

Table of drafting changes from Health Services Amendment Bill 2019 to Health Services Amendment Bill 2021

Current 2021 Bill clause number	Former 2019 Bill clause number	Changes
Clause 4	Clause 4	<ol style="list-style-type: none"> 1. Definition of 'administrator' has been added to the clause. Definition moved from Part 8 to section 6 of Act because term used in Part 4 of the Act. 2. Definition of '<i>Health Practitioner Regulation National Law</i>' has been added to the clause. Definition inserted to support drafting changes in how the legislation achieves the policy intent of capturing misconduct findings/suspensions of registration against health practitioners (staff members) by another participating jurisdictions. This occurs where a staff member has worked in another States and Territories before moving to work for a health service provider in the WA health system.
Clause 6	Clause 6	<ol style="list-style-type: none"> 1. Drafting style change to heading of new section 7A. 2. Reference to "a successor health service provider" in (1)(a) changed to "the successor health service provider". Reflects that a successor will be declared for the whole of a former public hospital under (1)(a), but that several successors may be declared for parts of a former public hospital under (1)(b). E.g. EMHS may be declared for the patient health services at former Swan District Hospital, but PathWest declared as successor for matters relating to pathology services carried out there. 3. New subsection (2) inserted to expressly allow the Minister to revoke or amend an order made under subsection (1). Previous intention was to rely upon the Interpretation Act provisions relating to subsidiary legislation, but position is now that it needs to be expressly provided for.
Clause 7	Clause 7	Drafting style change to move words "that are to, or are set apart from, premises mentioned in subsection (4)(a)" to its own paragraph.
Clause 8	Clause 8	Drafting style change of wording from "to whom 1 of the Minister's functions is delegated" to "to whom a function of the Minister is delegated".
Clause 9	Clause 9	Minor amendment to insert "or a" after joint arrangement. Change made to make it clear that joint arrangement is a different type of arrangement to an arrangement that is for the provision of services to or by a health service provider.

Health Services Amendment Bill 2021

Clause 12	Clause 12	New amendment inserted to section 20(1)(i) to delete reference to “award, order or industrial agreement under the <i>Industrial Relations Act 1979</i> ” and replace it with “industrial instrument” which is a defined term. Ensures a consistent approach is taken across the Act when referring to awards, agreements and other industrial instruments.
Clause 13	Clause 13	Drafting change to change (b)(i) and (b)(ii) into their own subclauses (b) and (c) respectively to reflect that the Department CEO may want to commission and deliver the works or require a health service provider to commission and deliver the works or to do both. This ensures greater flexibility in approach.
Clause 19	Clause 19	Minor amendment to expressly state that the health service provider power to make gifts or act of grace payment is subject to section 37, 38 and any relevant policy framework.
Clause 20	Clause 20	<ol style="list-style-type: none"> 1. Minor drafting amendment to 36A(3) to change flow from “only valid if consistent with” to “not valid if it is inconsistent with” the matters set out. 2. Minor drafting amendment to state “revoked or amended” rather than “amended or revoked” 3. Minor drafting change to 36C to replace words “is to” with “must” in respect of the requirements relating to guarantees. 4. Minor change to heading of 36D.
Clause 21	Clause 21	<ol style="list-style-type: none"> 1. Minor amendment to subsection (3)(b) to make it clear that it is an exemption from the requirement to obtain the Minister’s written agreement. 2. New subclause inserted to expressly allow the Minister to revoke or amend an order made under subsection (3)(b). Previous intention was to rely upon the Interpretation Act provisions relating to subsidiary legislation, but position is now that it needs to be expressly provided for.
Clause 22	Clause 22	Word “making” deleted from subclause. Not necessary as it is the gift or act of grace payment that constitutes the transaction.
Clause 23	Clause 23	The definition for administrator has been deleted. The term is now defined in section 6 so that a single definition is used in the Act.
Clause 25	Clause 25	Minor change to replace reference to “the relevant” policy framework in 48(3) with “any relevant” policy framework. This reflects that there may not always be a relevant policy framework in place.
Clause 26	Clause 26	<ol style="list-style-type: none"> 1. Minor drafting change to (1A)(a) to use words “that is not” instead of “other than” 2. Subsection (2) changed to reflect that the service agreement must cover the forecast period set by any relevant policy framework, rather than the relevant policy framework. As there may not be a policy framework covering this issue.

