NORTHERN TERRITORY OF AUSTRALIA

HEALTH SERVICES ACT 2014

As in force at 1 July 2014

Table of provisions

Part 1 Preliminary matters

1 Short title 1
2 Commencement 1
3 Principles and objectives of a unified Australian health system 1
4 Object of Act 2
5 Act binds Crown 3
6 Application of Criminal Code 3

Part 2 Interpretation

7 Definitions 3
8 Meaning of *health service* 6
9 Affiliated health organisations 7

Part 3 Overview of Public Health System

10 Purpose of Part 7
11 Management of the Public Health System 7
12 Health Services 8
13 Health Service performance 8
14 System Manager 9

Part 4 Management of Public Health System

Division 1 System Manager

15 Functions of System Manager 9
16 Delegation by System Manager 10

Division 2 Health Services

17 Establishment of Health Services 10
18 Functions of a Service 11
19 General powers of Services 12
20 Specific powers and limitations on powers of Services 13

Division 3 Health Service Boards

21 Establishment of Health Service Boards 14
22 Functions of Board 14

23 Strategic functions of Board 15
24 Community leadership functions of Board 15
25 Other functions of Board 16
26 Powers of Board 16
27 Minister may direct Board 17
28 Delegation by Board 17
29 Chairperson and deputy chairperson 18

Division 4 Chief Operating Officer

30 Appointment of Chief Operating Officer 18
31 Acting COO 18
32 Functions of COO 18
33 Powers of COO 20

Division 5 CEO

34 CEO 20
35 CEO is System Manager 21
36 CEO is Accountable Officer for Services 21

Part 5 Service Delivery Agreement

37 Service Delivery Agreement 21
38 Term of SDA 21
39 Negotiations for SDA 21
40 Content of SDA 22
41 SDA not to be inconsistent with Act 22
42 Obligation to negotiate in good faith 22
43 Minister may decide on terms of SDA 23
44 Variation of SDA 23
45 SDA to be publicly available 23

Part 6 Performance of Service

Division 1 Reporting and provision of information

46 Service to report to System Manager 24
47 Annual Report by Service to Minister 24
48 System Manager to report quarterly to Minister 24
49 Other reports by System Manager 25

Division 2 Health Service Directives

50 Health Service Directives 25
51 Consultation on Health Service Directives 27
52 Health Service Directives binding 27

Division 3 Health Service Inquiry

53 Inquiry by System Manager 27
54 Health Service Inquiry Officer 28
55 Powers of Health Service Inquiry Officer 28
56 Report by Health Service Inquiry Officer 29

Division 4 Health Service Audit

57 Health Service Audit 30
58 Health Service Auditor 30
59 Functions and powers of Health Service Auditor 31
60 Report by Health Service Auditor 31

Division 5 Performance improvement

61 Power of System Manager 32
62 Performance improvement plan 32
63 Performance improvement adviser 33
64 Performance improvement personnel 34
65 Dissolution of Board 35
66 Appointment of Service administrator 35

Part 7 Offences

67 Obstruction of authorised officer 36
68 Misleading information 36
69 Falsely representing to be authorised officer 37
70 Confidentiality 37

Part 8 Administrative matters relating to Boards

Division 1 Board members

71 Eligibility for appointment 38
72 Employees not eligible 39
73 Term of appointment 39
74 Vacation of office 39
75 Termination of appointment 40

Division 2 Duties of Board members

76 Duties of Board members 40

Division 3 Business of Board

77 Holding meetings 41
78 Quorum 42
79 Presiding member at meetings 42

80 Procedures at meetings 42
81 Minutes 42
82 Resolution without meeting 43
83 Disclosure of interest 43
84 Effect of personal interest 43
85 Committees of Board 44
86 Other Board procedures 44
87 Variation of matters in this Division 44

Part 9 Other matters

88 Application of *Information Act* 45
89 Protection from liability 45
90 Donations 45
91 Regulations 45

Part 10 Repeal and Transitional provisions

Division 1 Definitions

92 Definitions 46

Division 2 Repeal

93 Repeal 46

Division 3 Transitional matters

94 Money held in trust 46
95 Transitional regulations 46

Part 11 Consequential amendments

Division 1 Medical Services Act

96 Act amended 47
97 Section 8 amended 47

Division 2 National Health Funding Pool and Administration (National Uniform Legislation) Act

98 Act amended 48
99 Section 3 amended 48

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2014

HEALTH SERVICES ACT 2014

An Act to provide a New Service Framework for Health Services in the Northern Territory, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Health Services Act 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Principles and objectives of a unified Australian health system

This Act recognises and gives effect to the principles and objectives of a unified Australian health system, namely:

(a) the following Medicare principles:

