

# Health Services Bill 2016

## Explanatory Memorandum

### Part 1 – Preliminary

This part provides the short title of the Bill, commencement provisions, objects and principles to be considered in the administration of the Bill and definitions of relevant terms. The provisions in this part are helpful in understanding the Bill as a whole.

Clause 1 Short title

This clause provides the short title of the Bill.

Clause 2 Commencement

This clause provides for the commencement of the Bill.

Clause 3 Act binds the State

This clause provides that Crown is bound by the Bill. This means that the Crown is required to comply with the provisions of the Bill.

Clause 4 Objects of this Act

This clause provides the objects of the Bill. Persons exercising functions under the Bill must have due regard to the objects.

Clause 5 Medicare principles

This clause acknowledges that the State will provide health services based on the Medicare principles set out in the National Health Agreement.

Clause 6 Terms used

This clause defines the terms used in the Bill.

*assets* sets out what is an asset for the purposes of this Bill.

*board* means a health service provider's board as constituted under clause 71.

*board governed provider* means a health service provider that is governed by a board.

*breach of discipline* is as defined by clause 161 which sets out what constitutes a breach of discipline by an employee of a health service provider.

*chief executive* means an individual who has been appointed by the Department CEO to the position of chief executive of a health service provider.

*chief executive governed provider* means a health service provider that is governed by a chief executive.

*Commission CEO* is the chief executive of the department assisting the Minister in the administration of the *Mental Health Act 2014* and the *Alcohol and Other Drugs Act 1974*.

*committee* is a committee appointed by a health service provider in accordance with clause 92(1).

*contracted health entity* means private entities that deliver health services to public patients under contract to the State.

*Department* is the department administering this Bill.

*Department CEO* means the Chief Executive Officer of the Department administering this Bill.

*Department CEO direction* refers to a binding direction issued by the Department CEO.

*disciplinary action* lists the actions which are disciplinary actions for the purposes of the Bill.

*employee* defines the persons who are employees of a health service provider for the purposes of the Bill.

*employing authority* refers to clause 103 where the employing authorities for the purposes of the Bill are set out.

*health executive* means a person who has been appointed to a position within the Health Executive Service but is not a chief executive.

*Health Executive Service* defines a group of senior executive positions across the WA health system. The Health Executive Service includes both health executives and chief executives of health service providers.

*health professional* means a health practitioner registered under the *Health Practitioner National Law (WA)* but may also be expanded to include other classes of health professional as prescribed.

*health service* is defined under clause 7 of the Bill.

*health service area* means a health service area declared by the Minister under clause 32(1)(a). Health service area is not limited to geographical areas and may include a public health service.

*health service provider* is the statutory body responsible for the provision of health services in a health service area.

*hospital* is defined by clause 8.

*improvement action* lists the actions an employing authority may take for the purpose of improving the performance or conduct of an employee.

*liabilities* include any liabilities, duties or obligations.

*member* is an individual appointed to the board of a health service provider.

*Ministerial Body* is a body corporate established to provide a body corporate through which the Minister can perform any of his or her functions.

*National Health Agreement* means the National Health Reform Agreement or any agreement that replaces or supersedes that agreement.

*patient* is self-explanatory.

*personal information* is as defined by the *Freedom of Information Act 1992*.

*policy framework* is a mechanism by which binding policies are set for the WA health system by the Department CEO.

*prescribed* means prescribed by regulations under this Bill.

*property* means every kind of property.

*provide* is self-explanatory.

*PSM Act* is the *Public Sector Management Act 1994*.

*public authority* lists the agencies and bodies which are public authorities for the purposes of the Bill and further persons or bodies to be prescribed in the future as public authorities.

*public health service* is as defined by clause 7(3).

*public health service facility* refers to the facilities where public health services are provided.

*public hospital* is defined by clause 8(6).

*relevant lands official* refers to the persons responsible for recording and registering transfer orders made under this Bill for the transfer of land, assets, rights and liabilities.

*rights* include any rights, powers, privileges or immunities.

*service agreement* means an agreement between a health service provider and the Department CEO or Commission CEO for the delivery of hospital and health services.

*staff member* this term includes employees and persons engaged under contracts for services by health service providers.

*State tax* means any tax, duty, fee, levy or charge under a law of Western Australia.

*WA health system* is a term used to describe the whole of the WA public health system. It includes the Department of Health and health service providers and contracted health entities.

*WA health system-wide plans* means plans developed by the Department CEO with a view to positioning the WA health system to better respond to emerging trends and opportunities.

Clause 7      *Meaning of health service and public health service*

This clause provides definitions for the terms 'health service' and 'public health service'.

Clause 8      *Meaning of hospital and public hospital*

This clause provides definitions for the terms 'day hospital facility', 'nursing post', 'hospital' and 'public hospital'. In addition, this clause provides for the Minister to declare any hospital to be a public hospital or private hospital as well as determine the health services or classes of health services for the purposes of defining day hospital facilities.

Clause 9 Application of Act to hospital where mentally ill treated

This clause provides for the application of the Bill at public hospitals where the *Mental Health Act 2014* also applies.

## **Part 2 – The Minister**

This part provides for the establishment of the Ministerial Body and sets out the powers of the relevant Minister under the Bill.

Clause 10 Ministerial Body established

This clause establishes a corporate body known as the Health Ministerial Body with perpetual succession.

Clause 11 Purpose and nature of Ministerial Body

This clause provides for the Ministerial Body to assist the relevant Minister in performing any of the Minister's functions that are more suitably performed by a body corporate than an individual.

The clause further provides that any acts or things done by the Ministerial Body are to be regarded as operations and services under the control of the Department for the purpose of reporting under the *Financial Management Act 2006* and explicitly states that the Ministerial Body is not an organisation for the purposes of the *Public Sector Management Act 1994*.

Clause 12 Execution of documents by Ministerial Body

This clause sets out the methods by which documents may be executed by the Ministerial Body and allows for the Ministerial Body to authorise persons to execute deeds or other documents on its behalf.

Clause 13 Minister's general powers

This clause sets out the Minister's powers under the Bill. Specifically, this clause provides that the Minister can:

- acquire, develop, dispose of and otherwise deal in property;
- enter into a contract or other arrangement, including for the provision of services to or by a health service provider;
- do all things necessary or convenient for the purpose of carrying out joint arrangements with a health service provider;
- develop and turn to account any intellectual property and apply for any intellectual property licences;
- provide and turn to account health education and training services;
- provide and turn to account advertising opportunities; and
- give effect to any agreement entered into by the Commonwealth with the State.

Clause 14 Minister's powers in relation to business arrangements

This clause authorises the Minister to enter into business arrangements, subject to the Treasurer's approval, for the purposes of the Bill.

Clause 15 Delegation by Minister

This clause provides for the Minister to delegate any of his functions under the Act to the Department CEO.

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

This clause makes it clear that section 9 of the *Health Legislation Administration Act 1984* does not apply to the functions of the Minister under the Bill.

Clause 17 Role of Mental Health Minister not affected

This clause provides that the role of the Minister responsible for administering the *Mental Health Act 2014* is not affected by this Bill.

### **Part 3 – The Department CEO**

This part sets out the role, functions and power of the Department CEO in fulfilling his or her responsibilities under the Bill.

#### **Division 1 – Role of the Department CEO**

This division establishes the Department CEO as the system manager of the WA health system.

Clause 18 Administration of this Act

This clause provides that the Department CEO, subject to the control of the Minister and the *Public Sector Management Act 1994*, is responsible for the administration of the Bill.

Clause 19 Management of the WA health system

This clause sets out the entities which comprise the WA health system and establishes the Department CEO as the system manager with responsibility for the overall management of the WA health system.

Clause 20 Functions of Department CEO

This clause provides the functions of the Department CEO, including:

- advising and assisting the Minister in the development and implementation of the WA health system-wide planning;
- providing strategic leadership and direction for the provision of public health services in Western Australia;
- recommending to the Minister the amounts of monies that may be allocated to health service providers from the Consolidated Account;
- promoting the effective and efficient use of available resources in the provision of public health services;
- carrying out certain functions of health service providers as specified in service agreements;
- managing WA health system-wide industrial relations on behalf of the State, this includes the negotiation of industrial agreements and making applications to make or vary awards;
- with the written agreement of the Minister for Works, commissioning and delivering capital works and maintenance works for public health service facilities;
- classifying and determining the remuneration of health executives;
- establishing the conditions of employment for employees in health service providers;
- arranging for the provision of health services by contracted health entities;

- providing support services to health service providers;
- overseeing, monitoring and promoting improvements in the safety and quality of health services provided by health service providers;
- monitoring the performance of health service providers and taking remedial action when performance is below the expected standard;
- receiving and validating performance data provided by health service providers; and
- any other functions given to the Department CEO under this Bill or another Act.

