**Health Services Amendment Bill 2019**

# EXPLANATORY MEMORANDUM

The *Health Services Amendment Bill 2019* (the Bill) amends the *Health Services Act 2016* (the Act) to refine the Act's effectiveness. The Bill amends the functions and powers of the Minister for Health (the Minister), the Department CEO and health service providers (HSPs) to improve the functioning of the WA health system and to overcome operational and administrative burdens that have been encountered since the Act commenced. It also rectifies drafting errors and amends the parts of the Act that have not been operationalised effectively due to ambiguous interpretation.

The Bill also makes consequential amendments to the:

(a) *Mental Health Act 2014;*
(b) *Motor Vehicles (Catastrophic Injuries) Act 2016*;
(c) *Queen Elizabeth II Medical Centre Act 1966*; and
(d) *University Medical School, Teaching Hospitals, Act 1955*.

The Bill is set out as follows:

## PART 1 — PRELIMINARY

### Clause 1 Short title

The Act will be called the *Health Services Amendment Act 2019.*

### Clause 2 Commencement

This clause provides for the commencement of the Act, with Part 1 coming into operation on the day on which the Act receives the Royal Assent; and the rest of the Act may come into operation on different days fixed by proclamation.

## PART 2 — *Health Services Act 2016 amended*

### Clause 3 Act amended

This clause provides that Part 2 of the Bill amends the Act.

### Clause 4 Section 6 amended

This clause inserts new definitions into section 6 of the Act.

Key definitions inserted include:

*Accountable authority* means the 'accountable authority' for the HSP under section 55 of the *Financial Management Act 2006* (the FMA). For a chief executive governed HSP this is the chief executive. For a board governed HSP this is the board. The 'accountable authority' for the HSP is responsible for performing various financial management duties under Part 7 of the Act.

*Clinical commissioning,* for a public hospital, is the process of preparing a public health service facility to provide health services to patients.

Clinical commissioning takes place once a building has been commissioned and is a separate activity to capital works and maintenance works. Clinical commissioning is likely to include the following types of activities:

(a) embedding models of patient care and workflows;
(b) commissioning the information communication technology (ICT);
(c) establishing the human resources strategy;
(d) establishing the opening day definition for the facility;
(e) setting the transitional ramp down and up procedures for health services to be provided;
(f) managing the orientation and training of staff.

*Contracted health entity* is an existing definition in the Act that is replaced by this clause with an amended definition. The amended definition broadens the term to capture non-government entities that provide health services to the State pursuant to a contract with the Premier.

*Corresponding national law* means the Health Practitioner National Law that applies in another State or Territory of Australia. Staff members of HSPs often work in other States and Territories in Australia and may have misconduct findings made against them pursuant to the relevant Health Practitioner National Law that applies in those other jurisdictions. Where this occurs, the employing authority needs the power to take actions necessary to protect the health and safety of patients. The definition has been inserted to support the amendments that have been made at sections 145, 147, 149 and 150.

*Financial difficulty* means the HSP is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available to it when the financial obligation is due. The definition of financial difficulty has been included to clarify the intent and operation of section 66 of the Act, which sets out a process that must be followed when a HSP is in financial difficulty.

*Former Act* means the *Hospitals and Health Services Act 1927* as in operation immediately before it was amended and renamed the *Private Hospitals and Health Services Act 1927* (the PHHSA) on 1 July 2016.

*Former hospital service* means the services provided by a former public hospital under the former Act. The types of services include accommodation, maintenance and care provided to patients.

*Former public hospital* means a hospital that was operated by a hospital board or the Minister, in his incorporated capacity as the board, or a hospital declared to be a public hospital under the former Act. The term is used for the purposes of section 57B of the Act to allow HSPs to recover compensable charges in circumstances where the health services were provided by a former public hospital. The term is also used in section 217A to provide a process for dealing with information collected by former public hospitals.

*Health property* means health reserves, which are Crown reserves under the care, control and management of the Minister or the Health Ministerial Body (HMB), and freehold property vested in the Minister or the HMB. The term health property has been inserted for the purposes of defining the land and property that the Minister or HMB may permit a HSP to control, manage and use pursuant to a joint arrangement.

*Health reserve* means Crown land that is a reserve under the *Land Administration Act 1997* (the LAA) and is under the control and management of the Minister or the HMB

pursuant to a management order made under section 46(1) of the LAA. The term has been inserted to define the crown land that the Minister or HMB may permit a HSP to control, manage and use pursuant to a joint arrangement.

*Industrial instrument* means an award, industrial agreement or order made under the *Industrial Relations Act 1979,* including a General Order made under section 50 of that Act, whether made before, on or after the commencement of the definition. The term 'industrial instrument' was previously defined in different forms in sections 29 and 157 of the Act. The multiple definitions have been rationalised into a single definition to streamline the Act.

*Joint arrangement* means an arrangement entered into by the Minister or HMB with a HSP to allow a HSP to control, manage or use health property for the purpose of performing its functions under the Act. Depending on the operational needs of a HSP, the joint arrangement may permit a HSP to deal with the land and property as if it were the interest holder or management body. Alternatively, the joint arrangement may only give the HSP the right to access and use the health property in the same way as a licence. This is provided for in section 36A of the Act.

*Successor health service provider* means the HSP declared to be the successor HSP by the Minister under section 7A. A definition of successor HSP is required to make it clear which HSP is responsible for carrying out certain functions or exercising powers associated with activities that were carried out by former public hospitals under the former Act. The order will clearly set out which HSP is responsible for the recovery of compensable charges for former hospital services under Part 6 and which HSP is responsible under section 217A for the disclosure of health information collected by a former public hospital.

*Section 194 transfer order* means a transfer order made under section 194(2). This definition has been inserted to differentiate the transfer orders made under the new provisions from the earlier transfer orders made under sections 194 and 238 of the HS Act prior to the commencement of this Bill.

**Clause 5 Section 7 amended**

This clause amends section 7(3)(c) to reflect the change to the definition of contracted health entities to include non-government entities that provide health services to the State pursuant to a contract with the Premier.

**Clause 6 - Section 7A inserted**

This clause provides for the Minister to declare the successor HSPs for each former public hospital. The Minister is able to declare multiple HSPs as the successor HSPs for one former public hospital. This is to allow for circumstances where more than one HSP has taken over the functions performed at a former public hospital. For instance, there are some public hospitals where one HSP may be responsible for the primary health care services provided at the hospital, but there are other HSPs with responsibility for discrete health service areas at the hospital, such as child and adolescent health services or pathology services.

**Clause 7** **Section 8 amended**

This clause amends the definitions of day hospital, nursing post and hospital to ensure that public health service facilities that have been built and are ready to treat patients but have not yet been opened to the public are considered hospitals for the purposes of the Act. The amendments will allow for new public hospitals to be declared by the Minister as health service areas under section 32 of the Act and placed under the responsibility of a HSP prior to the arrival of the first patient.

**Clause 8** **Section 11 amended**

This clause amends section 11 to allow a delegate of the Minister to act through the HMB when exercising the Minister's delegated powers. It is intended that this will allow delegates of the Minister to make decisions on behalf of the HMB and manage the day to day affairs of the HMB.

**Clause 9** **Section 13 amended**

This clause amends section 13 by deleting the definition of 'joint arrangement'. This amendment is necessary because the definition of joint arrangement has been moved from section 13 to section 6 to provide a single definition of the term for the Act. The clause also inserts the words 'joint arrangement' into section 13(2)(b) to make it explicitly clear that the Minister has the power to enter into a joint arrangement with a HSP.

**Clause 10** **Section 15 amended**

This clause amends section 15 to gives the Minister the power to delegate his functions to:

(a) the Department CEO;
(b) an employee of the Department;
(c) a staff member of a HSP;
(d) a HSP; or
(e) a prescribed person or class of person.

Previously, section 15 only allowed the Minister to delegate functions to the Department CEO. The amendment to section 15, when coupled with the amendment to section 11(1), provides the WA health system with greater flexibility and relieves administrative burdens from the Minister and the Department CEO when performing the functions of the Minister and the HMB.

See diagram at Attachment 3 Streamlining Process.

**Clause 11** **Section 19 amended**

This clause clarifies the Department CEO's role within the WA health system. The clause inserts subsection (1A) and deletes and replaces subsection 19(2).

The clause deletes the existing subsection 19(2) because it oversimplified the system manager role and did not accurately reflect the Department CEO's responsibilities. There was also a concern that it could be interpreted to mean that the Department CEO was responsible for the overall management of contracted health entities.

The new subsection (2) gives the Department CEO responsibility for carrying out the 'system manager role'. The 'system manager role' is defined in the newly inserted

subsection (1A) as the role of managing the WA health system for the purpose of providing stewardship, strategic leadership and direction and allocating resources for the provision of public health services in the State.

This section uses a new term "stewardship". In this context "stewardship" is intended to capture the System Manager's over-arching responsibility for the long term future of the WA health system. Stewardship involves ensuring the quality and sustainability of public health care provided to Western Australians.

These new subsections are intended to make it clear that the system manager role does not extend to interfering in or being responsible for the operations of contracted health entities. Contracted health entities are private entities that provide health services to the State under a contractual arrangement and those arrangements will continue to be managed in the same way.

**Clause 12** **Section 20 amended**

This clause amends the Department CEO's functions under section 20 of the Act. The amendments are as follows:

(a) Subsection 20(1)(b) has been deleted because it is now captured within the Department CEO's function of performing the system manager role in section 19.