(i) eligible persons are to be given the choice to receive, free of charge as public patients, health and emergency services of a kind that are currently, or were historically, provided by hospitals;

(ii) access to these services by public patients free of charge is to be on the basis of clinical need and within a clinically appropriate period;

(iii) arrangements are to be in place to ensure equitable access to the services for all eligible persons regardless of their geographic location; and

(b) the Australian health system principles – Australia's health system should:

(i) be shaped around the health needs of individual patients, their families and communities; and

(ii) focus on the prevention of disease and injury and the maintenance of health and not simply on the treatment of illness; and

(iii) support an integrated approach to the promotion of healthy lifestyles, prevention of illness and injury, and diagnosis and treatment of illness across the continuum of care; and

(iv) provide all Australians with timely access to quality health services based on their needs, not their ability to pay, regardless of where they live in the country; and

(c) the following long-term objectives for Australia's health system:

(i) prevention – Australians are born and remain healthy;

(ii) primary and community health – Australians receive appropriate high quality and affordable primary and community health services;

(iii) hospital and related care – Australians receive appropriate high quality and affordable hospital and hospital-related care;

(iv) aged care – Australians receive appropriate high quality and affordable health and aged care services;

(v) patient experience – Australians have positive health and aged care experiences that take account of individual circumstances and care needs;

(vi) social inclusion and Indigenous health – Australia's health system promotes social inclusion and reduces disadvantage, especially for Indigenous Australians;

(vii) sustainability – Australians have a sustainable health system.

4 Object of Act

(1) The object of this Act is to establish a Public Health System that provides high quality health services to persons in the Territory, having regard to the principles and objectives of Australia's health system.

(2) The object is to be achieved mainly by:

(a) establishing Health Services as the entities responsible for the provision of health services in particular operational areas in order to improve transparency and accountability; and

(b) providing for Territory-wide health system management, including health system planning, coordination, policy development and standard setting; and

(c) balancing the benefits of:

(i) the operational area approach focussing on local service provision and local decision making; and

(ii) the Territory-wide approach focussing on strategic system-wide management; and

(d) ensuring health services continue to be provided as part of an integrated health system across the Northern Territory, consistent with the principles and objectives of Australia's health system.

5 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Interpretation

7 Definitions

In this Act:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

affiliated health organisation, see section 9(2).

authorised officer means any of the following:

(a) a Health Service Inquiry Officer;

(b) a Health Service Auditor;

(c) a performance improvement adviser;

(d) a person appointed as one of a group of performance improvement personnel.

Board means a Health Service Board.

capital works means capital works as defined in clause I 1.2.3 of the Treasurers Directions issued under the *Financial Management Act*.

CEO means the Chief Executive Officer of the Department.

chairperson, of a Board, means a person appointed under section 29(1) to be the chairperson of the Board, and includes a person acting for the time being as the chairperson of the Board.

COO, of a Service, means the person appointed to be the Chief Operating Officer for the Service under section 30.

Department means the Agency principally responsible for health policy in the Territory.

deputy chairperson, of a Board, means a person appointed under section 29(2).

Executive Contract of Employment, see section 3(1) of PSEMA.

exercise, of a power, includes the purported exercise of the power.

Health Service means an entity established under section 17(1).

health service, see section 8.

Health Service Audit, see section 57.

Health Service Auditor means a person appointed under section 58(1).

Health Service Board means a Board established under section 21.

Health Service Directive, see section 50(1).

Health Service Inquiry Officer means a person appointed under section 54(1).

health support service means a service that is provided in aid or support of a health service, for example, a professional, technical or other educational service.

hospital services means services provided by or on behalf of a public hospital.

medical service means a service, related to ensuring the health of a person, that is provided by:

(a) a health practitioner within the meaning of the Health Practitioner Regulation National Law (NT); or

(b) a person of a class of persons prescribed by regulation.

Medicare Local, for the Territory, means the entity established as the Medicare Local for the Territory for the purposes of the National Health Reform Agreement agreed by COAG on 2 August 2011, as amended from time to time.

member means a member of a Board.

operational area, of a Service, means the operational area mentioned in section 17(1)(b).

performance, of a function, includes the purported performance of the function.

performance improvement adviser means a person appointed under section 63(2).

performance improvement personnel means persons appointed under section 64(2).

performance improvement plan, see section 62(1).

PSEMA means the *Public Sector Employment and Management Act*.

public health service, see section 8(2).

Public Health System, see section 11(1).

relevant Service, see:

(a) for Part 6, Division 3 – section 53; and

(b) for Part 6, Division 4 – see section 58(1); and

(c) for Part 6, Division 5 – see section 61(1).

SDA means a Service Delivery Agreement.

Service means a Health Service.

Service Delivery Agreement, see section 40.