Clause 21 Powers of Department CEO

This clause authorises the Department CEO to do anything necessary or convenient for the performance of the Department CEO's functions.

Clause 22 Staff who are not public servants

This clause gives the Department CEO the power to employ persons in the Department as wages staff or other staff. Persons employed under this provision are not appointed under Part 3 of the *Public Sector Management Act 1994*.

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

This clause authorises the Department CEO to provide and charge for health services, other services or facilities and to enter into agreements for the provision of health services by non-government entities.

The clause also allows the Department CEO to arrange for a health service provider to use the services of any officer or employee or facility in the Public Sector or in a State agency or instrumentality or otherwise in service of the State.

Clause 24 Delegation by Department CEO

This clause provides for the Department CEO to delegate his functions under the Bill, other than a function under clause 20(1)(f), to a person employed or engaged in the Department or a staff member of a health service provider.

A function under clause 20(1)(f) may only be delegated to a person employed or engaged in the Department and cannot be delegated to a staff member of a health service provider.

The function of commissioning and delivering capital works and maintenance works for public health service facilities may be delegated to a health service provider.

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

This clause makes it clear that section 9 of the *Health Legislation Administration Act 1984* does not apply to the functions of the Department CEO under the Bill.

## **Division 2 – Policy frameworks**

This division empowers the Department CEO to set state-wide policy frameworks on such things as the provision of health services by health service providers and financial management of health service providers.

### **Clause 26 Department CEO may issue policy frameworks**

This clause provides for the Department CEO to set policy frameworks to ensure consistency across the WA health system. Policy frameworks cover such matters as:

- service coordination and integration, and efficiency and effectiveness in the provision of health services;
- the making of service agreements, other than Commission service agreements (see clause 46);
- the provision of health services;
- the performance and exercise of functions by health service providers (see clauses 34 to 36);
- financial management of health service providers (see Part 7);
- employment in health service providers;
- the movement of employees between health service providers or between a health service provider and another employer;
- the management and administration of the Health Executive Service, which is comprised of chief executives and health executives of health service providers;
- the engagement of medical practitioners by health service providers and the conditions of engagement;
- investigations, inspections and audits under clause 175 (see Part 13);
- the management of information (see Part 17); and
- any other matter in connection with the functions of the Department CEO.

The clause also provides that policy frameworks may apply to all or specified health service providers, a type of public health service facility, a type of public health service or a staff member of a health service provider.

### **Clause 27 Policy framework is binding**

This clause provides that policy frameworks are binding on each health service provider or staff member to whom it relates.

## **Division 3 – Department CEO directions**

This division provides for the Department CEO to issue directions to ensure system integration, consistency and co-ordination.

### **Clause 28 Department CEO may issue directions**

This clause authorises the Department CEO to issue directions requiring compliance in relation to a matter set out in a policy framework or any other matter connected with the functions of the Department CEO.



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

This clause sets out the hierarchical relationship between Department CEO direction and other instruments. In particular, it provides that industrial instruments, Commissioner's instructions and directions of the Minister made under this Act are not overridden by a Department CEO direction. Other instruments may be prescribed by regulation.

This clause also provides that a Department CEO direction prevails over a direction given by a responsible authority to a chief executive. This provision is to ensure that the chief executive of a health service provider is ultimately responsible to the Department CEO rather than the board of that health service provider.

Clause 30 Department CEO direction is binding

This clause provides that directions issued by the Department CEO are binding.

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

This clause requires the Department CEO to provide the directions that are issued to each person to whom it relates and to the board or chief executive responsible for the health service provider to which it relates or applies.

## **Part 4 – Health service providers**

This part provides for the establishment of health service providers and sets out their functions and powers. Health service providers will be responsible and accountable for hospital and health service delivery for their populations according to performance standards set out in service agreements with the Department CEO.

Depending on the type of services delivered, health service providers will be governed by either a board or a chief executive.

### **Division 1 – Establishment**

This division provides for the establishment of corporate entities known as health service providers.

Clause 32 Establishment of health service provider

This clause provides the Minister with the power to, by order, declare a health service area, establish a health service provider for a health service area and determine the governance structure of the health service provider.

A health service provider, depending on the nature of the services provided, may be either board governed or chief executive governed.

This clause relates to clause 70 which outlines the governance structure of chief executive governed and board governed health service providers.

Clause 33 Status of health service provider

This clause provides that health service providers are agents of the State of Western Australia and have the status, immunities and privileges of the State.

## **Division 2 – Functions and powers**

This division sets out the functions and powers of health service providers.

### **Clause 34 Functions**

This clause outlines the functions of health service providers in the provision of health services for their respective health service areas. Their main functions being to provide:

- health services as stated in their respective service agreements (see Part 5);
- teaching, training and research; and
- any other services as agreed with the Department CEO.

A health service provider is also responsible for carrying out other functions including:

- ensuring that the operations of the health service provider are carried out efficiently, effectively and economically;
- entering into and complying with service agreements;
- complying with policy frameworks and Department CEO directions (see clauses 26-31);
- contributing to the development and implementation of WA health system-wide plans;
- preparing and reviewing strategies for the provision of health services;
- establishing an efficient and effective procedure for dealing with complaints from health consumers;
- reporting to the Department CEO on the provision of health services;
- monitoring and improving the quality of health services provided and implementing corporate and clinical governance arrangements;
- maintaining all assets controlled by the health service provider;
- arranging for the provision of health services by contracted health entities;
- managing the performance of the health service provider against performance measures and operational targets set out in service agreements;
- providing the Department CEO with performance data and any other data or information the Department CEO may require; and
- undertaking any other functions necessary or incidental to their functions under this clause.

### **Clause 35 Commercial activities**

This clause authorises health service providers to engage in commercial activities subject to policy frameworks issued by the Department CEO.

Clause 36      General powers

This clause empowers a health service provider to do all the things it needs to do to perform its functions.

Specifically, the clause provides that a health service provider may:

- acquire, develop, dispose of and undertake other dealings in property;
- enter into contract or other arrangements, including for the provision of services to the health service provider;
- participate in business arrangements such as companies, partnerships, trusts and joint ventures;
- produce and publish information;
- produce and deal in any equipment, facilities or systems associated with the performance of its functions;
- develop and turn to account intellectual property that relates to its functions;
- sell advertising opportunities and enter into arrangements for sponsorship; and
- utilise expertise and resources to provide consultancy, advisory or other services for profit.

Powers exercised by a health service provider under this clause are subject to clauses 37 and 38.

Clause 37      Restrictions on power to dispose of land

This clause requires a health service provider to obtain the Minister's written agreement before disposing of health service land and provides that the power to dispose of land does not extend to the transfer of Crown Land for an estate in fee simple.

Clause 38      Transactions that require agreement or approval

This clause restricts health service providers from entering into certain transactions and business arrangements without the Minister's written agreement and the Treasurer's approval.

Clause 39      Exemptions from section 38

This clause provides for the Minister to exempt certain transactions from the operation of clause 38(3).

Clause 40      Delegation

This clause provides for a health service provider to delegate any function under the Bill to a member of a health service provider board, a committee or one of its staff members.

Clause 41      Execution of documents by health service provider

This clause sets out the way in which a health service provider may execute a document.

Clause 42      Contract formalities

This clause provides for a person, authorised by a health service provider, to make, vary or discharge a contract on behalf of the health service provider.

## **Part 5 – Service agreements**

This part provides for service agreements being the method by which the Department CEO, as the system manager, and the Commission CEO engage the health service providers in delivering the desired and or required health services. Accordingly, there are two types of service agreements that are provided for under this part.

Firstly, there will be service agreements entered into between the Department CEO and health service providers. These service agreements are a critical tool which will specify the volume of services to be provided by the health service provider, the funding that will be provided to deliver the services and clearly set out the performance standards for the services.

Secondly, this part provides for the making of service agreements with the Commission CEO. Commission service agreements will be used by the Mental Health Commission to purchase mental health services from health service providers. Commission service agreements will be entered into by health service providers in line with the head agreement between the Commission CEO and the Department CEO.

