as the Quadriplegic Centre is to be
15 taken to have been declared by order under section 32(1) to be a
16 health service area.

17 (2) A body corporate is to be taken to have been established by
18 order under section 32(1) as a board governed provider for the
19 Quadriplegic Centre and to have been assigned the corporate
20 name Quadriplegic Centre.

21 (3) The new body corporate is a continuation of, and the same legal
22 entity as, the old body corporate.

23 (4) Subsections (1) and (2) have effect and may be treated as if they
24 were orders under section 32(1).

25 (5) The assets, rights and liabilities of or in relation to the old body
26 corporate continue as assets, rights and liabilities of or in
27 relation to the new body corporate.

28 (6) If in a written law or other document or instrument there is —
29 (a) a reference to the old body corporate; or

1 (b) a reference that is read and construed as a reference to
2 the old body corporate,
3 the reference may, where the context so requires, be read as if it
4 had been amended to be a reference to the new body corporate.

5 **252. Quadriplegic Centre board members**

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

9 (a) is to be taken to have been appointed as a member of the
10 board of the Quadriplegic Centre under section 71(1);
11 and

12 (b) subject to this Act, holds that office for the remainder of
13 the period for which the person was appointed to the
14 Quadriplegic Centre board constituted under the
15 HHS Act.

16 **253. Staff members**

17 (1) In this section —

18 *existing employee* means a person employed under the HHS Act
19 section 19 by the old body corporate immediately before
20 transition day.

21 (2) An existing employee is, on and after transition day, to be taken
22 to be employed under this Act as an employee in the new body
23 corporate.

24 (3) A person who was engaged under the HHS Act section 19 by
25 the old body corporate immediately before transition day is to
26 be taken to be engaged by the new body corporate under this
27 Act.

1 **254. Preservation of rights**

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

16 **255. Transfer of contracts for services**

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

22 **Division 7 — Other matters**

23 **256. Transitional regulations**

- 24 (1) In this section —
- 25 ***publication day***, for regulations made under subsection (2),
26 means the day on which those regulations are published in the
27 *Gazette*;
- 28 ***specified*** means specified or described in regulations made
29 under subsection (2);

- 1 *transitional matter* —
- 2 (a) means a matter that needs to be dealt with for the
- 3 purpose of effecting the statutory transition; and
- 4 (b) includes a saving or application matter.
- 5 (2) If there is no sufficient provision in this Part or in a transfer
- 6 order for dealing with a transitional matter, the Governor may
- 7 make regulations prescribing matters —
- 8 (a) required to be prescribed for the purpose of dealing with
- 9 the transitional matter; or
- 10 (b) necessary or convenient to be prescribed for the purpose
- 11 of dealing with the transitional matter.
- 12 (3) Regulations made under subsection (2) may provide that
- 13 specified provisions of this Act —
- 14 (a) do not apply to or in relation to a specified matter; or
- 15 (b) apply with specified modifications to or in relation to a
- 16 specified matter.
- 17 (4) If regulations made under subsection (2) provide that a specified
- 18 state of affairs is to be taken to have existed, or not to have
- 19 existed, on and after a day that is earlier than publication day
- 20 but not earlier than transition day, the regulations have effect
- 21 according to their terms.
- 22 (5) If regulations contain a provision referred to in subsection (4),
- 23 the provision does not operate so as —
- 24 (a) to affect in a manner prejudicial to any person (other
- 25 than the State or an authority of the State) the rights of
- 26 that person existing before publication day for those
- 27 regulations; or
- 28 (b) to impose liabilities on a person (other than the State or
- 29 an authority of the State) in respect of an act done or
- 30 omission made before publication day for those
- 31 regulations.