System Manager, see section 11(2).

8 Meaning of *health service*

(1) A ***health service*** includes any of the following:

(a) a hospital service;

(b) a medical service;

(c) a paramedical service;

(d) a community health service;

(e) an environmental health service;

(f) a health support service;

(g) the supply or fitting of any prosthesis or therapeutic device;

(h) any other service (including any service of a class, or description, that is prescribed by regulation) relating to the maintenance or improvement of the health, or the restoration to health, of persons, or the prevention of disease in, or injury to, persons.

(2) A health service is a ***public health service*** if it is provided by any of the following:

(a) a Service;

(b) the Department;

(c) an affiliated health organisation.

(3) A regulation may prescribe that a service is not a health service for this Act.

9 Affiliated health organisations

(1) This section provides for certain non-profit, religious, charitable or other non-government organisations and institutions to be recognised as part of the Public Health System if they control hospitals or health institutions, or provide health services, that significantly contribute to the operation of that system.

(2) The System Manager may, by *Gazette* notice, declare as an ***affiliated health organisation*** an organisation that:

(a) controls a hospital or health institution; or

(b) provides health services.

(3) The declaration must specify the organisation's establishments or health services that are:

(a) recognised as being part of the Public Health System; and

(b) funded by the Territory to provide public health services.

(4) An organisation or institution is an affiliated health organisation only in relation to its recognised establishments or recognised services.

(5) The Medicare Local is also an affiliated health organisation for this Act.

Part 3 Overview of Public Health System

10 Purpose of Part

This Part gives an overview of this Act.

11 Management of the Public Health System

(1) The ***Public Health System*** comprises:

(a) the Health Services; and

(b) the Department; and

(c) affiliated health organisations in relation to their respective recognised establishments and recognised services.

(2) The overall development, management and performance of the Public Health System is the responsibility of the ***System Manager***.

(3) Without limiting subsection (2), the System Manager is responsible for the following:

(a) Territory-wide planning;

(b) managing capital works;

(c) monitoring and managing the performance of each Service and the Public Health System as a whole;

(d) issuing binding Health Service Directives to Services.

(4) The relationship between the System Manager and a Service is set out in the Service Delivery Agreement with the Service.

12 Health Services

(1) Health Services are statutory bodies and are the principal providers of public health services.

(2) Each Service is governed by a Health Service Board which is accountable to the System Manager for the Service's performance.

(3) Although governed independently of each other, and operating independently from the Department, each Service has a responsibility to cooperate with each other Service and the Department to ensure that public health services across the Territory are provided in an integrated way.

(4) Each Health Service Board has certain responsibilities, including controlling:

(a) the performance of the Service in providing health services; and

(b) the financial management of the Service.

13 Health Service performance

(1) A Health Service is accountable for its performance in accordance with the SDA for the Service, any Health Service Directive issued to the Service and any other requirements under this Act.

(2) A Service is required to report on its performance to the System Manager.

14 System Manager

(1) The System Manager is responsible for:

(a) setting the performance standards for the provision of health services by Services; and

(b) monitoring the performance of the Services against those standards; and

(c) collating and reporting data on the performance of the Public Health System (including the performance of Services) to the Minister, the Commonwealth and the public.

(2) The System Manager may take action under Part 6, Divisions 3 to 5, to examine or improve the performance of a Service.

Part 4 Management of Public Health System

Division 1 System Manager

15 Functions of System Manager

(1) The System Manager is responsible for the overall development, management and performance of the Public Health System.

(2) The following are the functions of the System Manager:

(a) to provide strategic leadership and direction for the provision of public health services in the Northern Territory;

(b) to fund the Public Health System and ensure that it functions efficiently and effectively;

(c) to negotiate and enter into agreements with the Commonwealth and other governments in relation to the Public Health System or public health services;

(d) to negotiate and enter into agreements with affiliated health organisations in relation to the organisations' establishments or the provision of health services;

(e) to negotiate and enter into SDAs with Services for the provision of health services;

(f) to develop and issue Health Service Directives to Services;

(g) to set performance standards for the coordination, provision or quality of health services by Services;

(h) to monitor the performance of Services and take remedial action when performance does not meet the required standard;

(i) to develop Public Health System-wide policy and plans, including capital plans, workforce plans and other strategic plans;

(j) to undertake Public Health System-wide health policy development;

(k) to plan, approve and manage capital works;

(l) to collect data and report on the performance of the Public Health System (including the performance of Services) to the Minister, the Commonwealth and the public;

(m) any other functions conferred on the System Manager under this or another Act.

16 Delegation by System Manager

(1) The System Manager may delegate any of the System Manager's powers or functions under this Act:

(a) to an appropriately qualified public sector employee; or

(b) in relation to a Service – to the COO of the Service.