### **Division 1 – Preliminary**

This division sets out the terms used in this part.

#### **Clause 43      Terms used**

This clause sets out the various definitions relevant to part 5. Of particular note are the definitions of the terms ‘service agreement’ and ‘Commission service agreement’ which assist in identifying the two types of service agreements.

### **Division 2 – Commission service agreements**

This division contains provisions relevant to the making of Commission service agreements. In particular it provides for a head agreement to be entered into between the Department CEO and the Commission CEO. This head agreement will govern the terms under which Commission service agreements will be entered into between the Commission CEO and health service providers.

#### **Clause 44      Head agreement between Department CEO and Commission CEO**

This clause provides for the Department CEO and the Commission CEO to enter into a head agreement concerning the making of Commission service agreements. Commission service agreements are required to align with this head agreement.

#### **Clause 45      Commission CEO and health service provider may enter into service agreement**

This clause outlines the details and requirements for Commission service agreements between the Commission CEO and health service providers. Commission service agreements may be for the provision of mental health services or for the provision of alcohol and drug health services by the health service provider.

Unlike service agreements entered into with the Department CEO, a health service provider is not required to enter into a Commission service agreement.

### **Division 3 – Service agreements generally**

This division contains provisions relating to the making of service agreements between the Department CEO and health service providers. All health service providers are required to have a service agreement with the Department CEO.

**Clause 46** Department CEO and health service provider must enter into service agreement

This clause outlines the details and requirements for compulsory service agreements between the Department CEO and health service providers. In particular these service agreements will state the health services to be provided by the health service provider and will set out the performance measures and operational targets to be achieved by health service providers.

**Clause 47** Department CEO may decide on terms of service agreement

This clause gives the Department CEO the power to determine the terms of a service agreement that is not a Commission service agreement in circumstances where agreement cannot be reached between the Department CEO and health service provider.

**Clause 48** General provisions about service agreements

This clause is in addition to the matters set out in clauses 45(3) and 46(3). It provides that service agreements may also deal with matters relating to funding by the Commonwealth, without the Commonwealth being a party to the service agreements.

The clause also allows for service agreements to state the circumstances under which a health service provider may enter into an agreement for the provision of services with another health service provider.

**Clause 49** Term of service agreement

This clause requires the term of a service agreement to be not longer than 1 year. A service agreement that is not a Commission service agreement must, however, cover the forecast period set out in the relevant policy framework.

**Clause 50** Procedure to amend service agreement

This clause sets out the procedure that a party must follow if it wants to amend the terms of a service agreement.

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

This clause allows for service agreements to provide for the Department CEO to perform the functions of a health service provider and authorises the Department CEO to perform those functions.

**Clause 52** Review and report on service agreements

This clause sets out a health service provider's reporting requirements in relation to its performance under a service agreement. It also authorises the Department CEO and Commission CEO to evaluate and review the health service provider's performance.

Clause 53 Other agreements for provision of services

This clause ensures that none of the provisions in Part 5 limit a health service provider's power to enter into an agreement to provide services under clauses 35 and 36 of the Bill.

**Part 6 – Fees and charges for health services and other matters**

This part authorises health service providers to impose fees and charges for the provision of health services and charge for the provision of services, goods and facilities unrelated to the provision of health services.

The health service provider's power to impose fees and charges for the provision of health services is subject to any scale of fees or charges fixed order of the Minister and any non-chargeable health services set out by any Commonwealth Agreement in place at the time.

Clause 54 Effect of National Health Agreement

This clause requires the Minister and health service providers to have regard to the National Health Agreement in performing or exercising any functions under Part 6.

Clause 55 Fees and charges for the provision of health services

This clause authorises health service providers to impose fees and charges for the provision of health services subject to any scale fees or charges fixed by order of the Minister for Health and any non-chargeable health services set out by the Commonwealth in the National Health Agreement.

Clause 56 Minister may fix fees and charges

This clause provides for the Minister to make an order fixing a scale of fees and charges for the provision of health services by health service providers. The order may stipulate that no fee be charged or that a scale of fees be adopted by reference. The order may also define different classes of patient and classes of service and fix differing fees and charges for different hospitals or class of hospital.

Clause 57 Liability of persons for health service fees and charges

This clause provides that a fee or charge imposed for the provision of a health service is payable by or on behalf of the person who received the health service.

The clause also provides health service providers with a power to waive or refund a fee or charge.

Clause 58 Regulations about payment by compensable persons

This clause enables the making of regulations about the recovery of payments for the provision of health services to an individual who is entitled to or has received compensation payments in respect of an injury.

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

This clause allows health service providers to determine, impose and collect fees and charges for the provision of services, goods and facilities that are

not part of a health service. This clause does not authorise the charging of fees for parking.

## **Part 7 – Accountability and financial provisions**

This part provides for the accountability and financial management of health service providers. In particular this part provides for the Minister to issue directions to health service providers and request information from a health service provider.

Separate to the Minister's powers, the part also requires health service providers to provide notice of financial difficulty to the Department CEO and gives the Department CEO the power to request information relating to the financial management of the health service provider.

In addition to the financial management and accountability requirements of this Bill, this part also provides for the provisions of the *Financial Management 2006* to apply to health service providers.

### **Division 1 – Accountability**

This division establishes the health service provider's accountability to the Minister. In accordance with this division, the Minister has the power to issue directions to a health service provider in relation to the performance of its functions and the health service provider must comply with the direction.

This arrangement is consistent with long-standing convention and practice that recognises that the ultimate accountability for the performance of departments of State and statutory agencies rests with the relevant portfolio Minister.

#### **Clause 60 Minister may give directions**

This clause empowers the Minister to give written directions, subject to certain conditions, to a health service provider with respect to the performance or exercise of its functions.

The Minister's power to issue directions is separate to the Department CEO's power to issue directions under clause 28.

#### **Clause 61 Minister to have access to information**

This clause authorises the Minister to access information held by a health service provider. The Minister is authorised to have access to personal information in specified circumstances.

### **Division 2 – Financial provisions**

This division sets out further financial obligations and reporting requirements for health service providers. It also provides for local government funding of health services.

#### **Clause 62 Application of *Financial Management Act 2006* and *Auditor General Act 2006***

This clause expressly provides that the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* relating to financial administration, audit and reporting of statutory authorities apply to health service providers and their operations.

The clause also allows for regulations to prescribe the circumstances where section 36(3) of the *Financial Management Act 2006* does not apply to money in the possession of a person in a health service provider.



- Clause 63 Health funding arrangements under the National Health Agreement
- This clause states that the *National Health Funding Pool Act 2012* contains provisions relating to health funding arrangements. The *National Health Funding Pool Act 2012* governs the flow and acquittal of Commonwealth funds to health services through a State pool account established under that Act.
- Clause 64 Account
- This clause requires an agency special purpose account to be established under section 16 of the *Financial Management Act 2006* for each health service provider.
- Clause 65 Health service provider's funds
- This clause provides that funds available to a health service provider to perform or exercise its functions consist of money that is lawfully received by or made available to the health service provider.
- The clause also requires money received by a health service provider upon trust or lawful condition to be dealt with in accordance with the trust or condition.
- Clause 66 Notice of financial difficulty
- This clause sets out the procedure to be followed if a health service provider is unable, or is likely to be unable, to satisfy its financial obligations.
- Clause 67 Department CEO's power to require financial information
- This clause empowers the Department CEO to direct the accountable authority of a health service provider to provide the Department CEO with any information relating to the financial management of the health service provider.
- Clause 68 Various documents exempt from duty
- This clause exempts receipts, declarations and agreements relating to public hospitals under this Bill from duty under the *Duties Act 2008*.
- Clause 69 Local governments may fund health services
- This clause authorises a local government to fund health services from its general rates.

## **Part 8 – Administration of health service providers**

This part provides for the establishment of health service provider boards of governance. These boards will be responsible and accountable for the oversight of hospital and health service delivery for their local communities.

Persons appointed to be the chair or a member of the board of a health service provider are required to be people with high-calibre skills and experience in areas such as the provision of clinical or other health services, business and financial management, human resources, health education and training and legal practice.

### **Division 1 – Governance**

This division provides for the governance of health service providers. In particular it sets out the different governance structures for board governed and chief executive governed health service providers.

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

This clause relates to orders made under clause 32(1)(d) and provides that if an order is made to establish a board governed health service provider then that health service provider must have a board and the board will be the governing body of the health service provider and will be responsible for performing or exercising the functions of the health service provider.