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

4 **257. Effect of other instruments, rights and obligations**

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

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

20 **258. Interpretation Act 1984 not affected**

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

1 **Part 20 — Hospitals and Health Services**
2 **legislation amended**

3 **Division 1 — *Hospitals and Health Services Act 1927* amended**

4 **259. Act amended**

5 This Division amends the *Hospitals and Health Services*
6 *Act 1927*.

7 **260. Long title replaced**

8 Delete the long title and insert:

9

10 **An Act to provide for the control and regulation of private**
11 **hospitals and private psychiatric hostels and for related**
12 **purposes.**

13

14 **261. Section 1 replaced**

15 Delete section 1 and insert:

16

17 **1. Short title**

18 This is the *Private Hospitals and Health Services*
19 *Act 1927*.

20

21 **262. Section 2 amended**

22 (1) In section 2(1) delete the definitions of:

23 *agency*

24 *agency board*

25 *board*

26 *Commonwealth Act*

27 *day hospital facility*

1 ***Executive Director***
2 ***hospital***
3 ***hospital service***
4 ***hospital service provider***
5 ***nursing post***
6 ***practitioner***
7 ***public hospital***
8 ***teaching hospital***

9 (2) In section 2(1) insert in alphabetical order:
10

11 ***health service*** has the meaning given in the *Health*
12 *Services Act 2016* section 7;

13 ***hospital*** has the meaning given in the *Health Services*
14 *Act 2016* section 8;

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

18 ***mental illness*** has the meaning given in the *Mental*
19 *Health Act 2014* section 4;

20 ***private hospital service provider*** means the holder of a
21 licence granted under this Act to conduct a private
22 hospital or a private psychiatric hostel;

23 ***private psychiatric hostel*** means private premises in
24 which 3 or more persons who —

25 (a) are socially dependent because of mental
26 illness; and

27 (b) are not members of the family of the proprietor
28 of the premises,

29 reside and are treated or cared for;

1 **public hospital** has the meaning given in the *Health*
2 *Services Act 2016* section 8(6) and —

- 3 (a) includes a hospital declared to be a public
4 hospital under the *Health Services Act 2016*
5 section 8(7); and
6 (b) does not include a hospital declared not to be a
7 public hospital under the *Health Services*
8 *Act 2016* section 8(8).

10 (3) In section 2(1) in the definition of **private non-profit hospital**
11 delete “a hospital” and insert:

13 a private hospital

15 (4) Delete section 2(1A).

16 (5) Delete section 2(3) and (4).

17 **263. Section 3 amended**

18 (1) In section 3(1) delete “and any public hospital”.

19 (2) Delete section 3(2).

20 (3) In section 3(3) delete “a public hospital, or is not a nursing
21 home, as the case may be, for” and insert:

23 a nursing home for

25 (4) Delete section 3(4) and (5).

26 **264. Section 4 amended**

27 In section 4 delete “a hospital or part of a hospital” and insert:

29 a private hospital or part of a private hospital

30

1 **265. Sections 5A and 7 deleted**

2 Delete sections 5A and 7.

3 **266. Section 7A replaced**

4 Delete section 7A and insert:

5

6 **7A. Minister's powers**

7 The Minister has power —

- 8 (a) with the approval of the Treasurer, to make
9 payments to or on behalf of any religious or
10 charitable organisation for the purpose of
11 defraying the interest on moneys borrowed by
12 that organisation and expended or intended to
13 be expended by that organisation on a project
14 approved by the Minister in connection with a
15 private non-profit hospital or nursing home
16 maintained by that organisation; and
- 17 (b) to make payments by way of subsidy in respect
18 of patients who are unable to afford the
19 payment of reasonable fees.
- 20

21 **267. Sections 7B to 9 deleted**

22 Delete sections 7B to 9.

23 **268. Section 10 replaced**

24 Delete section 10 and insert:

25

26 **10. Visiting and inspecting private hospitals**

- 27 (1) Any person authorised by the CEO for that purpose
28 may —
- 29 (a) visit any private hospital; and

- 1 (b) inspect every part of any private hospital,
2 including any outbuildings or premises attached
3 to the private hospital; and
- 4 (c) subject to subsection (2) if the person is a
5 medical practitioner, medically examine any
6 patient in any hospital.
- 7 (2) Where a patient is a patient in a private hospital the
8 following provisions apply in respect of an
9 examination under subsection (1)(c) —
- 10 (a) an examination must not be made except on
11 complaint to the CEO; and
- 12 (b) the patient’s medical practitioner must be
13 notified of the intention of the authorised
14 person to examine the patient and given an
15 opportunity to be present at the examination;
16 and
- 17 (c) the person who is the licence holder under
18 Part IIIA in relation to the hospital in which the
19 patient is accommodated must be notified of the
20 intention to conduct the examination.
21