(2) In this section:

appropriately qualified, in relation to a person, includes having the qualifications, experience or standing appropriate to the exercise of the power or performance of the function.

Note for definition ***appropriately qualified***

Standing refers to a person's classification level or how senior the person is in the Department or Service.

Division 2 Health Services

17 Establishment of Health Services

(1) A regulation may:

(a) establish a Health Service for an operational area; and

(b) prescribe any of the following, or any combination of them, as the ***operational area*** for a Service:

(i) a part of the Territory;

(ii) a public hospital;

(iii) a public health facility; and

(c) assign a name to the Service.

(2) Each Service:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

Note for subsection (2)(c)

Section 20(1)(c) requires the approval of the System Manager for a Service to deal with real property.

(3) All courts, judges and persons acting judicially must take judicial notice of the seal of a Service and presume that it was duly affixed.

(4) A Service represents the Territory and has all the privileges and immunities of the Territory.

18 Functions of a Service

(1) A Service is responsible for the provision of the health services set out in the SDA for the Service and any Health Service Directive issued to the Service.

(2) Without limiting subsection (1), a Service also has the following functions:

(a) to enter into an SDA with the System Manager for the provision of health services;

(b) to meet the performance standards and targets in the SDA for the Service;

(c) to comply with Health Service Directives issued to the Service;

(d) to report on the performance of the Service and to provide other data and reports as required by this Act or another Act, the SDA for the Service, a Health Service Directive issued to the Service or another agreement in place for the Service;

(e) to contribute to the development of, and to implement, Public Health System policy and plans as required by the System Manager;

(f) to undertake capital works as approved by the System Manager;

(g) to monitor and improve the quality of health services provided by the Service;

(h) to develop local clinical and other governance arrangements for the Service and other best practice guidelines or standards consistent with the requirements of the System Manager;

(i) to cooperate with the CEO, each other Service and other providers of health services (including private providers) in providing and planning for health services in the Territory;

(j) to arrange for the provision of health services to public patients in private hospitals;

(k) any other function incidental to a function mentioned in paragraphs (a) to (j);

(l) any other function prescribed by regulation.

Example for subsection (2)(d)

A Service may have an agreement with Menzies School of Health, Charles Darwin University or similar research or teaching organisations.

19 General powers of Services

(1) A Service has the powers necessary and convenient to perform its functions.

(2) A Service must, in exercising its powers, comply with this Act and other relevant Acts including, but not limited to, the following:

(a) the *Financial Management Act*;

(b) the *Public Sector Employment and Management Act*;

(c) the *Procurement Act*;

(d) the *Medical Services Act*.

Examples for subsection (2)

1 A Service must comply with the Treasurer's Directions issued under the Financial Management Act.

2 A Service must comply with the Procurement Directions issued under the Procurement Act.

Note for subsection (2)

Although a Service is required to comply with the Financial Management Act and the Procurement Act, the Accountable Officer in relation to the Service is the CEO – see section 36.

20 Specific powers and limitations on powers of Services

(1) Without limiting section 19, a Service may do any of the following:

(a) enter into contracts and agreements;

(b) acquire, hold, lease, dispose of or otherwise deal with personal property;

(c) with the approval of the System Manager – acquire, hold, lease, dispose of or otherwise deal with real property;

(d) appoint agents and attorneys;

(e) engage contractors and consultants;

(f) receive gifts and donations;

(g) charge for services.

(2) A Service does not have power to do any of the following:

(a) negotiate with, or enter into agreements with, a government of a jurisdiction other than the Territory, or an Agency of such another government, without the approval of the System Manager;

(b) undertake capital works without the approval of the System Manager.

(3) Subsection (2) does not affect any requirements under another Act that may be relevant to an activity mentioned in that subsection (for example, planning approval, or development consent).

(4) A Service must not use its funds (including any money or other assets it receives by grant, contribution or otherwise) for any purpose other than the performance of its functions providing health services.

(5) A Service must obtain the approval of the System Manager before providing health services beyond the scope of the SDA for the Service, or a Health Service Directive issued to the Service.

(6) A regulation may prohibit, restrict or impose conditions in relation to any of the following:

(a) the types of assets and liabilities that a Service may hold or deal with;

(b) the types of contracts and agreements that a Service may negotiate or enter into;

(c) the performance of functions or exercise of powers by a Service in relation to particular activities of the Service.

(7) The SDA for a Service, or a Health Service Directive, may also limit the way in which, or the extent to which, the Service may exercise its powers in relation to the matters mentioned in subsection (6).

Division 3 Health Service Boards

21 Establishment of Health Service Boards

(1) There is a Health Service Board established for each Service.