Alternatively, if an order is made to establish a chief executive health service provider then the governing body of the health service provider is to be the chief executive who will perform or exercise the functions of the health service provider. A health service provider that is chief executive governed must not have a board.

### **Division 2 – Boards**

This division sets out the administrative requirements in relation to boards. It sets out matters such as how many members may be appointed to a board, the qualifications required of board members, the term of office, the holding of offices and establishment of committees.

It also establishes the requirements on board members to disclose material personal interests.

#### **Subdivision 1 – Constitution and procedures**

This subdivision provides for the constitution of the board and sets out the procedures for the appointment of alternate members and the filling of casual vacancies.

Clause 71 Constitution of health service provider's board

This clause requires a health service provider's board to consist of at least six but not more than ten persons appointed as members. The Minister has the power to appoint these members subject to certain conditions and must consult with the Department CEO before making an appointment.

Clause 72 Chairperson and deputy chairperson

This clause provides for the Minister to designate a member of the board to be the chairperson and another member of the board to be the deputy chairperson.

Clause 73 Deputy chairperson acting as chairperson

The clause provides for the deputy chairperson to act as the chairperson in certain circumstances.

Clause 74 Alternate members

This clause allows the Minister to appoint an alternate member to temporarily act in the place of a member who is unable to act due to illness, injury or a material personal interest.

Clause 75 Remuneration and allowances

This clause provides for the Minister to determine, on the recommendation of the Public Sector Commissioner, the remuneration and allowances that a member of the board is entitled to be paid.

Clause 76 Term of office

This clause provides that the term of a board member may not exceed 3 years. It also provides that members are eligible for reappointment but cannot hold office for more than 9 consecutive years.

Clause 77 Casual vacancies

This clause sets out when the office of a member is vacant and provides the circumstances under which the Minister may remove a member of a board.

Clause 78 Leave of absence

This clause provides for the board to grant a member a leave of absence from office.

**Subdivision 2 – Impartiality and disclosure of material personal interest**

This subdivision deals with the disclosure of a material personal interest by a member of the board and requires members to act in the public interest.

Clause 79 Members must act in public interest

This clause requires board members to act impartially and in the public interest when exercising their functions. A board member must put the public interest before the interests of the health service provider.

Clause 80 Disclosure of material personal interest

This clause requires the member of a board or a committee to disclose any material personal interests that they may have in relation to a matter being considered. The penalty for failing to disclose a material personal interest is \$25,000.

Clause 81 Voting by interested member

This clause prohibits a member of a board or committee, who has a material personal interest, from voting or being present when the matter is being considered.

- Clause 82      Section 81 may be declared inapplicable  
This clause provides that the board or a committee may pass a resolution that clause 81 is not applicable.
- Clause 83      Quorum where section 81 applies  
This clause sets out the quorum if a board member is disqualified from voting under clause 81.
- Clause 84      Minister may declare sections 81 and 83 inapplicable  
This clause is self-explanatory.

### **Subdivision 3 – Meetings**

This subdivision sets out the requirements for board meetings.

- Clause 85      Holding meetings  
This clause is self-explanatory.
- Clause 86      Quorum  
This clause sets out the quorum for a board.
- Clause 87      Procedure at meetings  
This clause is self-explanatory.
- Clause 88      Voting  
This clause sets out the procedure for voting.
- Clause 89      Holding meetings remotely  
This clause provides for a member to attend a meeting by telephone or other means of instantaneous communication.
- Clause 90      Resolution without meeting  
This clause provides for resolutions to be made in writing in the absence of a meeting.
- Clause 91      Minutes  
This clause requires the board to ensure that accurate minutes be kept at each of its meetings.

### **Subdivision 4 - Committees**

This subdivision provides for health service providers to appoint committees to assist it in the performance of its functions.

- Clause 92      Committees  
This clause provides for a board governed health service provider to appoint a committee to assist it to perform its functions.
- Clause 93      Remuneration and allowances

This clause provides for the Minister to, on the recommendation of the Public Sector Commissioner, determine the remuneration and allowances that a member of a committee is entitled to be paid.

### **Division 3 – Appointment of advisers to board, administrators, dismissal of board**

This Division sets out the Minister's powers to dismiss the members of the board. It also provides for the Minister's step in powers which include the appointment of up to two advisers to a board and the appointment of an administrator.

Clause 94 Terms used

This clause sets out the terms used in this division.

Clause 95 Minister may appoint advisers to boards

This clause permits the Minister to appoint up to two persons to be advisers to a health service provider board to improve the performance of the board or the health service provider governed by the board.

Clause 96 Terms and conditions of appointment as adviser

This clause is self-explanatory.

Clause 97 Functions of advisers

This clause sets out the functions of persons appointed as advisers to the board.

Clause 98 Obligations of board in relation to advisers

This clause requires the board to permit the adviser to attend all meetings of the board, provide the adviser with all documents and other information provided to board members and allow the adviser to provide advice during board meetings.

Clause 99 Minister may appoint administrator for health service provider

This clause empowers the Minister to appoint an administrator of a health service provider. This power may only be used in certain circumstances.

Clause 100 Terms and conditions of appointment as administrator

This clause outlines the term and conditions of the appointment of the administrator.

Clause 101 Role of administrator

This clause sets out the role and functions of the administrator.

Clause 102 Minister may dismiss all members of board

This clause empowers the Minister to dismiss all the members of the board if the Minister is satisfied of certain circumstances. If the Minister dismisses the board then notice of the dismissal must be laid before each house of Parliament and included in the annual report of the health service provider.

## **Part 9 – Health service provider employment**

This part outlines the employment arrangements for all health service provider employees. It sets out the processes for employment, transfer and secondment of employees of health service providers.

In addition to dealing with matters related to all employees, it also provides for the appointment of chief executives and health executives.

### **Division 1 – Preliminary**

This division makes clear the employing authority in respect of each different type of employee.

Clause 103 Term used: employing authority

This clause sets out the employing authority for each of the different types of employees within health service providers.

Clause 104 Application of the PSM Act

This clause provides for the application of the *Public Sector Management Act 1994* to persons employed under this Bill.

### **Division 2 – Health Executive Service**

This division sets out the employment arrangements for persons in the health executive service, which is comprised of chief executives and health executives.

Chief executives of health service providers will be appointed by the Department CEO. The Department CEO, as the chief executives employing authority, will be authorised to remove, transfer or carry out a performance review of a chief executive.

The procedure for appointment of health executives varies from that of chief executives in that the Department CEO is responsible for determining that a position within a health service provider is an executive position (see clause 105(2)). After such a determination is made, the employing authority of the health service provider where the position is located is then responsible for appointing a person to that position (see clause 121).

#### **Subdivision 1 – Composition**

This subdivision sets out the composition of the Health Executive Service.

Clause 105 Composition of Health Executive Service

This clause provides that the Health Executive Service is comprised of the chief executives of health service providers and persons holding offices of health executives.

This clause also authorises the Department CEO to determine the offices within health service providers that will be executive offices.

## Subdivision 2 – Chief executives

This subdivision sets out the functions and powers of chief executives and outlines their employment arrangements.

### Clause 106 Chief executive

This clause requires all health service providers to have a chief executive who will be the chief employee of the health service provider for the purposes of the *Public Sector Management Act 1994*.

### Clause 107 Functions and powers of chief executive

This clause sets out the functions and powers of chief executives. Specifically, the clause provides that the chief executive has, in addition to the functions and powers of a chief employee under the *Public Sector Management Act 1994*, the following functions:

- to manage the day to day operations of the health service provider;
- in the case of a board governed provider, to advise the board in relation to the functions of the provider under this Bill and other written law;
- to ensure that advice and information is available to the health service provider so that informed decisions can be made;
- to cause the health service provider decisions to be implemented;
- to be responsible for the employment, management, supervision, transfer, direction and dismissal of other employees of the health service provider; and
- to perform any other functions imposed under this Bill or any other written law.

The chief executive may do all things necessary or convenient to be done for or in connection with the performance of the functions of a chief executive. This power is fettered by Department CEO directions and the control of the board.

### Clause 108 Appointment of chief executive

This clause gives the Department CEO the power to appoint each chief executive of a health service provider for a term of up to 5 years.

### Clause 109 Procedure for appointment of chief executive

This clause sets out the procedure for the appointment of chief executives of health service providers by the Department CEO. In undertaking this process the Department CEO may consult with various sources including the health service provider board and chairperson.