22 **269. Section 11 amended**

23 In section 11(a) delete “duties, or the visitation or inspection of
24 any public hospital; or” and insert:

25
26 duties; or
27

28 **270. Sections 12 and 12A deleted**

29 Delete sections 12 and 12A.

30 **271. Part III deleted**

31 Delete Part III.

1 **272. Section 26P amended**

2 In section 26P delete the definitions of:

3 *mental illness*

4 *private psychiatric hostel*

5 **273. Part IIIC heading replaced**

6 Delete the heading to Part IIIC and insert:

7

8 **Part IIIC — Information**

9

10 **274. Section 26R amended**

11 In section 26R:

12 (a) delete “collect” and insert:

13

14 collect, use or disclose

15

16 (b) delete paragraphs (a) and (c);

17 (c) delete paragraph (d) and insert:

18

19 (d) health related research, whether that research is
20 conducted by persons employed or engaged in
21 the Department or other persons.

22

23 Note: The heading to amended section 26R is to read:

24 **Purpose for collecting, using or disclosing information**

1 **275. Section 26S amended**

2 In section 26S(1), (3)(a), (5), (6) and (7) before “hospital
3 service” (each occurrence) insert:

4
5 private

6
7 Note: The heading to amended section 26S is to read:

8 **CEO may direct private hospital service provider to give**
9 **information**

10 **276. Section 26T replaced**

11 Delete section 26T and insert:

12
13 **26T. No liability for disclosure**

14 If a private hospital service provider discloses
15 information in compliance with a direction under
16 section 26S —

- 17 (a) no civil or criminal liability is incurred in
18 respect of the disclosure; and
- 19 (b) the disclosure is not to be regarded as —
- 20 (i) a breach of any duty of confidentiality
21 or secrecy imposed by law; or
- 22 (ii) a breach of professional ethics or
23 standards or any principles of conduct
24 applicable to a person’s employment; or
- 25 (iii) unprofessional conduct.
- 26

27 **277. Sections 27 to 35 deleted**

28 Delete sections 27 to 35.

1 **278. Section 35A replaced**

2 Delete section 35A and insert:

3

4 **35A. Protection from personal liability**

5 (1) An action in tort does not lie against a person for
6 anything that the person has done, in good faith, in the
7 performance or purported performance of a function
8 under this Act.

9 (2) The protection given by this section applies even
10 though the thing done as described in subsection (1)
11 may have been capable of being done whether or not
12 this Act had been enacted.

13 (3) Despite subsection (1), the State is not relieved of any
14 liability that it might have for another person having
15 done any thing as described in that subsection.

16 (4) In this section, a reference to the doing of anything
17 includes a reference to an omission to do anything.
18

19 **279. Sections 35B, 35C and 36 deleted**

20 Delete sections 35B, 35C and 36.

21 **280. Section 37 amended**

22 (1) Delete section 37(2) to (2g).

23 (2) Delete section 37(3)(aa) to (af).

24 Note: The heading to amended section 37 is to read:

25 **Regulations**

1 **281. Section 38 amended**

2 Delete section 38(1)(c) and (d) and insert:

3

4 (c) the effectiveness of the operations of the
5 Minister, the Department, the CEO and
6 authorised persons under this Act;

7

8 **282. Schedule deleted**

9 Delete the Schedule.

10 **Division 2 — *Hospitals and Health Services Amendment***
11 ***Act 2013* repealed**

12 **283. *Hospitals and Health Services Act Amendment Act 2013***
13 **repealed**

14 The *Hospitals and Health Services Amendment Act 2013* is
15 repealed.

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Part 21 — Other Acts amended