(b) Subsection 20(1)(c) has been deleted because it specified that the Minister had responsibility for allocating funding to the HSPs. This did not accurately reflect the operational practice for allocating funding to the HSPs and was not consistent with Part 5 of the Act which gives the Department CEO responsibility for allocating funding to the HSPs through service agreements. This has been corrected in the new subsection 20(1)(b) which provides that the Department CEO is responsible for notifying the Minister of the amounts allocated to HSPs under their service agreements.

(c) Subsection 20(1)(g) has been deleted and a new provision detailing more precisely how capital works and clinical commissioning are undertaken has been inserted at section 20A.

(d) Subsection 20(1)(h) has been deleted and replaced with new subsection 20(1)(g) to clarify that the Department CEO classifies and determines the remuneration of, and varies the classification and remuneration of, an office of a health executive. Further, this new subsection enables regulations to be prescribed for the purpose of the subsection.

(e) Subsection 20(1)(n) has been amended to correct a drafting error.

(f) Subsection 20(1)(na) has been inserted to make it explicitly clear that the Department CEO has the function of collecting performance data and any other information from HSPs. It is intended that this function, when coupled with the Department CEO's power under section 21 to do anything necessary or convenient for the performance of the Department CEO's functions, puts it beyond doubt that the Department CEO can require HSPs to provide any information that is necessary for the Department CEO to fulfil the role of system manager.

(g) Subsection 20(2) has been amended to delete the part of the section referring to subsection (1)(g) which has been deleted.

**Clause 13** **Section 20A inserted**

This clause inserts section 20A which is intended to more accurately provide for the capital works and clinical commissioning of new public health service facilities by the WA health system. Section 20(1)(g) previously provided that the commissioning and delivery of capital works and maintenance works for public health service facilities was a function that only the Department CEO performs. This led to uncertainty as it did not reflect the actual performance of this function within the WA health system and did not provide a framework for how clinical commissioning should be carried out.

The new section establishes that the Department CEO is responsible for the overarching strategy for the capital works and maintenance works projects that will be commissioned and delivered in the WA health system. This includes responsibility for seeking the necessary budget allocations and determining if a public health service facility is required in the context of the WA health system's resources. Once the strategy and planning is complete, the Department CEO may commission and deliver the works required or alternatively may determine that the works should be commissioned and delivered by a HSP. If works are to be performed by a HSP, this will be provided for in the HSP's service agreement under section 46. The same process applies in respect of the carrying out of clinical commissioning. Generally, it is expected that the Department CEO will retain responsibility for commissioning and delivery of capital works and clinical commissioning of major or high risk public hospital projects, such as Perth Children's Hospital.

The exercise of powers under this section is subject to the *Procurement Act 2020*.

**Clause 14** **Section 24 amended**

This clause deletes subsection 24(2) because the new section 20A means that it is no longer necessary for the Department CEO to delegate capital works and maintenance functions to HSPs.

**Clause 15** **Section 26 amended**

This clause amends section 26(2) to refine the matters that the Department CEO may issue policy frameworks on. In particular, the clause:

(a) amends paragraph (e) to expressly provide that a policy framework issued on the financial management and business activities of a HSP may:
    a. address when a HSP should issue a notice of financial difficulty to the Department CEO under section 66 of the Act. It is intended that the policy framework may specify:
        i. the criteria a HSP should consider when assessing financial difficulty;
        ii. the information that should be provided to the Department CEO when the notification is made; and
        iii. the timing around when a notification should be made.
    b. deal with how a HSP determines and sets fees and charges under the Act, apart from fees and charges set by the Minister under section 56. This might include fees or charges for health services or for other services such as fees for commercial activities carried out under section 35. It is intended that the Department CEO may use the policy framework to provide a process for how fees and charges are to be determined or set the fees and charges that should be imposed for

certain types of services to ensure consistency across the WA health system.

c. be used to ensure that there are consistent approaches in the exercise of HSP functions that have financial consequences (particularly functions under ss36(3)(c), 36(3)(f), 36(3)(g), 36(3)(h) and 36(5) of the Act).

(b) provides that policy frameworks may be issued on the management of land and other property held by HSPs. It is intended that this policy framework will place controls around how HSPs manage and deal with land and property that they own or hold an interest in, as well as land that they may deal with pursuant to a management order or a joint arrangement.

**Clause 16 Section 29 amended**

This clause deletes the definition of 'industrial instrument' from section 29. This term is now defined in section 6 of the Act.

**Clause 17 Section 34 amended**

This clause amends section 34 to provide that it is an explicit function of a HSP to commission and deliver capital works and maintenance works and carry out the clinical commissioning of facilities as required by the terms of their service agreement with the Department CEO under section 46.

**Clause 18 Section 35 amended**

This clause amends subsection 35(2) to allow a HSP to provide a facility under its control and management to a person that engages in community work or conducts a service that has a community or charitable purpose, in addition to being able to provide the facility for the use of a health professional carrying out a health service. For example, this could enable a HSP to allow a not for profit community legal service to use its facilities to provide legal services to patients. It is intended that this section will allow the HSP to provide the facility without having to tie it to a commercial purpose, meaning that the HSP could grant access free of charge. To make this clear, subsection (4) has been amended to remove reference to 'commercial activity'.

In addition, this clause amends subsection 35(4) to replace the term 'WA health system' with 'State' because of a concern that use of the term WA health system would restrict HSPs from engaging in activities that would not benefit or would be in competition with the activities of a contracted health entity.

**Clause 19 Section 36 amended**

This clause makes two amendments to section 36. Firstly it amends section 36(2) and 36(3) to reinforce that a HSP's powers under these sections are exercised subject to any relevant policy framework issued by the Department CEO under section 26.

Secondly, it amends the HSP's power to make charitable gifts and ex gratia payments under section 35(5)(a) and (b) by:

(a) replacing the term 'ex gratia payment' with 'act of grace payment' to differentiate these payments from the ex gratia payments that are made by way of Cabinet's executive powers and to make the language used in the Act consistent with the FMA; and

(b) removing the inconsistency in the criteria used for exercising these two powers. The new provision provides that a HSP may make a gift or an act of grace payment in the following circumstances:
    a. for a charitable purpose or any other purpose of benefit to the community or a section of the community; or
    b. if it is in the HSP's interests.

**Clause 20 Sections 36A to 36E inserted**

This clause inserts section 36A to 36E into the Act.

Section 36A provides for joint arrangements to be entered into between a HSP and the Minister (or HMB) in relation to health property. It is intended for this section to allow the Minister to give the HSPs the power to deal with land and property which is the subject of a joint arrangement on behalf of the Minister or HMB. For example, the terms of the joint arrangement may permit a HSP to grant and terminate leases or licences up to a maximum term of 21 years on behalf of the HMB or Minister. The HSP will not require the Minister or HMB's approval prior to granting the lease or licence. However, the extent of the power to deal with the property will be subject to the terms of the joint arrangement. Actions taken by the HSP under this section are taken to be done by and are binding upon either the Minister or the HMB.

See diagram at Attachment 3 Streamlining Process.

Section 36B gives HSPs the power to borrow or re-borrow money and otherwise arrange for financial accommodation to be extended to the HSP. A HSP's power to borrow will be subject to the approval of the Treasurer, except where the Minister has, with Treasurer's consent, exempted a transaction or class of transaction from the requirement to obtain the Treasurer's approval.

Section 36C provides for the Treasurer to guarantee the performance by a HSP of any financial obligation arising under section 36B.

Section 36D authorises HSPs to act as agents on behalf of one another and the State when entering into contracts or other arrangements. A HSP is only permitted to enter into contracts on behalf of another HSP in circumstances where the first provider has the express written authority of the second provider. Similarly, a HSP may only enter into contracts on behalf of the State where it has the express written authority of the Department CEO. It is intended for this provision to allow one HSP to enter into whole of health contracts on behalf of other HSPs for the supply of goods and services to all of the HSPs. This will increase efficiencies in the procurement of goods and services by the WA health system. It will also allow one HSP to act on behalf of the State in relation to matters that the HSP is the lead expert, for example matters relating to health services for children may be more effectively negotiated and managed by the Child and Adolescent Health Service.

Section 36E gives the HSPs an explicit power to enter into contractual arrangements to provide health services and other services to, and receive health services and other services from, one another, as long as:

(a) the HSPs comply with the requirements of section 37 and 38 of the Act when disposing of land or entering into transactions for the purposes of section 36E;
(b) the provision of any medical, nursing or allied health services (section 7(2)(a)) or public health programs (section 7(2)(b)) is not inconsistent with the provider's health service area as determined by the Minister under section 32 of the Act; and

(c) the provision or receipt of any kind of service is consistent with the terms of both HSPs' service agreements.

In addition to allowing HSPs to provide health services to one another, the Act also permits HSPs to provide health services on behalf of one another. An example of this would be where PathWest Laboratory Medicine WA provides pathology services on behalf of the other HSPs to patients. This power to provide health services on behalf of one another is subject to the same constraints listed above.

The amendment will allow for better use of resources across the WA health system whilst still preserving the overarching governance framework established by the Act.

**Clause 21** **Section 37 amended**

This clause amends section 37 of the Act. Section 37 requires HSPs to obtain the Minister's written agreement before disposing of any interest in land vested in, held or acquired by the HSP. In addition to the sale of property, the term 'dispose of' includes the leasing, sub-leasing and licensing of land. As a result, there is a significant volume of licences, leases and sub-leases that currently require the Minister's written approval, many of which are low risk. This has resulted in a significant operational burden for the HSPs and the Minister in meeting the requirements of this section. This amendment will give the Minister the power to exempt certain classes of disposals from the section 37 requirements. It is intended for the Minister to use this section to make orders exempting low risk leases and licences from requiring the Minister's written agreement. See diagram at Attachment 3 Streamlining Process.