Clause 28	Clause 28	Heading of new section 53B amended. Drafting style change.
Clause 29	Clause 29	<ol style="list-style-type: none"> 1. Minor change to heading of new section 55. 2. Minor drafting style change to (2)(b) to state “any policy framework” rather than refer to a policy framework and have “if any” in brackets.
Clause 31	Clause 31	<ol style="list-style-type: none"> 1. 57A references to “the health service provider who” replaced with “the health service provider that”. Reference reflects that health service providers are corporate entities not natural person. 2. New sections 57A(4) and 57B(4) word one has been replace with numeral 1. 3. Section 58(2)(a) minor drafting amendments. One amendment to make it clear that the power is limited to requiring information or a document for the purposes of Part 6 of the Act. 4. Section 58(2)(e)(i) words “the act or omission causing” added to make it clear that the liability is for the act or omission rather than the treated injury. 5. 58(2)(f) amended to expressly state that the regulations may provide for State Administrative Tribunal review of decisions made by a health service provider under the regulations. 6. 58(3) amended to make the provisions more consistent with other parts of the Act. (d) has been inserted to expressly provide that the regulations may prohibit a person from giving information or a document that the person knows is false or misleading in a material particular. 7. Subsection 58(4) dealing with the a persons right not to incriminate themselves has been redrafted to more clearly set out that information that a person is required to provide under the regulations is not admissible in evidence in any criminal proceedings against the individual other than proceedings for an offence under (2)(a) – which may require a person to give specified information – or (3)(d) which may prohibit a person from knowingly giving false or misleading information under the regulations.
Clause 32	Clause 32	<ol style="list-style-type: none"> 1. Changed from “and” to “or” 2. Minor drafting style change to (2)(b) to state “any policy framework” rather than refer to a policy framework and have “if any” in brackets.
Clause 34	Clause 34	New subclause inserted to expressly allow the Minister to revoke or amend an order made under subsection (2) with the consent of the Treasurer. Previous intention was to rely upon the Interpretation Act provisions relating to subsidiary legislation, but position is now that it needs to be expressly provided for.

Clause 35	Clause 35	<ol style="list-style-type: none"> 1. Minor drafting style change to section 66 to state “any policy framework” rather than refer to a policy framework and have “if any” in brackets. 2. Minor drafting change to 66A(3)(b)(ii) and 66B(1)(b) to replace “the action” with “any action” as the Department CEO may not take action.
Clause 36	N/A	New clause to amend section 67 to make it consistent with the definition of accountable authority in the Act.
Clause 41	Clause 40	Drafting style change at (3)(c) – replace a comma with a dash.
Clause 42	N/A	New clause to delete definition of administrator. Definition now located in section 6 because the term is used in multiple parts of the Act.
Clause 52	N/A	New clause to delete reference to “award, order or industrial agreement under the <i>Industrial Relations Act 1979</i> ” from section 118 and replace it with “industrial instrument” which is a defined term. Ensures a consistent approach is taken across the Act when referring to awards, agreements and other industrial instruments.
Clause 54	Clause 51	<ol style="list-style-type: none"> 1. Minor amendment to replace “the relevant policy framework” with “any relevant policy framework” in section 121(1A)(b), as the Department CEO may not have set a policy framework in respect of classification and remuneration of health executives. 2. Reference to “award, order or industrial agreement under the <i>Industrial Relations Act 1979</i>” deleted from section 121(2) and replace it with “industrial instrument” which is a defined term. Ensures a consistent approach is taken across the Act when referring to awards, agreements and other industrial instruments.
Clause 56	Clause 53	<ol style="list-style-type: none"> 1. New subclause to delete reference to “award, order or industrial agreement under the <i>Industrial Relations Act 1979</i>” from section 140(3) and replace it with “industrial instrument” which is a defined term. Ensures a consistent approach is taken across the Act when referring to awards, agreements and other industrial instruments. 2. Section 140(3) reference to health service provider replaced with “employing authority” to make it clear that it is the employing authority of the health service provider that determines the terms and conditions of employment.
Clause 57	Clause 54	Drafting style change in approach due to a concern that referring to a “corresponding national law” implies that the <i>Health Practitioner Regulation National Law (Western Australia)</i> is not a national law. Accordingly, references to corresponding national law have been removed and a definition of the term Health Practitioner Regulation National Law has been inserted into the Act which includes other participating jurisdictions.