### Clause 110 Remuneration and leave entitlements

This clause authorises the Department CEO, on recommendation of the Public Sector Commissioner, to determine the remuneration and allowances of a chief executive. This determination, however, may be fettered by the *Salaries and Allowances Act 1975*.

### Clause 111 Contract of employment

This clause is self-explanatory.



- Clause 112 Appointment of health service provider employee or public service officer
- This clause provides for a person, who was an employee in a health service provider or public service officer immediately before the appointment, to retain their existing and accruing rights on appointment to the chief executive position.
- Clause 113 Reappointment of chief executive
- This clause requires the Department CEO, in circumstances where the chief executive of a health service provider's contract is about to expire and the person wishes to be reappointed, to either reappoint the chief executive or notify the chief executive that they will not be reappointed.
- If individual is chief executive of a board governed health service provider, then the Department CEO must consult with the board of the health service provider before making the decision.
- Clause 114 Performance criteria for chief executive and review of performance
- This clause requires a chief executive of a health service provider to enter into a performance agreement with the Department CEO and the chairperson of the board if the health service provider is board governed. The performance agreement must be reviewed at least annually.
- Clause 115 Removal from office
- This allows the Department CEO to remove a chief executive from office at any time subject to consultation with the board if the health service provider is board governed.
- Clause 116 Transfer from office
- This clause allows the Department CEO to transfer a chief executive to another office of chief executive that is vacant or to another position in a health service provider.
- Clause 117 Acting chief executive
- This clause provides the Department CEO with a power to direct an employee to act in the office of a chief executive if the position is vacant or the chief executive holding the position is absent or unable to perform. The filling of this vacancy may only be for a maximum of 12 months and in respect of a board governed provider must be carried out in consultation with the board.
- Clause 118 Employment of chief executive cannot be litigated and is not an industrial matter
- This clause prevents a chief executive from litigating or seeking an industrial remedy for employment matters.
- Clause 119 Delegation
- This clause provides for a chief executive of a health service provider to delegate any function to a staff member in the health service provider or an employee or person engaged in the Department and sets out the conditions under which the delegation may occur.

Clause 120 Modification of the PSM Act delegation provision

This clause substitutes the responsibilities of the Public Sector Commission, with regard to approval of delegations under section 33 of the *Public Sector Management Act 1994*, with the Department CEO.

### **Subdivision 3 – Health executives**

This subdivision provides for the appointment of health executives and sets out their employment arrangements.

Clause 121 Appointment of health executives

This clause provides for the employing authority of a health service provider to appoint a person to a health executive position that has been determined by the Department CEO (see clause 105(2)).

Clause 122 Reappointment of health executive

This clause is self-explanatory.

Clause 123 Transfer of health executives

This clause sets out the conditions for the transfer of a health executive either within a health service provider or between health service providers.

Clause 124 Performance assessment

This clause requires the performance of a health executive to be reviewed by their employing authority.

Clause 125 Termination of contract of employment by employing authority

This clause allows the employing authority of a health executive to terminate the health executive's contract by giving not less than 4 weeks' notice.

### **Subdivision 4 – General provisions about chief executives and health executives**

This clause sets out general employment provisions in relation to contracts of employment for chief executives and health executives.

Clause 126 Terms used

This clause is self-explanatory.

Clause 127 Conditions of employment

This clause is self-explanatory.

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

This clause defines the employment relationship between the executive and the executive's employing authority.

Clause 129 Content of contract of employment

This clause specifies the matters to be dealt with in the executive's contract of employment.

- Clause 130 Termination of contract of employment by executive  
This clause allows an executive to terminate their contract by giving not less than 4 weeks' notice to the executive's employing authority.
- Clause 131 Notification or payment in lieu if executive is not reappointed  
This clause defines the entitlements of an executive if they are not to be reappointed.
- Clause 132 Right of return for certain executives  
This clause sets out the conditions for a right of return to employment in a department or organisation for certain executives.
- Clause 133 Compensation if executive has no right of return  
This clause allows for compensation to be paid to an individual who ceases to be an executive before the expiry of their contract and has no right of return under clause 132.  
An executive is not entitled to compensation under this clause if they have been terminated or dismissed for substandard performance or breach of discipline or the Department CEO has determined under clause 105(3) that their office is no longer an executive office.
- Clause 134 Repayment of compensation  
This clause requires a person to repay any compensation paid under clause 133 should they be re-engaged within the public sector before the expiry of a prescribed period.
- Clause 135 Election to take compensation instead of right of return  
This clause is self-explanatory.
- Clause 136 Secondment of executive  
This clause allows for executives within health service providers to be seconded to any other organisation.
- Clause 137 Vacation of office of executive  
This clause defines the circumstances when an office of an executive becomes vacant.
- Clause 138 Operation of Division  
This clause is self-explanatory.

### **Division 3 – Other staff**

This division sets out the employment arrangements for all other employees of health service providers.

Clause 139 Division does not apply to Health Executive Service

This clause is self-explanatory.

Clause 140 Employees of health service provider

This clause provides health service providers with the power to employ and manage employees.

Clause 141 Transfers between health service providers or between health service providers and the Department

This clause entitles the employing authority of a health service provider to transfer an employee within the entity or to another health service provider.

The clause also provides for the transfer of employees between the Department and health service providers.

These transfers are subject to certain conditions.

Clause 142 Secondment of employee

This clause provides for the secondment of employees to other organisations.

Clause 143 Contracts for services

This clause allows for the employing authority of a health service provider to engage a person under a contract for services subject to any policy frameworks that apply.

### **Part 10 – Criminal and misconduct matters concerning employees**

This part, along with Part 11, seeks to adopt similar provisions, in dealing with staff members working within health service providers, to those set out in Part 5 of the *Public Sector Management Act 1994*.

Clause 144 Terms used

The terms within this clause are self-explanatory.

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

This clause places a responsibility on a staff member to report to the relevant responsible authority certain criminal conduct and misconduct findings.

Clause 146 Reporting of certain matters

This clause places a responsibility on the responsible authority to report certain matters relating to their staff member's conduct or conviction or charge relating to a serious offence to either the relevant health practitioner board or authority or the Department CEO.

The clause empowers the Department CEO to notify another health service provider, person or body of any report received from a health service provider under this clause for the protection of patients.

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

This clause authorises the employing authority to suspend an employee from duty if their health practitioner registration is suspended or becomes conditional.

Clause 148 Suspending employee pending decision in relation to serious offence

This clause provides authority for the employing authority to suspend an employee pending a decision in relation to a serious offence.

Clause 149 Salary during suspension

This clause provides for the employing authority to suspend an employee on full pay, partial pay or without pay. Conversely, if the reason for the suspension is not upheld then the employee is entitled to have the salary forfeited restored.

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

This clause provides an employing authority with the power to take disciplinary action or improvement action in circumstances where an employee's health practitioner registration has been suspended or conditions imposed or where an employee has been convicted or found guilty of a serious offence.

Clause 151 Protection of patients to be paramount consideration

This clause places an onus on the employing authority to have paramount consideration for its patients when taking disciplinary or improvement action against an employee under clause 150.

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

This clause is self-explanatory.

Clause 153 Appeals and referrals

This clause is self-explanatory.

## **Part 11 – Substandard performance and disciplinary matters**

This part, along with Part 10, seeks to adopt similar provisions, in dealing with employees working in health service providers, to those set out in Part 5 of the *Public Sector Management Act 1994*.

### **Division 1 General**

This division sets out the parameters of substandard performance and disciplinary matters.

Clause 154 Application and effect of Part

This clause is self-explanatory.

- Clause 155 Application of Part in respect of former employees  
This clause allows the employing authority to pursue disciplinary action against former employees, subject to regulations.
- Clause 156 Power of employing authority to take improvement or other action not limited  
This clause ensures that the employing authority's powers under this part do not limit an employing authority's powers to take improvement action or other action under any other provision of this Bill or any other law.
- Clause 157 Inconsistent provisions, instruments and contracts  
This clause makes clear that the provisions of this part prevail over any inconsistent industrial instrument, contract of employment or other provision of this Bill.

### **Division 2 – Substandard performance**

This division imports similar substandard performance provisions to those set out in the *Public Sector Management Act 1994*.