**Clause 22** **Section 38 amended**

This clause amends section 38 to expressly provide that a 'transaction' that requires the Minister's written agreement under section 38(3) includes a charitable gift or act of grace payment made by a HSP under section 36(5) that exceeds a prescribed amount. This amendment will increase accountability and oversight over these types of payments and gifts by HSPs and ensure that public funds are not applied inappropriately. The prescribed amount will be made on the recommendation of the Treasurer.

**Clause 23** **Section 41 amended**

This clause amends section 41 to set out the process for execution of documents by an administered provider. An 'administered provider' is a HSP that has had an administrator appointed to control it under section 99 of the Act. The amendments provide that a document is executed by an administered provider if the common seal is affixed in the presence of the administrator or if it is signed on behalf of the HSP by a person who has been authorised by the administrator to execute the document. The amendments also provide that authorisations made by a HSP under section 41 prior to it becoming an administered provider cease to have effect once the HSP becomes an administered provider. The cessation of the previous authorisations has been expressly included to ensure that the administrator reviews and determines the authority of all officers of the HSP to act on its behalf.

In addition to the amendments to provide for the execution of documents by administered providers, the clause also amends the Act to provide at subsections 41(7), 41(8) and 41(8B) that an employee of another HSP can be authorised to execute documents on behalf of a HSP. This amendment supports the implementation of section 36D which allows HSPs to act as agents on behalf of one another.

**Clause 24** **Section 46 amended**

This clause amends section 46 to broaden the purpose of service agreements. In particular, the purpose of the amendments is to permit the service agreement to provide for HSPs to provide services other than health services. In particular, these services include:

(a) the capital works and maintenance works projects that the HSP is responsible for commissioning and delivering; and
(b) the clinical commissioning of public health service facilities that the HSP is responsible for carrying out.

**Clause 25** **Section 48 amended**

This clause amends section 48 by deleting subsection (2), which restricted the HSPs from entering into agreements with one another to provide or receive services unless the circumstances of the agreement had been specified in a service agreement with the Department CEO. The deletion of subsection (2), in conjunction with the new section 36E, will give HSPs the power to enter into agreements with one another for the purpose of providing or receiving services.

**Clause 26** **Section 49 amended**

This clause amends section 49(1) to provide that the term of a service agreement may be up to 3 years rather than being limited to a term of one year. This gives greater flexibility and is consistent with the term of service agreements in the Queensland jurisdiction (section 36 of the *Hospital and Health Boards Act 2011)*.

The amendment also allows the Department CEO or the Commission CEO to extend the term of a service agreement for a further 12 months if it is necessary to continue the agreement to ensure the continued provision of health services. It is intended that an extension may be used in circumstances where there is a delayed budget due to an election year or where a HSP's board members or chief executive may have changed and the incoming office holders may require additional time to become familiar with the HSP's operations before entering into a new service agreement.

**Clause 27** **Section 52 amended**

This clause amends section 52 to provide that a HSP must provide an annual report on its performance during each year covered by a service agreement and is consequential upon the amendments to section 49.

**Clause 28** **Sections 53A and 53B inserted**

This clause inserts new definitions in Part 6 of the Act. These definitions support the new scheme for the recovery of fees and charges from patients who receive compensation in respect of an injury after the health services have been provided.

The key definitions are:

*Compensable charge* which means the fee or charge that a HSP or a former public hospital could have charged for a service at the time it was provided. For example, if a service was provided to a patient on 30 October 2016 then the compensable charge must be calculated based on the fees and charges that the HSP could have imposed for those services as at 30 October 2016.

*Compensation payer* means the person who must pay compensation to a person in relation to an injury.

*Compensation* is defined by section 53B which outlines a series of payments which are considered compensation but is drafted so that regulations may be prescribed to include or exclude other kinds of payments from the definition of compensation.

Compensation includes compensation that is paid or payable after the day on which clause 28 of the Bill comes into effect. Accordingly, it does not include compensation paid prior to the commencement of clause 28.

**Clause 29** **Section 55 replaced**

This clause deletes and replaces section 55 of the Act to make it more clear when and how a HSP may determine and impose fees and charges for health services. In keeping with the deleted section, the new section 55 gives HSPs the power to determine and impose fees and charges for the provision of health services. However a HSP cannot determine and impose a fee or charge:

(a) where it has been agreed that a person is not to be charged for that health service under the National Health Reform Agreement between the Commonwealth and the States; or
(b) where the Minister has determined that no fee or charge is to be imposed for that health service under an order made pursuant to section 56(2)(b) of the Act.

The new section makes it clear that HSPs are not permitted to determine and impose fees for health services that are inconsistent with an order made by the Minister under section 56 or any policy framework issued by the Department CEO under section 26(2)(e). The HSP may otherwise determine its own fee or charge for a health service.

**Clause 30** **Section 56 amended**

This clause amends the Minister's power to fix fees and charges under section 56 of the Act. Reference to fixing a scale of fees and charges has been deleted, as this implied that the Minister would fix a scale of fees for health services rather than determining a set fee or charge for a health service.

The clause also gives the Minister the power to:

(a) confer a discretion on a person to determine whether a patient falls within a class of patient; and

(b) specify criteria that a person may, or must, use to determine whether a patient falls within a class of patient.

It is intended that this power may be used to determine that a patient does not fall within a particular class of patient where it would be unfair or disadvantageous, for example, where a patient meets the criteria of a compensable patient but the compensation has been fraudulently used by another person and the patient is no longer is a position to afford the compensable patient fees or charges for the health service.

**Clause 31** **Section 58 replaced**

This clause deletes section 58 which provided for regulations to be made for the recovery of payments from compensable patients and replaces it with five new sections that establish a scheme for the recovery of fees and charges for health services from compensation a patient has received, or is entitled to receive, in respect of their injury.

The new sections ensure that a HSP will be paid the compensable charges for past services provided in relation to injuries for which compensation is payable. This ensures that the cost of treatment is borne by the compensation payer, not the public health system. The previous section 58 was intended to achieve this result through regulations. However, the regulation making power in section 58 is considered unclear and insufficient.

The essential elements of the scheme for the recovery of fees and charges for the treatment of compensable injuries are as follows:

(a) a patient who has already received compensation, or established their entitlement to receive compensation, for the injury in respect of which hospital treatment is proposed to be provided will be classified as a compensable patient and charged pursuant to section 55 of the Act;

(b) the fees charged by a HSP under section 55 will be consistent with fees set by the *Health Services (Fees and Charges) Order 2016* made by the Minister or, if no fee has been set, will be determined by the HSP in accordance with the fees and charges fixed by the Department CEO (in a policy framework). If no fee has been set by the Minister or Department CEO, then the HSP may determine its own fee or charge for the health service;

(c) the HSP may, pursuant to section 57A, recover the compensable charges, notwithstanding the patient's election to be treated as a public patient or a private patient at the time of admission. This is intended to cover circumstances where the HSP does not classify the patient as a compensable patient at the time of admission because:

a. it is unaware that the patient has received, or has established an entitlement to receive compensation for treatment of the injury at the time the health service is provided; or

b. where the patient receives compensation, or establishes their entitlement to receive compensation, for treatment of the injury after the health service has been provided.

(d) the successor HSP for a former public hospital may, pursuant to section 57B, recover the compensable charge that could have been charged for a former public hospital service (ie a service provided by a public hospital prior to 1 July 2016) if the former public hospital did not classify and charge the patient as a compensable patient at the time of admission. This section will cover circumstances where a former hospital service was provided and the patient receives compensation, or establishes their entitlement to receive compensation, for treatment of the injury after the commencement of this clause.

(e) the HSP may, pursuant to sections 57A(3) and 57B(3), recover the compensable charge from:

a. the compensation payer, if the compensation has not already been paid to the patient;

b. the patient or the patient's estate; or

c. any other person who received compensation on behalf of the patient.

(f) if the compensation payer has not paid, or has partially paid, the compensation to the patient or the patient's estate, the compensation payer is to pay the compensable charge to the HSP before paying the compensation to the patient or the patient's estate in accordance with section 57D.

(g) the HSP may, pursuant to section 57C, waive compensable charges raised under sections 57A or 57B;

(h) regulations will be made under section 58 to assist HSPs to operationalise this framework. The regulations may:

a. require patients to provide HSPs with information regarding any compensation received and any claim they make for compensation;

b. allow HSPs to provide patients with a notice of their treatment costs so that the amount can be accounted for in their claim for compensation;

c. specify how HSPs are to determine whether a health service or former hospital service was provided in the course of treatment of a person's compensable injury;

d. provide for the apportionment of the compensable charge if the liability for the injury is apportioned;

e. provide the process for how HSPs may recover the fees and charges that a person is liable to pay for the health services or former hospital services provided.

It is intended that the new scheme will allow for more effective recovery of treatment costs by HSPs from insurers and other compensation payers and will give greater certainty to compensable patients regarding the fees that will be charged for health services received. It will also ensure that patients are only charged compensable charges when they have received, or established the entitlement to receive, compensation in respect of an injury.