(2) A Board consists of at least 5 members and not more than 9 members, appointed by the Minister by *Gazette* notice.

(3) The Board must include at least one member with the skills or experience mentioned in:

(a) section 71(2)(a); and

(b) section 71(2)(b).

22 Functions of Board

(1) The principal function of a Board is to govern the Service for which the Board is established and ensure the Service is managed efficiently and effectively.

(2) Without limiting subsection (1), negotiating and entering into an SDA for its Service is a function of the Board for the Service.

(3) The following are also functions of the Board for a Service:

(a) to provide strategic direction for the Service consistent with:

(i) the health needs of the Service's community; and

(ii) the health priorities of the Territory Government; and

(iii) the priorities of the Department;

(b) to engage, and work collaboratively, with each of the following:

(i) the Service's community;

(ii) each other Service;

(iii) the CEO;

(iv) the Minister;

(v) the Medicare Local.

23 Strategic functions of Board

In providing strategic direction as mentioned in section 22(3)(a), the Board for a Service must:

(a) develop, and oversee the implementation of, a business plan with a health improvement focus, including the development of vision, values and goals for the Service; and

(b) regularly review and update the business plan; and

(c) encourage innovation to improve health outcomes; and

(d) undertake annual budget reviews and planning; and

(e) develop long-term budget priorities, including master planning and capital budget planning; and

(f) develop, and oversee the implementation of, strategies to improve the transition of patients between primary, secondary and tertiary health care providers.

24 Community leadership functions of Board

In engaging, and working collaboratively, with the Service's community and other entities as mentioned in section 22(3)(b), the Board for a Service is to provide community leadership to the Service by:

(a) promoting ethical behaviour in accordance with standards applicable to health consumer needs; and

(b) promoting appropriate culture and values of the Service; and

(c) leading community engagement with and by the Service, including as an interface between the Service and its stakeholders; and

(d) understanding the physical, cultural and health needs of the Service's community and seeking to ensure equity of access to health services provided by the Service; and

(e) leading systemic improvements in communication between the Service and its community.

25 Other functions of Board

The Board for a Service must also:

(a) monitor the performance of the Service and ensure it performs its functions effectively and appropriately; and

(b) ensure the Service complies with its obligations under this Act or any other law in force in the Territory; and

(c) ensure the Service provides effective and safe health services; and

(d) ensure the efficient and economic operation of the Service; and

(e) monitor the Service's performance against the SDA for the Service to ensure the Service complies with the requirements of the SDA; and

(f) ensure the Service complies with any Health Service Directive issued to the Service; and

(g) develop and implement policies, plans and initiatives for the operation of the Service, consistent with the SDA for the Service and any Health Service Directives issued to the Service; and

(h) undertake repairs and maintenance of the Service's assets; and

(i) endorse reports on behalf of the Service.

26 Powers of Board

(1) The Board for a Service has the powers necessary and convenient to ensure the performance of the Service's functions.

(2) Any function of the Service that is performed by the Board for the Service is taken to have been performed by the Service.

27 Minister may direct Board

(1) In the performance of its functions, the Board for a Service is accountable to the Minister and subject to the lawful directions of the Minister.

(2) The Minister may give a written direction to the Board for a Service in order to ensure provision of health services across the Territory:

(a) in an integrated way; and

(b) in accordance with Territory government policies and the requirements of national health agreements to which the Territory is, from time to time, a party.

(3) However, the Minister cannot give a direction to the Board in relation to:

(a) the employment or terms and conditions of employment of a particular person; or

(b) health services provided to a particular person by the Service.

(4) A direction under this section by the Minister to the Board for a Service may be inconsistent with the SDA for the Service or a Health Service Directive issued to the Service.

(5) The Board must comply with a direction under this section despite any such inconsistency.

28 Delegation by Board

(1) The Board for a Service may delegate any of its powers and functions to the COO of the Service.

(2) With the approval of the Board, the COO may sub-delegate the power or function to an appropriately qualified employee in the Service.

(3) In this section:

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power or performance of the function.

Note for definition ***appropriately qualified***

Standing refers to a person's classification level or how senior the person is in the Service.

29 Chairperson and deputy chairperson

(1) The Minister must appoint a member of the Board for a Service to be the chairperson of the Board.

(2) The Minister may appoint another member to be the deputy chairperson of the Board.

(3) If the Minister does not appoint a member to be the deputy chairperson, the members of the Board must appoint one of their number to be the deputy chairperson.

(4) The deputy chairperson is to act as chairperson:

(a) during a vacancy in the office of the chairperson; and

(b) during all periods when the chairperson is absent from duty or for another reason cannot perform the duties of the office.

Division 4 Chief Operating Officer

30 Appointment of Chief Operating Officer

(1) Each Health Service has a Chief Operating Officer (the *COO*).