- Clause 158 What is substandard performance  
This clause sets out what is substandard performance and outlines the matters which must be considered for the purpose of determining an employee's substandard performance.
- Clause 159 Powers in relation to substandard performance  
This clause outlines the actions an employing authority can undertake in respect of an employee for substandard performance.

### **Division 3 – Disciplinary matters**

This division imports similar disciplinary matters provisions to those set out in the *Public Sector Management Act 1994*.

- Clause 160 Term used: section 173(2) breach of discipline  
This clause is self-explanatory.
- Clause 161 What is a breach of discipline  
This clause is self-explanatory.
- Clause 162 Options in relation to suspected breach of discipline  
This clause outlines the actions that an employing authority may undertake against an employee for a breach of discipline.
- Clause 163 Dealing with disciplinary matter  
This provision outlines the protocols that must be and may be followed by an employing authority when dealing with a disciplinary matter.
- Clause 164 Action against employee pending decision on breach of discipline  
This clause allows an employing authority to suspend an employee on full pay, partial pay or without pay when dealing with a disciplinary matter until any of the actions undertaken in this division are completed.

- Clause 165    Special disciplinary inquiries
- This clause allows for the Department CEO to undertake special disciplinary inquiries under similar provisions as the Public Sector Commissioner under section 87 of the *Public Sector Management Act 1994*.
- Clause 166    Consequence of report of special disciplinary inquiry
- This clause sets out the actions that an employing authority must and may take upon receiving a report from the Department CEO after a special disciplinary inquiry.
- Clause 167    Notification of outcome of disciplinary matter
- This clause places an onus on the employing authority to notify the employee and Department CEO of the outcome of a disciplinary finding. Upon receipt of the notification, the Department CEO may notify any other employing authority of the employee.
- Clause 168    Termination of other employment if employee is dismissed
- This clause gives an employing authority the power to terminate an employee if they have been dismissed by another employing authority under this part.
- Clause 169    Payment and recovery of fine
- This clause is self-explanatory.
- Clause 170    When disciplinary action can be taken
- This clause is self-explanatory.

#### **Division 4 – Appeals and referrals**

This division sets out the procedures for the appeal or referral of a decision made under this part.

- Clause 171    Terms used
- This clause defines certain terms used in this division.
- Clause 172    Certain decisions and findings may be appealed or referred
- This clause sets out an employee’s right of appeal to the Industrial Commission in respect of specified decisions and findings that have been made under this part.
- Clause 173    Referrals in relation to directions that are lawful orders
- This clause sets out an employee’s right of appeal to the Industrial Commission in respect of a decision on a breach of discipline for failing to follow a lawful order for the purposes of clause 161(a).

## **Part 12 – Redeployment and redundancy of employees**

This part provides for the application of Part 6 of the *Public Sector Management Act 1994* to health service providers and their employees.

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

This clause is self-explanatory.

## **Part 13 – Investigations, inspections and audits**

This part outlines the Department CEO's powers to investigate, inspect and audit health service providers for the purpose of assessing their compliance with this Bill.

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

This clause empowers the Department CEO to investigate, inspect and audit health service providers.

Clause 176 Procedures

This clause is self-explanatory.

Clause 177 Powers of Department CEO

This clause sets out the powers the Department CEO may exercise when conducting an investigation, inspection or audit of a health service provider.

Clause 178 Incriminating information or answers

This clause requires a person to comply with a requirement under clause 177(3) even if compliance might incriminate the individual or make them liable to a penalty. Any information or document produced in compliance with a requirement under clause 177(3) is not admissible in criminal proceedings against the individual unless the proceedings relate to an offence under clause 181.

Clause 179 Liability for complying with requirement

This clause ensures that a person does not incur any civil or criminal liability as a result of complying with a requirement under clause 177(3).

Clause 180 Failure to comply with requirement

This clause creates an offence for non-compliance with a requirement of the Department CEO and sets out the penalty.

Clause 181 False information

This clause creates an offence for providing answers or information that a person knows to be false or misleading in a material particular. The penalty for this offence is \$10,000.



## **Part 14 – Inquiries**

This part empowers the Department CEO to conduct inquiries into the functions, management or operations of health service providers.

In conducting such an inquiry, the Department CEO is authorised to hold hearings and exercise other powers for the purpose of the inquiry.

Clause 182 Terms used

This clause is self-explanatory.

Clause 183 Department CEO may conduct inquiry

This clause authorises the Department CEO to conduct an inquiry, or appoint a person to conduct an inquiry on his behalf, into the functions, management or operations of one or more health service providers.

Clause 184 Preliminary matters

The clause requires the Department CEO to inform the Minister, in writing, of his intention to conduct an inquiry before commencing the inquiry.

Clause 185 Procedure

This clause sets out the procedure that an inquirer must follow when conducting an inquiry under this part.

Clause 186 Hearings

This clause gives the inquirer the power to hold hearings for the purpose of the inquiry.

Clause 187 Inquirer's powers

This clause sets out the inquirer's other powers when conducting an inquiry. Of particular note is the inquirer's power to require a person's attendance at a particular place and time and the power to require a person to answer any question put to them.

Clause 188 Failure to comply with requirements of notice

This clause makes it an offence for a person to fail to comply with a requirement issued under clause 187 and sets a penalty of \$10,000.

Clause 189 Incriminating answers or documents

This clause requires a person to comply with a requirement under clause 187 even if compliance might incriminate the individual or make them liable to a penalty. Any information or document produced in compliance with a requirement under clause 187 is not admissible in criminal proceedings against the individual unless the proceedings relate to an offence under clause 191.

Clause 190 Disruption of inquiry

This clause makes it an offence for a person to wilfully insult an inquirer or interrupt or obstruct an inquiry. The penalty for this offence is \$10,000.

Clause 191 False information

This clause makes it an offence for a person to give false or misleading information to an inquirer. The penalty for this offence is \$10,000.

Clause 192 Protection for certain purposes

This clause protects a person from liability or an action in tort for giving information or documents to an inquirer or acting under the direction of an inquirer for the purpose of an inquiry.

Clause 193 Reports

This clause provides that after completing an inquiry an inquirer must prepare a written report and provide that written report to the health service provider to which it relates. The health service provider may provide comments on the report within 28 days of receipt of the report and these comments must be included in the final report.

A copy of the report must be laid before each House of Parliament within 14 sitting days.

## **Part 15 – Changes to health service providers**

This part empowers the Minister to make changes to existing health service providers and their assets, rights and liabilities. The Minister will have the power to abolish, amalgamate, merge or divide health service providers and will have the power to transfer any asset, right or liability between the State, the Ministerial Body and health service providers.

### **Division 1 – Transfer of assets, rights and liabilities**

This division sets out the Minister's power to transfer assets, rights and liabilities.

Clause 194 Minister may order the transfer of assets, rights or liabilities

This clause empowers the Minister to transfer an interest or associated interest in land, or any other asset right or liability between the State, the Ministerial Body and health service providers by way of a transfer order.

### **Division 2 – Changes to, or abolition of, health service provider**

Clause 195 Amendment of order establishing health service provider

This clause allows the Minister to amend an order made for the purpose of establishing a health service provider under clause 32(1). Such an amendment may alter the name, health service area and governance of a health service provider.

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

This clause authorises the Minister to abolish, amalgamate, merge or divide a health service provider by way of order published in the *Gazette*.

Clause 197 Order may include savings and transitional provisions

This clause is self-explanatory.

Clause 198 Change of name

This clause ensures that an order changing the name of health service provider does not create a new legal entity or affect the continuity of the health service provider.

Clause 199 Board of health service provider

This clause provides that if a health service provider is changed from board governed to chief executive governed or the health service provider is abolished, amalgamated or divided then the members of the board cease to hold office. Where two or more health service providers are merged, then the members of the board of any board governed provider specified to be abolished cease to hold office.

Clause 200 Transfer of assets, rights and liabilities

This clause sets out the process for the transfer of assets, rights and liabilities in circumstances where a health service provider has been abolished, amalgamated, merged or divided.

Clause 201 Former accounts

This clause sets out how the former accounts of health service providers are to be dealt with in circumstances where a health service provider has been abolished, amalgamated, merged or divided.

**Division 3 – General provisions**

This division sets out general provisions to support changes made to health service providers under this part.

Clause 202 Term used: transfer order

This clause is self-explanatory.

Clause 203 Registration of documents

This clause requires the registration of documents by relevant lands officials, such as the Registrar of Titles and the Registrar of Deed and Transfers, to give effect to transfer orders made under this part.