**Clause 32** **Section 59 amended**

This clause amends section 59 to expressly provide that a fee or charge imposed by HSPs for goods and services, other than health services, must be determined in accordance with any policy framework issued by the Department CEO on financial management. The intent is to enable the Department CEO to issue policy frameworks on fees and charges raised by HSPs under section 59 to ensure consistency in the fees charged by the HSPs.

**Clause 33** **Section 60 amended**

This clause deletes the words 'in respect' from section 60(4)(b) because the term 'accountable authority' is now defined by section 6 of the Act.

**Clause 34** **Section 62 amended**

This clause amends section 62 to allow the Minister, with the consent of the Treasurer, to make an order specifying the circumstances in which section 36(3) of the FMA does not apply.

Section 36(3) of the FMA requires employees of agencies to bank money that comes into their possession or control. In the context of the public health system, patients often have money amongst their personal possessions when they are admitted to hospital and therefore this money is required to be banked. However, often the patient is only admitted for a short time and/or the value of the money is quite small. Therefore it is operationally burdensome for the HSP to bank the money on admission and withdraw the money, to return it to the patient, on discharge.

Section 62 was included in the Act to resolve this issue, but it has not operated effectively particularly in relation to banking foreign currencies and remote hospitals where deposit and withdrawal facilities are not accessible.

The amendments to section 62 remove reference to an amount approved by the Minister with the consent of the Treasurer to allow for greater flexibility in the exempt circumstances that can be set by the Minister under the order.

It is intended that the following circumstances will be exempted by the order from the application of section 36(3) of the FMA.

(a) where money is not received as cash (e.g. cheques);
(b) where money is received in foreign currency;
(c) where a patient is expected to be admitted for less than 6 days;
(d) where a patient is expected to be admitted for 6 days or more, and the amount received is less than AU$500; and
(e) where there are no cash deposit and withdrawal facilities that are reasonably accessible.

**Clause 35** **Section 66 replaced**

This clause deletes section 66 and replaces it with three new sections that provide a more detailed process to be followed when a HSP is in financial difficulty. The process established by the new sections is as follows:

(a) in accordance with section 66, the accountable authority of a HSP is required to notify the Department CEO if it considers that the HSP is in financial difficulty.

The assessment of whether a HSP is in financial difficulty and the notification should be made in accordance with the requirements of any policy framework on notices of financial difficulty issued by the Department CEO under section 26(2)(e).

(b) upon receiving the notice, section 66A requires the Department CEO to assess the notice to determine whether, based on the information received in the notice, the HSP is in financial difficulty.

(c) the Department CEO may:

    a. request further financial information from the HSP for the purpose of determining if the HSP is in financial difficulty; and

    b. require the HSP to take certain actions to address its liquidity issues.

(d) if the Department CEO determines that the HSP is not in financial difficulty, then the Department CEO may take no action and is not required to forward the notice to the Minister;

(e) however, if the Department CEO is satisfied that the HSP is in financial difficulty then the Department CEO:

    a. may take any actions necessary to ensure the HSP is able to satisfy its financial obligations. Examples of the types of actions that may be taken include amending the HSP's service agreement or giving extra funding to the HSP.

    b. must forward the notice to the Minister, along with advice as to any action taken, or not taken, and whether the HSP remains in financial difficulty following any actions the Department CEO has taken.

(f) if upon receiving the notice the Minister is satisfied the HSP is in financial difficulty despite the actions taken by the Department CEO and HSP, then the Minister must consult with the Treasurer to determine the action required to be taken to ensure the HSP is no longer in financial difficulty and initiate any actions required. The requirements placed on the Minister in section 66B have not changed from those that were set out in the now deleted section 66.

**Clause 36** **Section 76A inserted**

This clause moves the Minister's power to remove individual board members from section 77 of the Act into a standalone section. This change has been made because section 77 dealt with administrative matters relating to board members whereas the Minister's power to remove a board member is not an administrative matter.

The clause expands the definition of misconduct to cover a board member's breach of a duty under section 79 of the Act, under the *Statutory Corporations (Liability of Directors) Act 1996*; or a breach of a duty found in the common law or equity. It is intended that the Minister may remove a board member for misconduct in circumstances where the board member has:

(a) failed to act impartially and in the public interest in the exercise of the member's functions;

(b) failed to act in good faith in the interests of the HSP;

(c) failed to exercise powers for the benefit of the HSP;

(d) failed to avoid, or appropriately manage, actual and potential conflicts of interest;

(e) made a profit at the expense of the HSP;

(f) improperly used information acquired in their role as a board member for private advantage;

(g) failed to fulfil their fiduciary duties to the HSP and to the State.

**Clause 37 Section 77 amended**

This clause amends section 77 to delete the subsections relating to the Minister's power to remove board members.

**Clause 38 Section 78A inserted**

This clause inserts section 78A which gives the board of a HSP the power to delegate any of its functions to a committee, a member of the board or a staff member in its HSP (including the chief executive) or another HSP. Importantly, this delegation power will allow the board of a HSP to delegate its functions as the employing authority of a HSP's employees. This will ensure that these functions can be delegated where it is necessary or convenient for them to be performed at lower levels within the HPS's. The power of delegation provided is consistent with the HSP's power of delegation under section 40 of the Act with one variation to allow the board to delegate its powers and functions to a staff member of another HSP.

**Clause 39 Part 8 Division 2 Subdivision 2 heading replaced**

This clause retitles the heading for Part 8 Division 2 Subdivision 2.

**Clause 40 Section 79 amended**

This clause amends section 79 to place a number of express obligations on board members and committee members, some of which are additional obligations that are not covered by the general law obligations that are imposed on board members by the *Statutory Corporations (Liability of Directors) Act 1996* or common law or equity.

The amendments are intended to make sure that board and committee members are aware of the duties that they owe to the HSP and to the State, with particular emphasis on the management of personal interests. The new provisions create a higher level of transparency and integrity in respect of the personal interests held by board members by enshrining in the legislation under paragraph (b) that board members are required to notify their board of any personal interest that they hold that is in conflict with the interests of the HSP, so that the board may assess the personal interest to determine whether it is a matter that will affect the board member's ability to perform their duties to the HSP and act in the public interest. The purpose of subsection (c) is to make it clear that the board member is responsible for avoiding and appropriately managing their conflicts of interest. Due to the nature of the HSPs' operations, the significance of the services that are delivered to the public and the relative size of the budgets that they manage, a higher level of transparency and accountability by the board over a board member's personal interests is required, beyond that already provided for in section 80 of the Act.

**Clause 41 Section 97 amended**

This clause corrects a spelling error.

**Clause 42** **Section 102 amended**

This clause deletes the words 'in respect' from section 102(5)(b) because the term 'accountable authority' is now defined by section 6 of the Act.

**Clause 43** **Section 103 amended**

This clause amends section 103 to make it clear that the employing authority of the employees of a HSP (other than a chief executive) is:

(a) the board, if the HSP is board governed; or
(b) the chief executive, if the HSP is chief executive governed.

This amendment has been made in conjunction with amendments to sections 107 and 140 to remove ambiguities in respect of who the employing authority is for the HSP and its employees (other than the chief executive).

**Clause 44** **Part 9 Division 2 Subdivision 1 heading replaced**

This clause amends the heading for Part 9 Division 2 Subdivision 1.

**Clause 45** **Section 104A inserted**

This clause inserts section 104A to clarify the legislative intent behind the establishment of a Health Executive Service by the Act. The additional section is similar to section 42 of the *Public Sector Management Act 1992* (the PSMA), which describes the purpose of the Senior Executive Service in the WA public sector, but reflects the context of the WA health system.

**Clause 46** **Section 105 amended**

This clause inserts a new subsection 105(4) which requires the Department CEO, prior to determining that an office in a HSP is an executive office for the purposes of the Health Executive Service, or amending or revoking a determination, to consider whether the determination is consistent with the purposes of the Health Executive Service under new section 104A.

**Clause 47** **Section 107 amended**

This clause amends section 107(2)(e) to provide that the chief executive's functions in respect of the day to day management of employees are to manage, supervise and direct employees. The functions of employment, transfer and dismissal have been removed. The amendment is in accordance with the clarification in amended section 103 of the employing authority of employees within a HSP.

A chief executive of a chief executive governed HSP will retain functions to employ, transfer and dismiss employees as the employing authority of the HSP under section 103. A board governed HSP will be able to delegate its functions as employing authority of the HSP to the chief executive where operationally necessary under section 78A.

**Clause 48** **Section 114 amended**

This clause amends section 114 to provide that the chief executive's performance agreement must be entered into within 6 weeks after appointment rather than "on appointment". This change allows a reasonable time for the performance agreement to be discussed and negotiated after appointment between the Department CEO, chief executive, and board of the HSP if applicable.

**Clause 49** **Section 117 amended**

This clause amends section 117 to allow the Department CEO to direct employees of the Department to act in the office of a chief executive of a HSP during an absence or vacancy in the office.

**Clause 50** **Section 119 amended**

This clause amends section 119 to confirm that the chief executive's power of delegation includes the power to delegate the chief executive's functions as a responsible authority under Part 10 or as an employing authority for chief executive governed HSPs.

**Clause 51** **Section 121 amended**

This clause amends section 121 as follows:

(a) subsection 121(1A) is inserted to require the employing authority of a HSP to ensure that the classification and remuneration of health executives appointed under section 121(1):

    a. is in accordance with any classification level and remuneration determined for the health executive office by the Department CEO under section 20(1)(g);

    b. is in accordance with the relevant policy framework issued by the Department CEO pursuant to section 26(2)(h) of the Act on the management and administration of the Health Executive Service; and

    c. appropriate to the functions to be performed by the person appointed.