284. *Births, Deaths and Marriages Registration Act 1998* amended

- (1) This section amends the *Births, Deaths and Marriages Registration Act 1998*.
- (2) In section 12(1) in the definition of **responsible person** paragraph (a) delete “means the chief executive officer or general manager of the hospital; or” and insert:

means —

- (i) in the case of a public hospital as defined in the *Health Services Act 2016* section 6 — the chief executive of the health service provider for that hospital; or
- (ii) in the case of a private hospital as defined in the *Private Hospitals and Health Services Act 1927* section 2(1) — the chief executive officer or general manager of the hospital;

or

285. *Blood Donation (Limitation of Liability) Act 1985* amended

- (1) This section amends the *Blood Donation (Limitation of Liability) Act 1985*.
- (2) In section 3 in the definition of **hospital** delete paragraph (a) and insert:
- (a) a public hospital as defined in the *Health Services Act 2016* section 6, means the health service provider for that hospital;

1 (3) In section 3A(1) after “employed by” insert:

2

3 or in

4

5 (4) In section 9(1)(a)(ii) delete “employee of,” and insert:

6

7 employee of or in,

8

9 **286. Carers Recognition Act 2004 amended**

10 (1) This section amends the *Carers Recognition Act 2004*.

11 (2) In section 8(3)(b) delete “*Hospitals and Health Services*
12 *Act 1927*.” and insert:

13

14 *Health Services Act 2016*.

15

16 (3) Delete Schedule 2 Division 1 item 3 and insert:

17

18 3. A health service provider as defined in the *Health Services*
19 *Act 2016* section 6.

20 3A. The chief executive officer of the department principally
21 assisting in the administration of the *Health Services*
22 *Act 2016* in relation to any health services provided by the
23 chief executive officer under the *Health Services Act 2016*.

24

25 **287. Charitable Trusts Act 1962 amended**

26 (1) This section amends the *Charitable Trusts Act 1962*.

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

2

3 (b) any health service provider as defined in the
4 *Health Services Act 2016* section 6; or

5

6 **288. *Constitution Acts Amendment Act 1899* amended**

7 (1) This section amends the *Constitution Acts Amendment Act 1899*.

8 (2) In Schedule V Part 3 delete the items:

9

10 Agency established under section 7B of the *Hospitals and Health*
11 *Services Act 1927*.

12 Any hospital board constituted under the *Hospitals and Health*
13 *Services Act 1927*.

14

15 (3) In Schedule V Part 3 after the item relating to the Health
16 Education Council of Western Australia insert:

17

18 Any health service provider established by order under the *Health*
19 *Services Act 2016*.

20

21 **289. *Financial Management Act 2006* amended**

22 (1) This section amends the *Financial Management Act 2006*.

23 (2) In Schedule 1 delete the items:

24

25 Agencies established under the *Hospitals and Health Services*
26 *Act 1927* section 7B

27 Hospital boards constituted under the *Hospitals and Health Services*
28 *Act 1927* section 15 and the Minister in relation to any
29 public hospital controlled by the Minister under section 7 of
30 that Act

31

s. 292

1 (3) In section 340AB(3)(c) and (d) delete “the Hospital Board of
2 that hospital; and” and insert:

3

4 the chief executive of the health service provider for that
5 hospital under the *Health Services Act 2016*; and

6

7 **292. *Health and Disability Services (Complaints) Act 1995***
8 **amended**

9 (1) This section amends the *Health and Disability Services*
10 *(Complaints) Act 1995*.

11 (2) In section 3(1) in the definition of **provider** paragraph (c) delete
12 “under the *Hospitals and Health Services Act 1927*,” and insert:

13

14 as defined in the *Health Services Act 2016* section 6;

15

16 **293. *Health Legislation Administration Act 1984* amended**

17 (1) This section amends the *Health Legislation Administration*
18 *Act 1984*.

19 (2) Delete section 6(2) and insert:

20

21 (2) The Minister may for the purposes of the Acts to which
22 this Act applies, other than the *Health Services*
23 *Act 2016* —

24 (a) appoint persons, other than public service
25 officers, as employees on a full-time, part-time
26 or casual basis or for a specified period; and

27 (b) engage persons, other than public service
28 officers, under contract for services.

29

1 **294. *Human Tissue and Transplant Act 1982* amended**

2 (1) This section amends the *Human Tissue and Transplant*
3 *Act 1982*.

4 (2) Delete section 3(2) and insert:

5

6 (2) For the purposes of this Act —

7 *hospital* includes a health service provider as defined
8 in the *Health Services Act 2016* section 6 that has the
9 conduct of pathological examinations as an area for
10 which it is established.