Clause 204 Exemption from State tax

This clause provides that State tax is not payable in relation to anything done under this part.

Clause 205 Transitional regulations

This clause provides for the making of regulations in relation to changes made to health service providers under this part.

Clause 206 Effect of other instruments, rights and obligations

This clause is self-explanatory.

## **Part 16 – Control of conduct and traffic on health service provider land**

This part provides for the regulation and control of conduct and traffic on health service provider land.

Clause 207 Term used: health service provider land

This clause is self-explanatory.

Clause 208 Declaration of health service provider land

This clause allows the Minister to declare land that is vested in or under the management and control of a health service provider to be health service provider land.

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

This clause provides for regulations to be made regarding the conduct of persons on health service provider land. The regulations will also provide for the appointment of authorised persons to enforce the regulations.

Clause 210 Regulations about management and control of traffic

This clause provides for regulations to be made regarding the use of vehicles on health service provider land and the control, supervision and management of parking on health service provider land. Regulations made under this clause may prescribe the fees and charges payable for parking on health service provider land.

Clause 211 Requirement to leave health service provider land

This clause gives authorised persons the power to direct a person to leave health service provider land subject to certain circumstances. It also makes it an offence for a person not to comply with a direction from an authorised person and sets a penalty of \$5,000.

Clause 212 Proceedings and payment of penalties

This clause authorises persons, specified in regulations, to initiate proceedings on behalf of a health service provider against a person who has committed an offence under this part or its regulations.

## **Part 17 – Information**

This part provides for the collection, use and disclosure of information within the WA public health system and sets out the parameters under which information may be disclosed to entities and persons outside of the WA public health system. This part also imposes a statutory duty of confidentiality.

### **Division 1 – General**

This division provides for the establishment of health information management systems by the Department CEO and sets out the information that must be held in these systems.

Clause 213 Terms used

This clause is self-explanatory.

Clause 214 Health information management systems

This clause requires the Department CEO to establish and maintain health information management systems and provides that information held in these systems is held on behalf of the State.

Clause 215 Information held in health information management system

This clause sets out the information that is required to be held in a health information management system and allows the Department CEO to permit the Department, a health service provider or a contracted health entity to have access to health information held in a health information management system for purposes relating to the provision of public health services.

### **Division 2 – Disclosure of information**

This division provides for the disclosure of health information.

Clause 216 Disclosure of health information by Department CEO

This clause authorises the Department CEO to disclose health information for certain purposes.

Clause 217 Disclosure of health information by health service provider

This clause authorises a chief executive of a health service provider to disclose relevant information about a patient to any person who has a sufficient interest in the treatment, care, health, safety or wellbeing of the patient.

Clause 218 Requesting information

This clause authorises the Department CEO to request relevant information from public authorities, interstate authorities or external providers.

### **Division 3 – Confidentiality**

This division imposes a statutory duty of confidentiality.

#### Clause 219 Confidentiality

This clause prohibits a person from collecting, using or disclosing information obtained by or disclosed to the person under this Bill or obtained under the *Hospitals and Health Services Act 1927* unless the disclosure, use or collection is authorised under clause 220.

#### Clause 220 Authorised collection, use or disclosure of information

This clause sets out the circumstances under which the disclosure of information is authorised.

#### Clause 221 Regulations relating to information

This clause provides for regulations to be made about the collection, use and disclosure of information under this part.

### **Part 18 – Miscellaneous**

This part contains miscellaneous provisions relating to matters such as legal proceedings, protection from liability and the general regulation making powers.

### **Division 1 – Legal proceedings**

This division contains provisions relating to legal proceedings.

#### Clause 222 Commencement of legal prosecutions

This clause authorises the Department CEO to commence legal proceedings for an offence under this Bill.

#### Clause 223 Appointments and signatures taken to be proved

This clause is self-explanatory.

#### Clause 224 Documentary evidence of certain matters

This clause is self-explanatory.

#### Clause 225 *Evidence Act 1906* not affected

This clause is self-explanatory.

### **Division 2 – Miscellaneous**

This division contains miscellaneous provisions relating to matters such as protection from liability and the modification of the *Workers' Compensation and Injury Management Act 1981*.

#### Clause 226 Protection from liability for persons exercising functions

This clause provides persons, other than health service providers, with protection from liability for acts or omissions done in good faith in the performance of a function under this Bill.

- Clause 227 Minister and health service providers not required to be registered  
This clause is self-explanatory.
- Clause 228 Modification for purposes of *Workers' Compensation and Injury Management Act 1981* Part IV Division 2  
This clause modifies the application of the *Workers' Compensation and Injury Management Act 1981* to health service provider employees to ensure that, in the event of successful tortious claim by a health service provider employee against a health service provider, Part IV Division 2 of that Act will apply as if the health service provider were the plaintiff's employer, so excluding liability or limiting damages in the same manner as if the State had been sued.
- Clause 229 Laying documents before House of Parliament not sitting  
This clause provides the procedure for laying a document before each House of Parliament when Parliament is not sitting.
- Clause 230 Regulations – general power  
This clause provides the Governor with the power to make regulations.
- Clause 231 Regulations may adopt codes or legislation  
This clause is self-explanatory.

### **Division 3 – Review of Act**

This division provides for a review of this Bill to be undertaken.

- Clause 232 Review of Act  
This clause requires the Minister to carry out a review of this legislation every 5 years.

## **Part 19 - Transitional and savings matters**

This part contains the transitional and savings provisions to enable the transition from the present structures within the WA health system.

### **Division 1 – Interpretation**

This division defines the terms used in this part.

- Clause 233 Terms used  
This clause defines the terms used in this part.

### **Division 2 – Boards and ministerial control**

This division provides for the abolishment of the hospital boards established under the *Hospitals and Health Services Act 1927*.

- Clause 234 Boards abolished and Minister ceases to control hospitals

This clause provides for the abolition of hospital boards established under the *Hospitals and Health Services Act 1927* and the cessation of the Minister's management and control of any hospital under that Act.



Clause 235 Immunity continues

This clause provides for any immunity that applied in respect of hospital board or the Minister to continue.

### **Division 3 – Hospital boards’ assets, rights and liabilities**

This division provides for the transition of the abolished hospital boards’ assets, rights and liabilities.

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

This clause is self-explanatory.

Clause 237 Transfer to health service provider or Ministerial Body

This clause provides for the transfer by transfer order of assets, rights and liabilities from a hospital board to a health service provider or to the Ministerial Body.

Clause 238 Transfer orders

This clause authorises the Minister to make transfer orders for the purpose of transferring assets and liabilities, proceedings and agreements and instruments from a hospital board to a health service provider or to the Ministerial Body.

Clause 239 Correction of errors in transfer orders

This clause authorises the Minister to correct any errors in a transfer order or a schedule for a transfer order.

Clause 240 Reserves

This clause outlines how Crown land reserves are to be dealt with from transition day.

Clause 241 Registration of documents

This clause requires the registration of documents by relevant lands officials, such as the Minister for Lands, the Registrar of Titles and the Registrar of Deed and Transfers, to give effect to transfer orders made under this part.

Clause 242 Hospital boards to complete necessary transactions

This clause provides for a hospital board’s continued existence for the purpose of performing its functions in relation to an asset or liability that has not been effectively assigned to a health service provider or to the Ministerial Body.

Clause 243 Exemption from State tax

This clause provides an exemption from State tax in relation to anything done under this Part.

Clause 244 Operating accounts of hospital boards

This clause sets out how the operating accounts of hospital boards are to be dealt with following transition day.

#### **Division 4 – Staff**

This division sets out the transitional provisions in relation to existing staff of health service providers.

Clause 245 Employees of hospital boards

This clause requires the Department CEO to determine where an existing employee of a hospital board is to be employed on and from transition day.

Clause 246 Preservation of rights

This clause provides for the preservation of hospital board employees' employment rights in the change to employment in a health service provider or the Department such as rate of pay, annual leave, long service leave, sick leave, superannuation and continuity of service.

#### **Division 5 – Continuation of certain things**

This division provides for the continuation of certain acts and omissions done in respect of hospital boards.

Clause 247 Completion of things done

This clause is self-explanatory.

Clause 248 Continuing effect of things done

This clause provides for the acts and omissions of hospital boards to be taken to be the acts and omissions of the hospital board's relevant successor subject to certain limitations.