(b) subsection 121(1B) has been inserted to expressly provide that the appointment of a health executive is subject to the classification and remuneration set under subsection (1A) and the contract of employment entered into under section 128.

(c) Subsection 121(5) is deleted and replaced with a new subsection that provides that a person is deemed to have been appointed under subsection 121(1) as a health executive if, at the time the Department CEO determines their position is to be a health executive office in accordance with section 105(2) of the Act, the individual already occupies the position and is governed by a contract of employment. The new subsection applies to written determinations made by the Department CEO prior to, as well as after, the commencement of this amended clause.

    The intended effect of this subsection is to ensure that employees occupying the office of a health executive are taken to have been appointed as health executives by the employing authority despite not having a contract of employment entered into under section 128.

**Clause 52** **Section 123A inserted**

This clause inserts section 123A. Section 123A provides that an employing authority of a HSP may temporarily direct an employee within the HSP to act in an office of a health executive when there is a vacancy or absence in the office.

**Clause 53** **Section 140 amended**

This clause amends section 140 to clarify that it is the employing authority of a HSP that has the power to employ and manage employees of the HSP (other than the chief executive or a health executive). This section should be read in conjunction with section 103 which has also been amended to clarify that the employing authority is the board, for a board governed HSP, and the chief executive, for a chief executive governed HSP.

**Clause 54** **Section 145 amended**

This clause amends section 145 to require a staff member who has had a misconduct finding made against them under a Health Practitioner National Law that applies in another Australia jurisdiction to report the misconduct finding to the staff member's responsible authority within 7 days of receiving the notice.

Health practitioners will often practice in different jurisdictions across Australia and as a result may be subject to misconduct findings in jurisdictions other than Western Australia. The amendment to section 145 and the amendments to sections 147, 149 and 150 of the Act are for the purpose of ensuring that misconduct findings made in jurisdictions outside of Western Australia may be treated in the same manner as misconduct findings made under the Western Australian Health Practitioner National Law.

**Clause 55** **Section 147 amended**

This clause amends section 147 to ensure its applicability in circumstances where an employee's registration as a registered health practitioner is suspended in another jurisdiction or where conditions are imposed on the registration of an employee in another jurisdiction.

The amendment ensures that employing authorities are able to act to protect the safety and wellbeing of patients in circumstances where a health practitioner's registration has been suspended or becomes conditional in another State or Territory under the relevant Health Practitioner National Law for that jurisdiction.

**Clause 56** **Section 149 amended**

This clause amends section 149(2)(a) to ensure its applicability in circumstances where an employee's registration is suspended or becomes conditional in another jurisdiction. This ensures consistency in how these matters are dealt with.

The clause also amends section 148(2)(b) to ensure it is applicable in circumstances where an individual is charged with one type of serious offence but is found guilty of another serious offence.

**Clause 57** **Section 150 amended**

This clause amends section 150 to ensure its applicability to an employee whose registration has been suspended or become conditional under the Health Practitioner National Law in another jurisdiction. The employing authority cannot, however, take action until all rights of appeal under the Health Practitioner National Law in another jurisdiction have lapsed or been exhausted or if the employee successfully appeals against their suspensions or conditions.

**Clause 58** **Section 157 amended**

This clause deletes the definition of industrial instrument from section 157 because there is now one single definition for the term in section 6 of the Act.

**Clause 59** **Section 161 amended**

This clause amends section 161 of the Act to expand the definition of a breach of discipline to include where an employee contravenes the PSMA. This is in keeping with the fact that employees of HSPs are subject to certain parts of the PSMA.

**Clause 60** **Section 167 amended**

This clause deletes and replaces subsection 167(4) with a new subsection which allows the Department CEO to notify any employing authority of a HSP of a notification of the outcome of a disciplinary matter that the Department CEO has received from another employing authority of a HSP under subsection (2). Importantly, the Department CEO may only provide the information about the notification to another employing authority if it is necessary to ensure the safety of patients or the information is relevant to the performance of the other employing authority's functions.

Under the deleted subsection (4) the Department CEO could only notify an employing authority of the employee, not an employing authority of a HSP. This restricted the operation of this provision, as the Department CEO could not forewarn an employing authority that an individual had been found to have committed a breach of discipline and the breach was of such a nature that it could result in a risk to the safety of patients prior to the individual being employed in the HSP. This restriction affected pre-employment checks and reduced the effectiveness of the section in ensuring the safety of patients.

**Clause 61** **Section 176 amended**

This clause amends section 176 to delete reference to "a policy framework under section 26(2)(j)" because policy frameworks are not issued for this purpose.

**Clause 62** **Section 177 amended**

This clause amends section 177(1) to define 'confidential information' non-exhaustively. Replacing the word "means" with "includes" ensures that the definition of 'confidential information' is not limited to patient information. This will allow the Department CEO to inspect patient information and other confidential information when exercising the Department CEO's powers under section 177.

**Clause 63** **Section 187 amended**

This clause amends section 187 to give the person conducting an inquiry under section 183 (the inquirer) the power to enter and inspect premises, examine and make copies of records, require a person on the premises to provide information and answer questions and require the production of records and any assistance or facilities the inquirer requires to conduct the inquiry. These powers are a replication of the powers that the Department CEO may use when conducting an investigation, inspection or audit under Part 13 of the Act.

**Clause 64** **Section 188 amended**

This clause amends the offence provisions in section 188 to make it an offence for a person to refuse or fail to produce documents as required by an inquirer under section 187(1B)(f) or refuse or fail to provide information or answer questions under section 187(1B)(e). The fine for these acts is $10,000 and is consistent with the fine that was previously set for refusal or failure to produce documents or answer questions under sections 187(1)(b) and 187(1)(e) respectively.

**Clause 65** **Section 193 amended**

This clause amends section 193 to make the process for producing the inquirer's report more logical. Firstly, the amendments to subsection (1) and (2) provide that the report that the inquirer first prepares is a draft report and so will not be finalised until after the comments from the HSPs are received under subsection (1)(c) and considered by the inquirer. The amendment to subsection (2) uses the terms "preliminary findings" and "draft recommendations" to account for the fact that the findings and recommendations in the draft report may change as a result of the comments received from the HSPs.

In addition, section 193(2)(c) has been deleted to remove the requirement for the inquirer to include any comments received from the HSP in the final report. This requirement has been removed to allow candid comments to be made without the commenter being concerned that the comments will be made publicly available when the report is tabled in Parliament.

Subsection (2A) has been inserted to provide a process for preparation of the final report. The section provides that after considering the HSPs' comments on the draft report, the inquirer must prepare the final report which should contain the final findings, conclusions and recommendations. The amended section also provides that the inquirer must the give the report to the Minister and to the Department CEO (if the Department CEO is not the inquirer).

**Clause 66** **Part 15 Division 1 replaced**

This clause deletes and replaces Division 1 of Part 15, which provided for the Minister to transfer interests in land, assets, rights and liabilities between HSPs, the HMB and the State.

The Minister's transfer powers have been amended to address a failure of the transitional provisions in the Act to effectively transition all land and property from the old health entities.

When the transitional provisions of the Act commenced on 1 July 2016, it was intended that all land and property used by the WA health system would be transitioned to the HMB. The transitional provisions provided for the transfer of land, assets, rights and

liabilities that were held by old hospital boards or the Minister in his capacity as the board of a hospital under s 7 of the HHSA to either the HMB or to a HSP. However, the transition was not effective for all land and property because a significant portion of the land, assets, rights and liabilities used by the WA health system was held by the Minister for Health or the Minister for Public Health in various other capacities.

To rectify the applicability of the transitional provisions to all land and property transfers, the Minister's transfer powers have been broadened to allow for the transfer of land, an asset, a right or a liability (or an associated interest) held by the Minister in his various capacities. This is achieved through a broadened definition of health entity, which captures the range of entities and Ministerial capacities currently holding land that is used by the WA health system For example, these entities include the Minister for Health in his personal capacity, such as the Honourable Antony Kevin Royston Prince, the Minister for Health as a body corporate pursuant to the provisions of the *Health (Miscellaneous Provisions) Act 1911*, the Minister for Public Health and Her Majesty Queen Elizabeth the second.

The definition of health entity also includes a HSP or the HMB, thereby retaining the Minister's existing power to transfer land and other assets, rights and liabilities (or an associated interest) between the HSPs and the HMB.

The Minister may use the transfer order powers to transfer land, an asset, a right or a liability (or an associated interest) held by a health entity to the State, the Ministerial Body or to a HSP. The power is, however, limited in that the transfer order may only be used in respect of a "health asset" which means an interest in land, an asset, a right or a liability held for the purposes of the Act or the former Act; or for the purpose of providing healthcare, or for a purpose associated with, or related to, these two matters. This limitation is intended to restrict the Minister from exercising the transfer order power to transfer interests in land held by the State that are unrelated to provision of health care by the WA health system.

Whilst it is intended that this new section will allow the transfer orders to transfer the interests in freehold land and property to the correct entities in the WA health system, it will also be used in the future to transfer interests in land, assets, rights and liabilities between the HMB and the HSPs.

See diagram at Attachment 1 Transfer Power.

**Clause 67** **Section 200 amended**

This clause amends section 200 to replace references to a "transfer order made under section 194" with "section 194 transfer order". This change has been made because the Minister's transfer powers have been amended in Division 1.