(2) The COO of a Service is appointed by the CEO with the agreement of the Board for the Service.

(3) The COO of a Service is a public sector employee and is employed on the terms and conditions specified in his or her Executive Contract of Employment.

(4) The performance of the COO of a Service is to be reviewed annually by the CEO in consultation with the Board for the Service.

31 Acting COO

(1) The CEO may appoint a person to act as the COO of a Service during any period, or during all periods, when the COO of the Service is absent from duty or from the Territory, or during a vacancy in the office.

(2) A person appointed to act as the COO of a Service during a vacancy in the office must not continue to act in the office for more than 12 months after the occurrence of the vacancy.

32 Functions of COO

(1) The principal function of the COO of a Service is the administration of the day-to-day operations of the Service.

(2) The COO is also responsible for the following:

(a) implementing the SDA for the Service;

(b) developing financial and management plans for the Service and implementing those plans after they have been approved by the Board;

(c) monitoring the financial and administrative performance of the Service;

(d) participating in the governance of the Public Health System;

(e) directing the employees employed in the Service;

(f) assigning duties to be performed by each employee in the Service;

(g) implementing employee performance management and development systems for the Service;

(h) assisting employees in the Service to undertake relevant training, education and development programs;

(i) implementing record keeping and information management systems for the Service;

(j) implementing programs to ensure that employees in the Service have equal employment opportunities in accordance with the human resource management principle set out in section 5C of PSEMA;

(k) ensuring the application in the Service of appropriate occupational health and safety standards and programs.

(3) In the performance of his or her functions, the COO of a Service is:

(a) accountable to both the CEO and the Board for the Service; and

(b) subject to the lawful directions of both the CEO and the Board.

(4) However, the Board cannot give a direction to the COO in relation to any of the following:

(a) the employment, promotion, assignment, reassignment or terms and conditions of employment (including the remuneration) of a particular person;

(b) the designation to apply to an employee in the Service or to the performance of particular duties;

(c) requiring the COO to commence or refrain from commencing an action under Part 7 or 8 of PSEMA in relation to a particular employee in the Service;

(d) health services provided to a particular person by the Service.

(5) If there is conflict between a direction given by the Board, and a direction given by the CEO, as mentioned in subsection (3)(b), the directions of the CEO take precedence to the extent of the conflict, given the CEO's role also as System Manager.

33 Powers of COO

The COO of a Service has the powers:

(a) given by this Act; and

(b) delegated by the Board for the Service; and

(c) delegated by the CEO.

Division 5 CEO

34 CEO

The CEO has the following functions under this Act:

(a) providing Services with appropriate staff and corporate support services to allow the Services to perform their functions;

(b) contributing to the negotiation of Northern Territory-wide industrial agreements for the terms and conditions of employees (as required by the Office of the Commissioner for Public Employment);

(c) ensuring that health services that are not provided by Services under an SDA are provided:

(i) by the Department; or

(ii) by affiliated health organisations; or

(iii) where necessary – by a provider outside the Territory;

(d) ensuring the Department contributes to:

(i) the development of Public Health System-wide policy and plans, including capital plans, workforce plans and other strategic plans; and

(ii) Public Health System-wide health policy development; and

(iii) the planning and management of capital works;

(e) any other functions given to the CEO under this or another Act.

35 CEO is System Manager

The CEO is the System Manager for this Act.

36 CEO is Accountable Officer for Services

For the *Financial Management Act* and the *Procurement Act*, the CEO is the Accountable Officer for each Service.

Part 5 Service Delivery Agreement

37 Service Delivery Agreement

(1) The Board for a Service must enter into a Service Delivery Agreement (an ***SDA***) for the Service with the System Manager.

(2) The chairperson of the Board for a Service must sign the SDA on behalf of the Service.

(3) An SDA for a Service is binding on the System Manager and the Service.

(4) The Board for a Service must ensure the Service complies with the requirements of the SDA for the Service.

38 Term of SDA

The term of an SDA is to be no shorter than 12 months and no longer than 3 years.

39 Negotiations for SDA

(1) For the first SDA for a Service, the System Manager and the Service must begin negotiations immediately after the commencement of this section.

(2) For each subsequent SDA for a Service, the System Manager and the Service must begin negotiations at least 6 months before the expiry of the previous SDA.

(3) For negotiations for an SDA for a Service, the Board for the Service must consult with the COO of the Service.

40 Content of SDA

(1) A ***Service Delivery Agreement***, for a Service, means an agreement between the System Manager and the Service that sets out:

(a) the health services and other services to be provided by the Service; and

(b) the funding to be provided to the Service for the provision of the services and the way in which the funding is to be provided; and

(c) the performance standards, targets and measures for the provision of the services; and

(d) the performance data and other matters to be reported to the System Manager by the Service and the frequency of that reporting; and

(e) any other matter the System Manager, or the Service, considers relevant.