Health Services Amendment Bill 2021

Clause 58	N/A	New clause inserted to amend section 146 so that it also uses the new defined term Health Practitioner Regulation National Law for consistency with the other sections in Part 10.
Clause 59	Clause 55	Drafting style change in approach due to a concern that referring to a "corresponding national law" implies that the <i>Health Practitioner Regulation National Law (Western Australia)</i> is not a national law. Accordingly, references to corresponding national law have been removed and a definition of the term Health Practitioner Regulation National Law has been inserted into the Act which includes other participating jurisdictions.
Clause 60	Clause 56	Drafting style change in approach due to a concern that referring to a "corresponding national law" implies that the <i>Health Practitioner Regulation National Law (Western Australia)</i> is not a national law. Accordingly, references to corresponding national law have been removed and a definition of the term Health Practitioner Regulation National Law has been inserted into the Act which includes other participating jurisdictions.
		In addition, the section 149 has been amended to align with Parliamentary Counsel's Office (PCO) current drafting practice to avoid using "sandwich provisions". Sandwich provision is where the clause states if x and/or y then z will apply. Rather than stating z will apply if x and/or y occur.
Clause 61	Clause 57	Drafting style change in approach due to a concern that referring to a "corresponding national law" implies that the <i>Health Practitioner Regulation National Law (Western Australia)</i> is not a national law. Accordingly, references to corresponding national law have been removed and a definition of the term Health Practitioner Regulation National Law has been inserted into the Act which includes other participating jurisdictions.
		In addition, the section 150 has been amended to align with PCO's current drafting practice to avoid using "sandwich provisions". Sandwich provision is where the clause states if x and/or y then z will apply. Rather than stating z will apply if x and/or y occur.
Clause 67	N/A	New clause to amend section 182 to correct drafting error in Act. Reference to Division should be reference to Part.
Clause 68	Clause 63	1. The word one has been replaced with the numeral 1 in (1B). 2. Subclause (4) minor drafting change to use "and" instead of "or".
Clause 69	Clause 64	Comma inserted after lawful excuse.
Clause 71	Clause 66	1. Minor drafting amendment to definition of associated interest. 2. 194(2)(b) and (7) words inserted to make it clear that references to an associated interest means an associated interest in relation to a health asset that is land and that the entities

		<p>from whom the interest would be transferred would be Government entities not a private entity that held the interest in the land.</p> <p>3. 194(3) amended to replace word one with numeral 1.</p> <p>4. 194(4) words “to be” deleted.</p>
Clause 78	Clause 73	Minor drafting amendment to change reference to section 73 to 78 to align with numbering changes to clauses.
Clause 80	Clause 75	Minor drafting change to replace words “for any of these” with “for any of the following”. Heading of clause also to be amended.
Clause 83	Clause 78	<p>Sections 260 and 262 amended to ensure that the policy intent is achieved. The changes:</p> <ol style="list-style-type: none"> 1. make it clear that the section only applies if the relevant act was not valid and effective but only because the health interest was not vested in, or held by the government entity. Ensuring the provision will not validate actions that are/were invalid for other reasons. For example it ensures that invalid acts such as where a delegate acted outside of their delegated powers are not validated. 2. ensure that the act or omission is taken to have been done by the correct entity that held the land at the time. 3. ensure that any acts or omissions done in reliance upon the initial act or omission are also taken to be valid and effective. 4. ensure that 262 does not limit the operation of 260.
Clause 84	Clause 79	<ol style="list-style-type: none"> 1. words “(as inserted by section 83 of this Act)” added as a drafting style change. 2. In section 266(2) one is replaced with the numeral 1. 3. In section 266(3) the words “to be” are deleted. 4. In section 268(3) and (4) the words “to be” are deleted.