**Clause 68** **Section 202 deleted**

This clause deletes section 202 because the definition of transfer order contained in that section is no longer applicable.

**Clause 69** **Section 203 amended**

This clause amends section 203 to make it clear that references to 'transfer order' in this section are a reference to a transfer order made under section 194.

**Clause 70** **Section 205 amended**

This clause amends section 205 to make it clear that references to 'transfer order' in this section are a reference to a transfer order made under section 194.

**Clause 71 Section 206 amended**

This clause amends section 206 to make it clear that references to 'transfer order' in this section are a reference to a transfer order made under section 194.

**Clause 72 Section 208 amended**

This clause amends section 208 to make it clear that land under the control and management of a HSP pursuant to a joint arrangement with the Minister may be declared 'HSP land' by the Minister. Land declared to be 'HSP land' is land for the purposes of Part 16 of the Act and the *Health Services (Conduct and Traffic) Regulations 2016*.

Section 208 currently provides for the Minister to declare land vested in or under the care, control and management of, a HSP to be HSP land for the purposes of allowing the HSPs to control conduct and traffic on the land. It was intended that this would include land that the HSP controls and manages pursuant to a joint arrangement. However, there is some ambiguity as to whether land under the "care, control and management" of a HSP is limited to land that a HSP manages pursuant to a management order under the LAA. Accordingly, this amendment makes it explicit that the Minister may declare land that is the subject of a joint arrangement with a HSP to be HSP land.

See diagram at Attachment 4 Declaration of HSP Land.

**Clause 73 Section 213 amended**

This clause amends the definitions for Part 17 of the Act. The key changes to the definitions are as follows:

1. The definition of *health information* has been amended to include personal information collected before, on or after the commencement of the definition. The purpose of this amendment is to capture health information that was collected under the HHSA for the purposes of providing public health services to patients prior to the Act's commencement, as well as health information that is collected under the Act. Since the commencement of this Act, it has been unclear whether the definition of health information includes information about public patients that was collected under the public hospital provisions of the HHSA before it was amended to deal only with private hospital licensing matters and renamed the *Private Hospitals and Health Services Act 1927*. The amendments are intended to give clarity to ensure that such can be dealt with as health information under the Act.
2. A definition of *CEO* for the purposes of section 215 has been inserted. The definition should be read in conjunction with section 215 and is for the purpose of allowing information collected by the Chief Executive Officer of the Department responsible for administering the *Health Legislation Administration Act 1984*, under the HHSA to be held in a health information management system.
3. A definition of the term *legal process* has been included for the purposes of section 217A which gives the Department CEO the power to direct that a HSP comply with a summons or other legal requirement for the Department CEO to

produce information held in a health information management system in circumstances where the information was collected by the HSP or by a former public hospital rather than the Department CEO. Legal process is not intended to include freedom of information applications made under the *Freedom of Information Act 1992*.

**Clause 74 Section 215 amended**

This clause amends section 215 to provide that health information that was collected prior to the commencement of the Act on 1 July 2016 by either the CEO or a public hospital under the HHSA must also be held in a health information management system.

**Clause 75 Section 216 amended**

This clause amends section 216 to provide that the Department CEO may collect, use and disclose any information, not just disclose health information, for the purposes listed in section 216. This amendment is necessary because the information that is collected by the Department CEO for the performance of the Department CEO's functions under the Act is not limited to health information and there are circumstances where the Department CEO may need to disclose other types of information for the purposes set out in section 216. For example, the Department CEO may need to disclose employee information and commercial information.

**Clause 76 Section 217A inserted**

This clause inserts section 217A to provide an operational practice for when a legal process, such as a subpoena or summons, requires the Department CEO to disclose information contained in a health information management system.

The section enables the Department CEO to direct a HSP to comply with the request on behalf of the Department CEO. It is intended that the Department CEO would make this direction when the health information that is required to be disclosed was collected by a HSP, rather than the Department CEO, or where the health information was collected by a former public hospital under the HHSA and the HSP is the successor of that former public hospital. This amendment is required because the Department CEO is not always best placed to disclose the health information for the purpose of complying with a legal process. This ensures that legal processes may be more effectively complied with by the Department CEO and HSPs.

**Clause 77 Section 231 amended**

This clause amends section 213 to allow regulations or subsidiary legislation made under the Act to adopt other regulations, codes or other texts as amended from time to time.

**Clause 78 Part 20 replaced**

This clause inserts Part 20 which are the transitional and savings provisions for the Bill. The key provisions contained within Division 1 of Part 20 are as follows:

*Section 259*
Section 259 provides definitions for the terms 'commencement day' and 'health entity'.

*Section 260*

Section 260 validates acts and omissions made by a HSP, the Minister or the HMB in relation to a 'health interest' held by another health entity when the act or omission occurred. This section is intended to validate acts and omissions that were carried out, in good faith and for the purposes of performing functions under the Act, by the wrong entity because the relevant interest was not properly transferred to the HMB or to a HSP by the transitional provisions of the Act. See diagram at Attachment 2 Validation Power.

As outlined in the amendments to Part 15, there was a period of time when the HMB, HSPs and Minister entered into transactions for the purpose of performing functions under the Act on the assumption that all interests in land, assets, rights and liabilities had transferred to the HMB or the HSPs. It was subsequently determined, however, that not all of these 'health interests' transitioned.

In addition, the HSPs entered into transactions for land and property that was vested in the HMB or Minister without authority. As stated above, section 36A has been inserted by the Bill to provide clarity that HSPs have power to lease and licence both crown reserves and freehold property subject to the terms of their joint arrangement with the Minister.

The validation protects the interests of third parties that may have relied on the actions and omissions of the HMB, Minister and HSPs prior to the commencement of this clause.

Due to the volume of interests held by the WA health system, it is not possible to list all of the 'health interests' or acts and omissions. Accordingly, this provision has been drafted to apply to a broad category of 'health interests'.

*Section 261*
When the definition of contracted health entities was included in the Act, it was thought that non-government entities that provided health services to the State did so only under contract with the Minister for Health, the Department CEO or a HSP. It was subsequently determined that there was another category of non-government entities that provided health services to the State under contracts with the Premier. The definition of 'contracted health entity' is amended by clause 4. However, this transitional provision operates to ensure that the non-government entities that have been providing health services under a contract or agreement entered into with the Premier prior to the commencement of this section of the Amendment Bill are taken to have been contracted health entities for the purposes of the Act.

The provision expressly provides that:

(a) the health services provided by these entities under the contract with the Premier are taken to be public health services;
(b) health information collected by these entities that is held in a health information management system is taken to have always been health information collected by a contracted health entity and held in the health information management system under section 215(1); and
(c) a staff member of these entities who may have been granted access to a health information in a health information management system by the Department CEO under section 215(2)(c) is taken to have always been a staff member of a contracted health entity.

*Section 262*
Due to the failure of the transitional provisions to transfer all the land and property to the HMB, the Director General, acting pursuant to the Minister's delegation of powers

under section 15, and the HMB's authorised officers, acting pursuant to authorisations made under section 12, may have entered into land transactions and executed documents on behalf of the incorrect entity.

Section 262(1) validates acts of the Department CEO in relation to land held by a health entity other than the Minister pursuant to a delegation from the Minister to exercise the Minister's powers.

Section 262(2) validates legal documents executed to give effect to land transactions that were entered into by the Department CEO, or another authorised officer, on behalf of the HMB pursuant to an authorisation made under section 12(5) in relation to land held by a health entity other than the HMB. This section applies only to acts prior to the commencement of this clause of the Bill.

See diagram at Attachment 2 Validation Power.

*Section 263*
Section 263 validates the *Health Services (Health Service Provider Land) Order 2016* (the Land Order) made under section 208 of the Act, along with any amendment orders made under the same, and all acts carried out by persons because the land was declared HSP land.

This validation provision is necessary for three reasons. Firstly, as stated above, there is some ambiguity with respect to how the land "under the care, control and management" of a HSP in section 208 of the Act should be interpreted.

Secondly, as a result of the ineffective transitional provisions a significant portion of the declared land did not transition to the HMB and the Minister did not have the power to give the HSPs control and management of the land pursuant to a joint arrangement. Accordingly, this land does not meet either of the criteria in section 208 and is invalidly declared.

Thirdly, some of the land declared in the Land Order was unmanaged crown land. Public health service facilities operated by HSPs are located on these sites and the land has been reserved for a health related purpose. However, the unmanaged sites do not meet the criteria in section 208 and are invalidly declared.

Due to these issues, there is a need to validate the declarations made by the Minister in the Land Order and the acts carried out by persons in reliance upon that declaration. Examples of the acts carried out include:

(a) directing a person to leave HSP land or a part of HSP land because of disorderly or threatening conduct;
(b) charging fees for parking on HSP Land; and
(c) issuing parking infringements for parking offences on HSP Land.

See diagram at Attachment 4 Declaration of HSP Land.

*Section 264*
This section provides that State tax is not payable in relation to anything that occurs or is done to give effect to Division 1 of Part 20 of the Act.

**Clause 79** **Part 20 Division 2 inserted**

This clause inserts Division 2 of Part 20, which contains transitional and savings matters relating to Crown reserves used by the WA health system. The key sections are as follows:

*Section 265*
This clause contains the definitions relevant to this Division.