(2) An SDA may also include any of the following:

(a) the performance management system to be used in relation to the Service;

(b) safety and quality standards relevant to the Service;

(c) circumstances in which the Service may agree to purchase services from, or provide services to, another Service.

41 SDA not to be inconsistent with Act

An SDA must not purport to:

(a) extend the powers of the System Manager or the Service; or

(b) require the System Manager, or the Service, to act in a manner inconsistent with this Act.

42 Obligation to negotiate in good faith

(1) Each Service must negotiate its SDA with the System Manager in good faith.

(2) Without limiting subsection (1), a Service must provide the System Manager with information required for the negotiations within appropriate time frames.

43 Minister may decide on terms of SDA

(1) This section applies if agreement cannot be reached between the System Manager and a Service in relation to some or all of the terms of an SDA.

(2) The System Manager must advise the Minister:

(a) that agreement has not been reached and, in the System Manager's opinion, is unlikely to be reached; and

(b) of the matters about which agreement has not been reached.

(3) If the lack of agreement is in relation to an SDA that is to replace an existing SDA on its expiry, the advice must be given to the Minister at least 1 month before the expiry of the existing SDA.

(4) The Minister must determine the matters on which agreement has not been reached and advise the System Manager of them.

(5) The SDA entered into for the Service must reflect the matters determined by the Minister.

44 Variation of SDA

(1) An SDA for a Service may be varied by agreement in writing between the System Manager and the Service.

(2) An SDA for a Service must be varied if a Health Service Directive issued to the Service requires the Service to provide ongoing additional health services for which additional funding is appropriate.

(3) If agreement cannot be reached on the terms of the variation, the procedure set out in section 43 applies in relation to the terms on which agreement has not been reached.

45 SDA to be publicly available

The System Manager must, within 14 days of entering into, or varying, an SDA, make the SDA or variation publicly available.

Part 6 Performance of Service

Division 1 Reporting and provision of information

46 Service to report to System Manager

(1) The Board for a Service must report to the System Manager on the performance of the Service as follows:

(a) as required by the SDA for the Service;

(b) as required under a Health Service Directive issued to the Service.

(2) The reporting must be no less frequently than quarterly.

(3) The System Manager may also require a Service to provide any other information relevant to the operations or performance of the Service.

Note for subsection (3)

Section 88 allows personal information about a person, or a person's health, to be shared with the Department by a Service.

(4) The Service (and the COO of the Service) must comply with a requirement under subsection (3) as soon as reasonably practicable.

47 Annual Report by Service to Minister

(1) A Service must give the Minister an annual report on the performance of the Service.

(2) The Minister must table the report in the Legislative Assembly within 6 sitting days of receiving it.

48 System Manager to report quarterly to Minister

The System Manager must report quarterly to the Minister about the performance of each Service against the requirements of the Service's SDA.

49 Other reports by System Manager

The System Manager must report to the Minister as soon as reasonably practicable if any of the following occurs in relation to a Service:

(a) the conducting of:

(i) a Health Service Inquiry; or

(ii) a Health Service Audit;

(b) the development of a performance improvement plan;

(c) the appointment of:

(i) a performance improvement adviser; or

(ii) performance improvement personnel.

Division 2 Health Service Directives

50 Health Service Directives

(1) A ***Health Service Directive*** is a written directive issued by the System Manager to a Service or the COO of a Service, directing the Service or COO to do, or not do, certain things or take certain actions.

(2) The System Manager may develop and issue Health Service Directives to Services for any of the following:

(a) promoting coordination and integration in the provision of health services:

(i) between Services; and

(ii) between Services, the Department and other service providers;

(b) optimising the effective and efficient use of available resources in the provision of health services;

(c) setting standards and policies for safe and high quality provision of health services;

(d) ensuring consistent approaches to the provision of health services;

(e) supporting the application of public sector policies, Acts of the States and the Commonwealth, and agreements entered into by the Territory;

(f) any other purpose the System Manager considers necessary to ensure the effective operation, management and performance of a public health service or the Public Health System.

(3) Without limiting subsection (1), a Health Service Directive issued to a Service may do any of the following:

(a) set standards and policies for the rights of users of public health services;

(b) set standards and policies for improving the quality and integration of public health services;

(c) require the Service to use or purchase certain goods and services from the Department, another Agency, another Service or another provider;

(d) require the Service to provide certain information to the System Manager (for example, about coronial inquiries, Sentinel events or matters referred to the Ombudsman or the Health and Community Services Complaints Commission) or another entity (for example, the Commonwealth);

(e) set standards about how information held by Services should be dealt with;

(f) provide direction about how to respond to public emergencies;

(g) provide direction about the setting of fees and charges.