Clause 249 Agreements, instruments, proceedings and remedies generally

This clause sets out how agreements, instruments, proceedings and remedies involving a hospital board should be dealt with in circumstances where clause 237 does not apply.

#### **Division 6 – Quadriplegic Centre**

This division sets out the transitional provisions in relation to the Quadriplegic Centre and its board members and employees.

Clause 250 Terms used

This clause is self-explanatory.

Clause 251 Quadriplegic Centre continued

This clause provides for the continuation of the Quadriplegic Centre as a health service area and establishes the body corporate as a health service provider under this Bill and ensures that the new body corporate is a continuation of the old body corporate established under the *Hospitals and Health Services Act 1927*.

Clause 252 Quadriplegic Centre boards members

This clause provides for individuals who have been appointed as members of the Quadriplegic Centre board to continue to hold office for the remainder of the period for which he or she was appointed.

- Clause 253    Staff members
- This clause provides for the transfer of existing employees of the Quadriplegic Centre to the new body corporate.
- Clause 254    Preservation of rights
- This clause provides for the preservation of the rights of existing employees of the Quadriplegic Centre.
- Clause 255    Transfer of contracts for services
- This clause provides for persons who are engaged under a contract for services by the Quadriplegic Centre to be taken to have been engaged under a contract for services by the new body corporate.

### **Division 7 – Other matters**

This division is self-explanatory.

- Clause 256    Transitional regulations
- This clause provides for the making of regulations for dealing with transitional matters.
- Clause 257    Effect of other instruments, rights and obligations
- This clause is self-explanatory.
- Clause 258    *Interpretation Act 1984* not affected
- This clause is self-explanatory.

## **Part 20 – Hospitals and Health Services legislation amended**

This part provides for the amendment of the *Hospitals and Health Services Act 1927* to limit its application to the control and regulation of private hospitals and private psychiatric hostels.

### **Division 1 – *Hospitals and Health Services Act 1927* amended**

This division sets out the amendments to the *Hospitals and Health Services Act 1927*.

- Clause 259    Act amended
- This clause is self-explanatory.
- Clause 260    Long title replaced
- This clause is self-explanatory.
- Clause 261    Section 1 replaced
- This clause is self-explanatory.
- Clause 262    Section 2 amended
- This clause deletes definitions from section 2 of the *Hospitals and Health Services Act 1927* and inserts additional definitions.

- Clause 263 Section 3 amended  
This clause is self-explanatory.
- Clause 264 Section 4 amended  
This clause is self-explanatory.
- Clause 265 Section 5A and 7 deleted  
This clause is self-explanatory.
- Clause 266 Section 7A replaced  
This clause deletes the Minister's existing powers under the *Hospitals and Health Services Act 1927*.
- Clause 267 Sections 7B to 9 deleted  
This clause is self-explanatory.
- Clause 268 Section 10 amended  
This clause is self-explanatory.
- Clause 269 Section 11 amended  
This clause is self-explanatory.
- Clause 270 Sections 12 and 12A deleted  
This clause is self-explanatory.
- Clause 271 Part III deleted  
This clause is self-explanatory.
- Clause 272 Section 26P amended  
This clause is self-explanatory.
- Clause 273 Part IIIC heading replaced  
This clause is self-explanatory.
- Clause 274 Section 26R amended  
This clause is self-explanatory.
- Clause 275 Section 26S amended  
This clause is self-explanatory.
- Clause 276 Section 26T replaced  
This clause deletes section 26T and substitutes it with a clause that protects a private hospital services provider from liability for disclosure of information required by the CEO.
- Clause 277 Sections 27 to 35 deleted  
This clause is self-explanatory.

- Clause 278 Section 35A amended  
This clause is self-explanatory.
- Clause 279 Sections 35B, 35C and 36 deleted  
This clause is self-explanatory.
- Clause 280 Section 37 amended  
This clause is self-explanatory.
- Clause 281 Section 38 amended  
This clause is self-explanatory.
- Clause 282 Schedule deleted  
This clause is self-explanatory.

### **Division 2 – *Hospitals and Health Services Amendment Act 2013* repealed**

This division provides for the repeal of the *Hospitals and Health Services Amendment Act 2013*.

- Clause 283 *Hospitals and Health Services Act Amendment Act 2013* repealed  
This clause is self-explanatory.

### **Part 21 – Other Acts amended**

This part sets out the consequential amendments to other Acts.

- Clause 284 *Births, Deaths and Marriages Registration Act 1998* amended  
This clause amends the definition of ‘responsible person’ in the *Births, Deaths and Marriages Registration Act 1998*.
- Clause 285 *Blood Donation (Limitation of Liability) Act 1985* amended  
This clause is self-explanatory.
- Clause 286 *Carers Recognition Act 2004* amended  
This clause amends the *Carers Recognition Act 2004* to reflect the new governance structure of the WA public health system.
- Clause 287 *Charitable Trusts Act 1962* amended  
This clause is self-explanatory.
- Clause 288 *Constitution Acts Amendment Act 1899* amended  
This clause amends the *Constitution Acts Amendment Act 1899* by replacing references to the statutory bodies established under the *Hospitals and Health Services Act 1927* with references to the statutory bodies established under this Bill.

- Clause 289 *Financial Management Act 2006* amended
- This clause amends the *Financial Management Act 2006* by replacing references to the statutory bodies established under the *Hospitals and Health Services Act 1927* with references to the statutory bodies established under this Bill.
- Clause 290 *Food Act 2008* amended
- This clause is self-explanatory.
- Clause 291 *Health Act 1911* amended
- This clause is self-explanatory.
- Clause 292 *Health and Disability Services (Complaints) Act 1995* amended
- This clause amends the definition of provider in the *Health and Disability Services (Complaints) Act 1995* to reflect the new governance structure of the WA public health system.
- Clause 293 *Health Legislation Administration Act 1984* amended
- This clause excludes this Bill from the operation of section 6(2) of the *Health Legislation Administration Act 1984*.
- Clause 294 *Human Tissue and Transplant Act 1982* amended
- This clause is self-explanatory.
- Clause 295 *Industrial Relations Act 1979* amended
- This clause amends the *Industrial Relations Act 1979* to include the employing authority of health service provider employees in the definition of employer and definition of employing authority.
- The clause also amends the jurisdiction of a Public Service Appeal Board under section 80I to hear and determine appeals by a health service provider government officer under clause 173 of this Bill.
- Clause 296 *Mental Health Act 2014* amended
- This clause is self-explanatory.
- Clause 297 *National Health Funding Pool Act 2012* amended
- This clause is self-explanatory.
- Clause 298 *Pay-roll Tax Assessment Act 2002*
- This clause deletes section 40(2)(d) and replaces it with a clause exempting wages paid to a person who is a staff member of a health service provider in connection with their employment or engagement under a contract for services by a health service provider from pay-roll tax.
- This exemption does not, however, apply to wages paid to a staff member to the extent that their employment is in connection with a commercial activity under clause 35 unless otherwise prescribed.



- Clause 299 *Pharmacy Act 2010* amended  
This clause is self-explanatory.
- Clause 300 *Public Works Act 1902* amended  
This clause is self-explanatory.
- Clause 301 *Queen Elizabeth II Medical Centre Act 1966* amended  
This clause amends the powers of a delegate under the *Queen Elizabeth II Medical Centre Act 1966* under section 13(2e). It also replaces the making of by-laws by the Trust with the making of regulations by the Governor.
- Clause 302 *Rail Safety National Law (WA) Act 2015* amended  
This clause is self-explanatory.
- Clause 303 *Spent Convictions Act 1988* amended  
This clause amends the Table set out in Schedule 3 clause 1(7) of the *Spent Convictions Act 1988* to include persons employed in or seconded to a health service provider or the Department under this Bill.
- Clause 304 *State Superannuation (Transitional and Consequential Provisions) Act 2000*  
This clause is self-explanatory.
- Clause 305 *University Medical School, Teaching Hospitals, Act 1955*  
This clause amends the *University Medical School, Teaching Hospitals, Act 1955* to reflect the new governance structure of the WA public health system.
- Clause 306 *Workers' Compensation and Injury Management Act 1981* amended  
This clause is self-explanatory.

## **Part 22 – By-laws, regulations and determinations repealed or revoked**

This part sets out the subsidiary legislation repealed or revoked by this Bill.

- Clause 307 By-laws and regulations repealed  
This clause is self-explanatory.
- Clause 308 Determinations revoked  
This clause is self-explanatory.