*Section 266*
The transitional provisions of Part 19 of the Act provided that from 1 July 2016 the HMB would replace the old hospital boards as the management body for crown reserves. At the time, it was thought that the old hospital boards were the entities that were the management body for all crown reserves used for the purposes of the WA health system. This was not the case and instead the management bodies of a significant number of the crown reserves were actually the Minister for Health under the *Hospitals and Health Services Act 1927* or the Minister for Health as a body corporate under the *Health (Miscellaneous Provisions) Act 1911*.

As a result, the transitional provisions of Part 19 were not effective and section 266 has been included in the transitional provisions of the Bill to give the Minister the power to make a reserve order to change the management body for "eligible crown land" that is managed by a health entity. See diagram at Attachment 1 Transfer Power.

*Eligible crown land* is defined by section 265 to mean crown reserves reserved for the purpose of providing healthcare or for a purpose related to providing healthcare. This definition is intended to include land that is reserved for the purpose of a hospital or occupational therapy clinic, as well as those reserves which might be reserved for the purpose of providing accommodation to employees or for parking, drainage or tunnels used in connection with a public health care facility.

The section is flexible in that it allows the management body to be changed to either the HMB or HSP. It also applies to the crown reserves that were already transitioned to the HMB. This allows for a policy decision to be made by the Minister as to whether to preserve the policy decision to vest all property with the HMB or alternatively, to make a decision that the HSPs are mature enough to be the management bodies for the crown reserves that are located within their health service areas.

In addition to changing the management body for crown reserves that are used to provide healthcare or for purposes relating to the provision of healthcare, this section also provides consistency by allow the Minister to change the reserve purpose.

*Section 267*
Section 267 gives the Minister the power to amend the management orders for eligible crown reserves to remove the condition requiring the management body to obtain the Minister for Lands' consent to lease the reserve. This section aligns with government policy to no longer require the management bodies of crown reserves to seek the Minister for Lands', or any other person's consent, to lease crown reserves.

*Section 268*

Section 268 validates leases, subleases and licences granted by an incorrect State entity over crown land reserved for the purpose of providing healthcare or associated with the provision of healthcare. The primary purpose of the validation provision is to protect the land interests of third parties who may have been granted leases and licences by an incorrect entity. The validation provision also validates any acts done by a person in relation to those leases and licences. See diagram at Attachment 2 Validation Power.

In addition, the HSPs also dealt with and entered into leases and licences for the crown reserves without proper authority because it was thought that the HSPs had the power to deal with the land as if they were the management body by way of their joint arrangements with the Minister. Section 36A has been inserted by the Amendment Bill to provide HSPs with a power to lease and licence both crown reserves and freehold property subject to the terms of their joint arrangement with the Minister.

As a result of these issues, the leases, subleases and licences need to be validated to ensure their effectiveness and protect the interests of third parties who are relying upon them.

The section validates leases, subleases and licences granted by the Minister, the HMB or a HSP in relation to crown land reserved for the purpose of providing healthcare or associated with the provision of healthcare.

*Section 269*
Section 269 provides that State tax is not payable in relation to anything that occurs or is done to give effect to Division 2 of Part 20 of the Act.

*Section 270*
Section 270 provides for the registration of the changes made by the Minister under Division 2.

**Clause 80** **Parts 21 and 22 deleted**

This clause deletes Part 21 and 22 which contained the consequential amendments that were made by the Act to other legislation on 1 July 2016.

## PART 3 — *Mental Health Act 2014*

### Clause 81 Act amended

This clause explains that Part 3 of the Bill amends the *Mental Health Act 2014* (the MHA).

At the time of its commencement, the Act amended the *Hospitals and Health Services Act 1927* (HHSA) by changing the title of the Act to the *Private Hospitals and Health Services Act 1927* (PHHSA). As a result, consequential amendments were made to the MHA to reflect this change. However, some of the references to the HHSA were overlooked and remain unchanged. This Part amends those references.

### Clause 82 Section 4 amended

This clause amends the definition of "private psychiatric hostel' in section 4 of the MHA by deleting reference to section 26P of the HHSA and replacing it with reference to section 2(1) of the PHHSA.

### Clause 83 Section 524 amended

This clause replaces references to the HHSA in section 524 of the MHA with a reference to the PHHSA.

### Clause 84 Section 541 amended

This clause replaces references to the HHSA in section 541 of the MHA, and the note for that section, with references to the PHHSA.

### Clause 85 Section 543 amended

This clause replaces references to the HHSA in section 543(1)(b) of the MHA, and the note for that section, with references to the PHHSA.

## PART 4 — *Motor Vehicles (Catastrophic Injuries) Act 2016* amended

### Clause 86 Act amended

This clause explains that Part 4 of the Bill amends the *Motor Vehicles (Catastrophic Injuries) Act 2016* (MVCI Act).

Due to the timing of the commencement of the MVCI Act at approximately the same time as the Act, the MVCI Act contained references to the HHSA which could not be amended earlier.

### Clause 87 Section 20 amended

This clause replaces a reference to the HHSA in section 20(1) of the MVCI Act with a reference to the PHHSA.

**Clause 88** **Section 30 amended**

This clause amends the definition of *hospital* in section 30(1) of the MVCI Act so that the term is given the same meaning as the term *hospital* is given in section 8 of the Act.

## PART 5 — *Queen Elizabeth II Medical Centre Act 1966* amended

**Clause 89** **Act amended**

This clause explains that Part 5 amends the *Queen Elizabeth II Medical Centre Act 1966* (the QEII Act).

The consequential amendments made by this Part were previously included in the Act. However, the amendments did not commence due to a drafting error which would have caused the QEII Act to become inoperable and have been corrected in this Bill. The purpose of the amendments is to replace the by-law making power held by the Queen Elizabeth Medical Centre Trust (the Trust) under the QEII Act with a regulation making power to be held by the Governor to make the QEII Act consistent with other health legislation which has moved away from the use of by-laws.

**Clause 90** **Section 13 amended**

This clause deletes and replaces section 13(2e) of the QEII Act. The new subsection 13(2e) has been amended to remove paragraph (b) which provided for the delegate to make regulations or by-laws in respect of the site. Importantly, the new subsection continues to permit the delegate of the Trust to exercise the powers of the Trust in respect of the portion of the QEII site that has been set aside under subsection (2a).

The clause also replaces section 13(2g)(b)(i) with a new paragraph that clarifies that the delegate of the Trust is to pay money collected from fees paid pursuant to the regulations made under the QEII Act into a designated account.

**Clause 91** **Section 20 amended**

This clause amends section 20 to remove the QEII Trust's by-law making power in respect of the control of conduct and traffic on the QEII site and replaces it with a power for the Governor to make regulations in respect of those matters.

**Clause 92** **Sections 22 and 23 inserted**

This clause inserts transitional provisions into the QEII Act to:

(a) repeal the *Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986* so that they may be replaced with regulations; and

(b) provide that references to by-laws made under the QEII Act in written law or other documents (such as parking infringement notices) are taken to be a reference to the regulations made under the QEII Act instead.

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

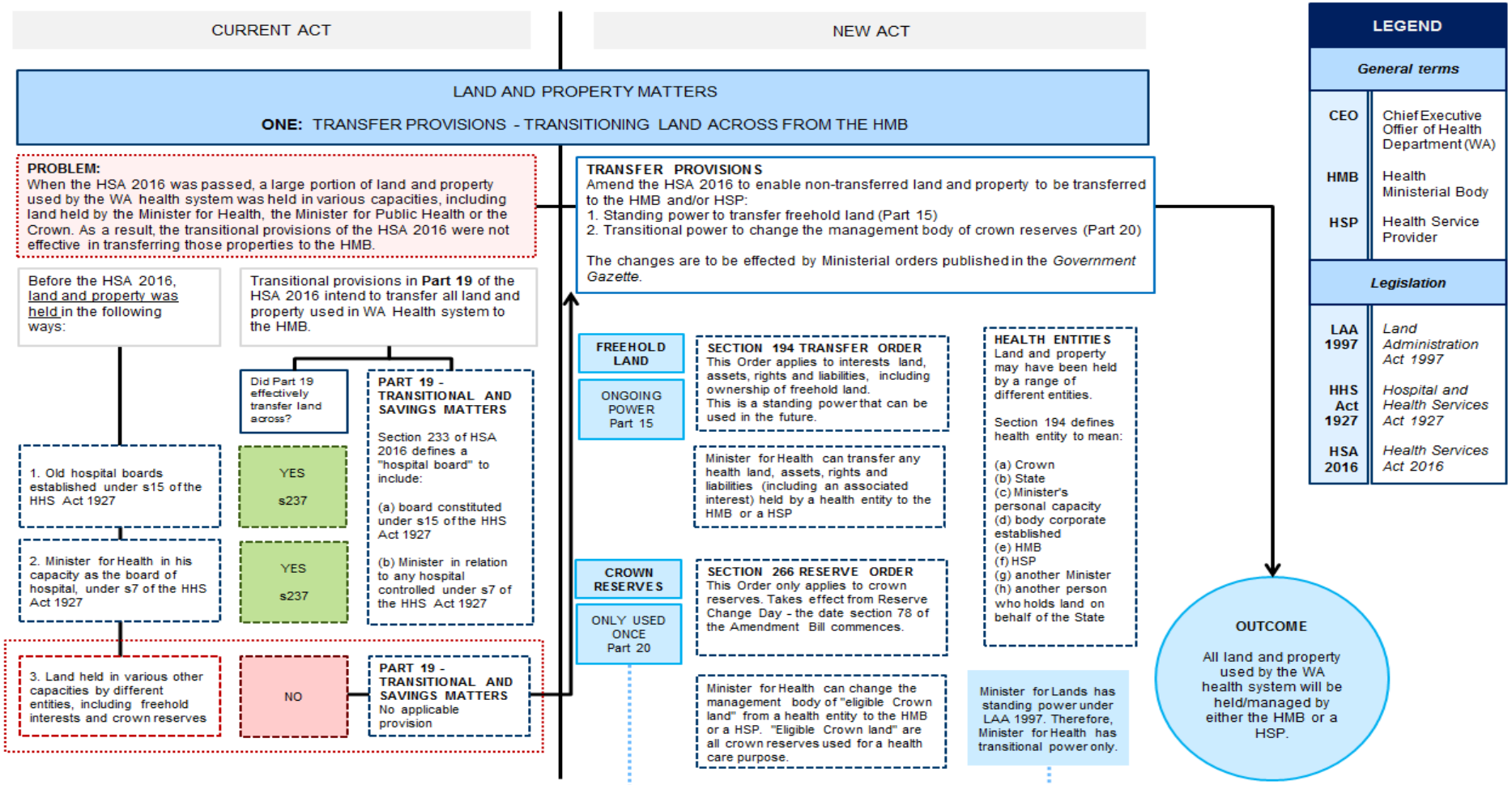
**Clause 93** **Act amended**

This clause explains that Part 6 amends the *University Medical School, Teaching Hospitals, Act 1955*.