11

12 **295. *Industrial Relations Act 1979* amended**

13 (1) This section amends the *Industrial Relations Act 1979*.

14 (2) In section 7(1) in the definition of ***public hospital*** delete
15 “*Hospitals and Health Services Act 1927*” and insert:

16

17 *Health Services Act 2016* section 6;

18

19 (3) In section 80C(1) delete the definition of ***employing authority***
20 and insert:

21

22 ***employing authority*** means —

23 (a) in relation to a government officer who is an
24 employee within the meaning of the *Health*
25 *Services Act 2016* section 6, an employing
26 authority within the meaning of section 103 of
27 that Act;

28 (b) in relation to any other government officer, an
29 employing authority within the meaning of the
30 *Public Sector Management Act 1994* section 5;

31

s. 295

- 1 (4) In section 80C(1) in the definition of *employer* after
2 paragraph (a) insert:
3
- 4 (aa) in relation to a government officer who is an
5 employee within the meaning of the *Health*
6 *Services Act 2016* section 6, means the
7 employing authority of the employee;
8
- 9 (5) In section 80C(2) delete “1994.” and insert:
10
11 *1994* and the *Health Services Act 2016*.
12
- 13 (6) Delete section 80I(1) and (2) and insert:
14
- 15 (1) Subject to the *Public Sector Management Act 1994*
16 section 52, the *Health Services Act 2016* section 118
17 and subsection (3) of this section, a Board has
18 jurisdiction to hear and determine —
- 19 (a) an appeal by any public service officer against
20 any decision of an employing authority in
21 relation to an interpretation of any provision of
22 the *Public Sector Management Act 1994*, and
23 any provision of the regulations made under
24 that Act, concerning the conditions of service
25 (other than salaries and allowances) of public
26 service officers;
- 27 (b) an appeal by a government officer under the
28 *Public Sector Management Act 1994* section 78
29 against a decision or finding referred to in
30 subsection (1)(b) of that section;
- 31 (c) an appeal by a government officer under the
32 *Health Services Act 2016* section 172 against a
33 decision or finding referred to in
34 subsection (1)(b) of that section;

1 (d) an appeal, other than an appeal under the *Public*
2 *Sector Management Act 1994* section 78(1) or
3 the *Health Services Act 2016* section 172(2), by
4 a government officer that the government
5 officer be dismissed,

6 and to adjust all such matters as are referred to in
7 paragraphs (a), (b), (c) and (d).
8

9 **296. *Mental Health Act 2014* amended**

10 (1) This section amends the *Mental Health Act 2014*.

11 (2) In section 4 in the definition of **general hospital** delete
12 “*Hospitals and Health Services Act 1927* section 2(1)” and
13 insert:
14

15 *Health Services Act 2016* section 6)
16

17 (3) In section 4 in the definition of **private hospital** delete
18 “*Hospitals and Health Services Act 1927*” and insert:
19

20 *Private Hospitals and Health Services Act 1927*
21

22 (4) In section 4 in the definition of **public hospital** delete
23 “*Hospitals and Health Services Act 1927* section 2(1);” and
24 insert:
25

26 *Health Services Act 2016* section 6;
27

s. 297

- 1 (5) In section 348 in the definition of *identified person*
2 paragraph (h) delete “*Hospitals and Health Services Act 1927*”
3 and insert:

4

5 *Private Hospitals and Health Services Act 1927*

6

7 **297. *National Health Funding Pool Act 2012* amended**

- 8 (1) This section amends the *National Health Funding Pool*
9 *Act 2012*.

- 10 (2) In section 16(1)(a) delete “*Hospitals and Health Services*
11 *Act 1927*; and” and insert:

12

13 *Health Services Act 2016*; and

14

15 **298. *Pay-roll Tax Assessment Act 2002***

- 16 (1) This section amends the *Pay-roll Tax Assessment Act 2002*.