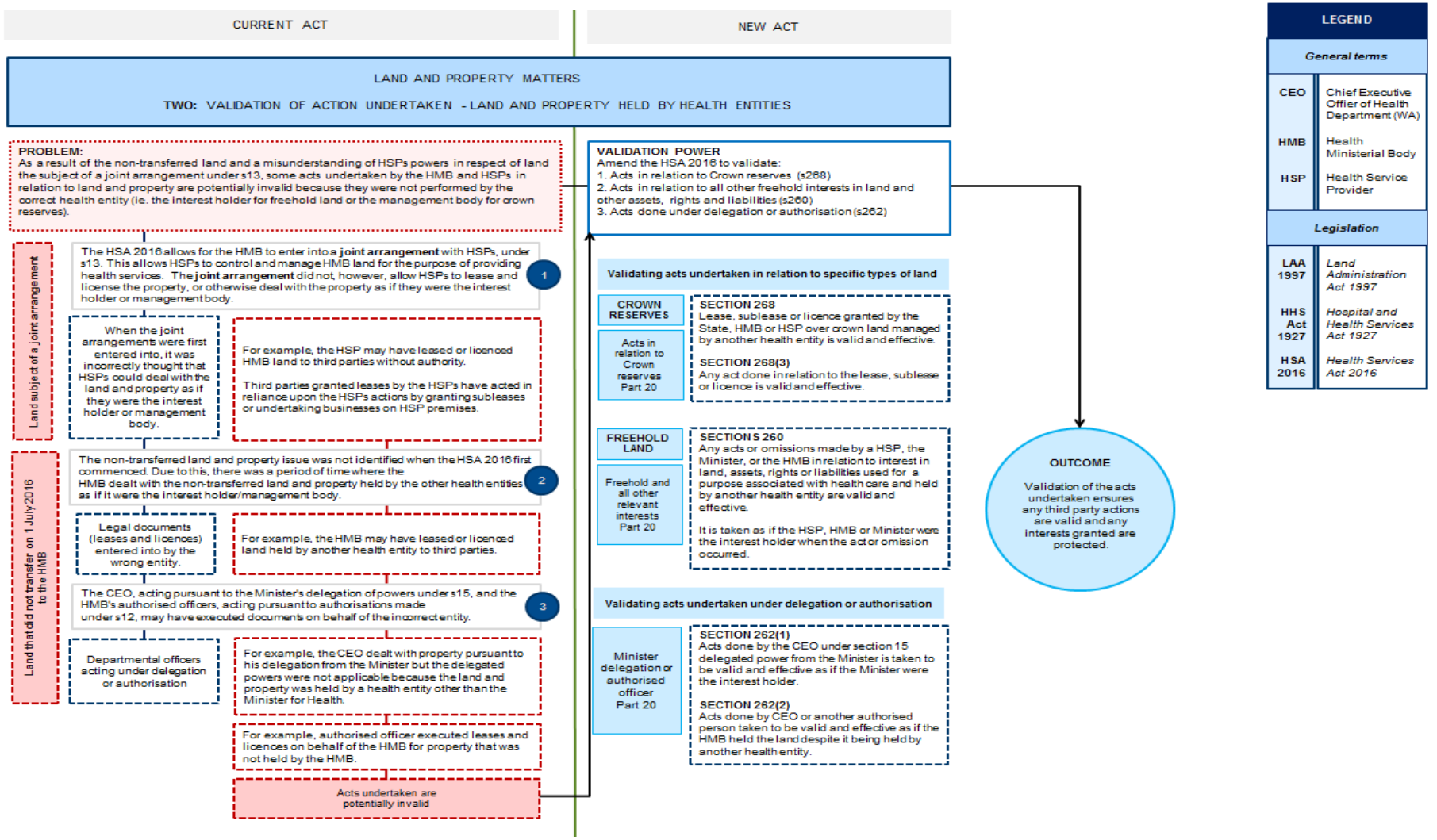
**Clause 94** **Section 4 amended**

This clause amends a drafting error that was made to section 4 of the Teaching Hospitals Act and replaces the word ‘State’ with the word ‘Senate’.

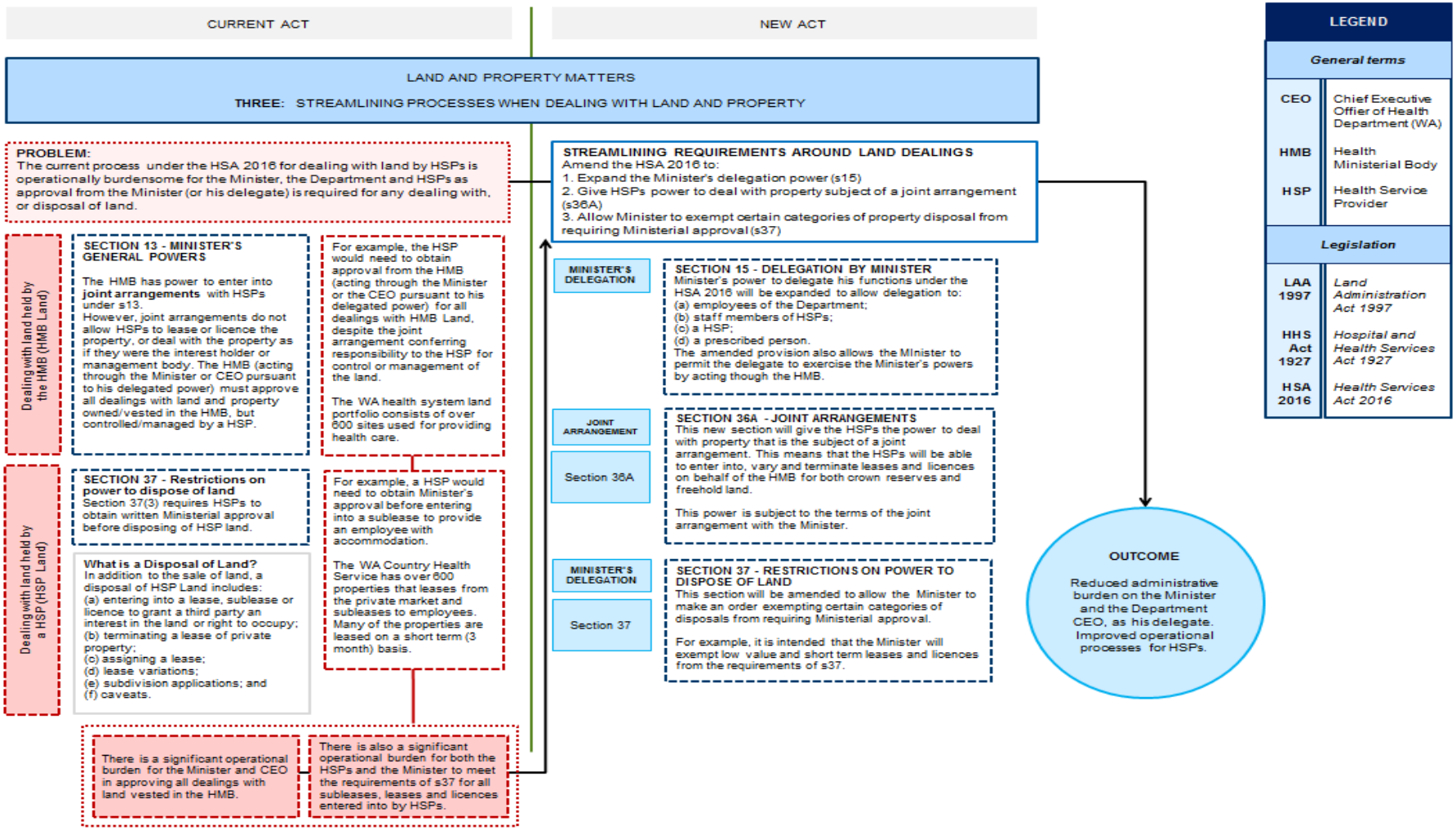
## Attachment 1 Transfer Power



## Attachment 2 Validation Power



## Attachment 3 Streamlining Process



## Attachment 4 Declaration of HSP Land