- 17 (2) Delete section 40(2)(d) and insert:

18

- 19 (d) to a person who is staff member as defined in
20 the *Health Services Act 2016* section 6 of a
21 health service provider, in connection with that
22 person’s employment in, or engagement under
23 a contract for services by, the health service
24 provider under that Act; or

25

- 26 (3) After section 40(2) insert:

27

- 28 (2A) The exemption provided for by subsection (2)(d) does
29 not apply to wages that are paid or payable to a staff
30 member to the extent that the person’s employment or
31 engagement is in connection with a commercial

1 activity referred to in the *Health Services Act 2016*
2 section 35 unless the commercial activity is, or is in a
3 class of commercial activity, prescribed in the
4 regulations for the purposes of this subsection.
5

6 **299. Pharmacy Act 2010 amended**

7 (1) This section amends the *Pharmacy Act 2010*.

8 (2) In section 3(1) in the definition of **pharmacy business**
9 paragraph (c) delete “*Hospitals and Health Services Act 1927*
10 section 2(1); or” and insert:

11
12 *Health Services Act 2016* section 6; or
13

14 **300. Public Works Act 1902 amended**

15 (1) This section amends the *Public Works Act 1902*.

16 (2) In section 2 insert in alphabetical order:

17
18 **hospital** has the meaning given in the *Health Services*
19 *Act 2016* section 6;
20

21 (3) In section 2 in the definition of **public work** paragraph (f) delete
22 “hospitals within the meaning given to that term by section 2 of
23 the *Hospitals and Health Services Act 1927*,” and insert:

24
25 hospitals,
26

27 **301. Queen Elizabeth II Medical Centre Act 1966 amended**

28 (1) This section amends the *Queen Elizabeth II Medical Centre*
29 *Act 1966*.

s. 301

- 1 (2) Delete section 13(2e) and insert:
2
- 3 (2e) While a setting aside and delegation under
4 subsection (2a) are in force, the delegate, for the
5 purposes for which the site was set aside, has all the
6 powers delegated to the delegate under subsection (2a)
7 in respect of the site as if those powers had been
8 conferred on the delegate by this Act.
9
- 10 (3) Delete section 13(2g)(b)(i) and insert:
11
- 12 (i) to the delegate under the regulations; or
13
- 14 (4) Delete section 16.
- 15 (5) In section 19(1) delete “*Hospitals and Health Services*
16 *Act 1927*,” and insert:
17
- 18 *Private Hospitals and Health Services Act 1927*, the *Health*
19 *Services Act 2016*,
20
- 21 (6) In section 20(1) and (1a) delete “Trust may, with the approval
22 of the Governor, make by-laws” and insert:
23
- 24 Governor may make regulations
25
- 26 (7) In the provisions listed in the Table:
27 (a) delete “by-laws” (each occurrence) and insert:
28
29 regulations
30

1
2
3
4
5

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

regulation

Table

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

6
7
8
9
10
11
12
13
14
15
16
17

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

Regulations

302. Rail Safety National Law (WA) Act 2015 amended

- (1) This section amends the *Rail Safety National Law (WA) Act 2015*.
- (2) In section 23 in the definition of *hospital* delete “*Hospitals and Health Services Act 1927* section 2(1).” and insert:

Health Services Act 2016 section 6.

303. Spent Convictions Act 1988 amended

- (1) This section amends the *Spent Convictions Act 1988*.

s. 304

1 (2) In Schedule 3 clause 1(7) delete the Table and insert:

2

3

Table

1. A person who is employed in or seconded to, or who is being considered for employment in or secondment to, the Department of Health or the Mental Health Commission under any of the following —
 - (a) the *Health Act 1911*;
 - (b) the *Health Services Act 2016*;
 - (c) the *Mental Health Act 2014*;
 - (d) the *Alcohol and Other Drugs Act 1974*.
2. A person who is employed in or seconded to, or who is being considered for employment in or secondment to, a health service provider under the *Health Services Act 2016*.
3. A person who is placed, or who is being considered for placement, as a student undertaking a practicum or in an unpaid capacity in the Department of Health, the Mental Health Commission or a health service provider as defined in the *Health Services Act 2016* section 6.

4

5 **304. *State Superannuation (Transitional and Consequential***
6 ***Provisions) Act 2000***

7 (1) This section amends the *State Superannuation (Transitional and*
8 *Consequential Provisions) Act 2000*.

9 (2) Delete section 48(2).

10 **305. *University Medical School, Teaching Hospitals, Act 1955***

11 (1) This section amends the *University Medical School, Teaching*
12 *Hospitals, Act 1955*.

1 (2) In section 2 delete the definition of *managing body* and insert:

2

3 *managing body*, in relation to a hospital, means the
4 health service provider that has control or management
5 of the hospital;

6

7 (3) In section 2 insert in alphabetical order:

8

9 *health service provider* has the meaning given in the
10 *Health Services Act 2016* section 6;

11

12 (4) In section 2 in the definition of *public hospital* delete “same
13 meaning as in section 2 of the *Hospitals and Health Services*
14 *Act 1927*,” and insert:

15

16 meaning given in the *Health Services Act 2016* section 6,

17

18 (5) Delete section 4(1) and insert:

19

20 (1) Subject to subsection (2) and section 5, a health service
21 provider that has control or management of a teaching
22 hospital may enter into an agreement with the State in
23 relation to —

24 (a) the provision in the teaching hospital of
25 facilities for research and for the teaching of
26 medicine, including the use of land under the
27 control of the teaching hospital and the erection
28 of buildings thereon; and

29 (b) the admission of medical students to the
30 practice, referred to in that agreement, of the
31 teaching hospital; and

32 (c) except in the case of a teaching hospital which
33 is on the reserve within the meaning of the

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1 *Queen Elizabeth II Medical Centre Act 1966,*
2 the formation of an electoral committee for the
3 teaching hospital charged with the
4 responsibility of making recommendations to
5 the managing body of the teaching hospital or
6 the Minister, as the case requires, concerning
7 the appointment of persons who are concerned
8 with teaching duties to the consultant clinical
9 staff of the teaching hospital.
10

11 (6) Delete sections 5 and 6.

12 **306. *Workers' Compensation and Injury Management Act 1981***
13 **amended**

14 (1) This section amends the *Workers' Compensation and Injury*
15 *Management Act 1981*.

16 (2) In Schedule 1 clause 18(1) delete "*Hospitals and Health Services*
17 *Act 1927*" and insert:

18
19 *Health Services Act 2016*
20

1 **Part 22 — By-laws, regulations and determinations**
2 **repealed or revoked**

3 **307. By-laws and regulations repealed**

4 These by-laws and regulations are repealed:

- 5 (a) *Armadale Kelmscott District Memorial Hospital*
6 *By-laws 2002;*
- 7 (b) *Bentley Hospital By-laws 2001;*
- 8 (c) *Fiona Stanley Hospital By-laws 2014;*
- 9 (d) *Fremantle Hospital By-laws 1992;*
- 10 (e) *Hospitals (Administration of Public Hospitals)*
11 *Regulations 1940;*
- 12 (f) *Hospitals and Health Services (Pathology)*
13 *Regulations 2005;*
- 14 (g) *Hospitals (Services Charges) Regulations 1984;*
- 15 (h) *Metropolitan Health Service By-laws 2008;*
- 16 (i) *Osborne Park Hospital By-laws 2007;*
- 17 (j) *Queen Elizabeth II Medical Centre (Delegated Site)*
18 *By-laws 1986;*
- 19 (k) *Royal Perth Hospital By-laws 2009;*
- 20 (l) *WA Country Health Service By-laws 2007;*
- 21 (m) *Women's and Children's Hospitals By-laws 2005.*

22 **308. Determinations revoked**

23 These determinations are revoked:

- 24 (a) *Hospitals and Health Services (Day Hospital Facility)*
25 *Determination 2005;*
- 26 (b) *Hospitals and Health Services (Day Hospital Facility)*
27 *Determination (No. 2) 2005;*
- 28 (c) *Hospitals (Services Charges for Compensable Patients)*
29 *Determination 2005;*

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- 1 (d) *Hospitals (Services Charges for Magnetic Resonance*
2 *Imaging) Determination 2004;*
- 3 (e) *Hospitals (Services Charges for Pathology Services)*
4 *Determination 2012;*
- 5 (f) *Hospitals (Services Charges for Specialised Orthoses)*
6 *Determination 2015;*
- 7 (g) *Hospitals (Services Charges for the Supply of Surgically*
8 *Implanted Prostheses) Determination 2013.*

9

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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