(4) The System Manager may, by a Health Service Directive issued to a Service, determine or vary the role, functions and activities of any hospital or health service facility controlled by the Service.

(5) In this section:

provision, of health services, includes:

(a) matters that support the provision of health services, including:

(i) the establishment and operation of clinical networks; and

(ii) the training of health professionals in public health service facilities; and

(iii) the engagement of independent contractor visiting medical officers or other contracted health professionals; and

(iv) private practice arrangements for health professionals; and

(v) the management of information, including the way in which information is captured, collated, shared and reported; and

(vi) research, innovation and the application of intellectual property; and

(b) undertaking capital works for proposed public health service facilities; and

(c) the provision of health services to public patients in private health facilities.

51 Consultation on Health Service Directives

In developing a Health Service Directive to be issued to a Service, the System Manager must, to the extent practicable, consult with the Service.

52 Health Service Directives binding

(1) A Health Service Directive is binding on a Service to which it is issued.

(2) The Board for a Service is responsible for ensuring the Service complies with a Health Service Directive issued to the Service.

Division 3 Health Service Inquiry

53 Inquiry by System Manager

The System Manager may inquire into any of the following:

(a) the administration or management of a Service (the ***relevant Service***);

(b) the performance of the relevant Service in providing health services.

54 Health Service Inquiry Officer

(1) The System Manager may, in writing, appoint a Health Service Inquiry Officer to exercise the System Manager's power of inquiry under section 53, on any conditions the System Manager considers appropriate.

(2) The instrument of appointment must specify:

(a) the term of the appointment; and

(b) the nature of the inquiry to be conducted.

(3) The appointment of the Health Service Inquiry Officer ends if:

(a) the person resigns in writing to the System Manager; or

(b) the term of office expires; or

(c) the appointment ends under another condition of appointment.

55 Powers of Health Service Inquiry Officer

(1) For the purpose of conducting an inquiry, a Health Service Inquiry Officer may enter any premises of facilities controlled by the relevant Service at any time the facility is open for business or otherwise available for entry.

(2) However, a Health Service Inquiry Officer must not enter private residential premises except with the consent of the owner or occupier of the premises.

(3) In conducting a Health Service Inquiry, a Health Service Inquiry Officer may do any of the following:

(a) inspect any premises mentioned in subsection (1);

(b) at those premises, inspect any thing that is controlled or operated by the relevant Service or the Department, or an employee in the Service or Department;

(c) require an employee or the COO of the relevant Service, or an employee in the Department, to answer questions, produce a document or thing under the person's control or give any other assistance the Health Service Inquiry Officer requires to carry out the Health Service Inquiry (including providing confidential information);

(d) examine, copy or take extracts from any account, record, document or other thing relating to a health service provided by the relevant Service (and seize or take possession of any such thing for further examination);

(e) at a facility controlled by the relevant Service, take photographs, films or audio or visual recordings necessary for the Health Service Inquiry;

(f) require any person (not limited to persons employed in the Public Health System) to produce an account, record, document or thing in the person's possession or control that relates to, or the Health Service Inquiry Officer reasonably believes relates to, the administration or management of the relevant Service;

(g) exercise any other power prescribed by regulation.

(4) A Service, the COO of the Service, and an employee in the Service or the Department, must comply with a requirement by a Health Service Inquiry Officer under subsection (3)(c) or (f).

56 Report by Health Service Inquiry Officer

(1) The Health Service Inquiry Officer appointed to conduct a Health Service Inquiry must prepare and provide a report to the System Manager in relation to the Health Service Inquiry.

(2) The report may make recommendations in relation to any of the following:

(a) the administration or management of the relevant Service;

(b) the performance of the Service in providing health services.

(3) After considering the report, the System Manager may:

(a) take the action the System Manager considers appropriate (including issuing a Health Service Directive); and

(b) make the report available to the Board and the COO for the relevant Service to improve the provision of health services by the Service.

Division 4 Health Service Audit

57 Health Service Audit

(1) A ***Health Service Audit*** means an audit of a Service:

(a) to examine the accuracy of performance data and other data reported by the Service; or

(b) to investigate the circumstances leading to an inability of the Service to meet any performance standards, targets and measures applying to the Service, for example, a Service's inability to provide health services at an efficient price; or

(c) to investigate any other matter to promote the effective and efficient use of available resources in the provision of health services by the Service.

(2) In this section:

efficient price means the cost of providing a particular health service as stated by an entity established under an Act of the Commonwealth to provide advice on the funding of health services.

58 Health Service Auditor

(1) The System Manager may, in writing, appoint a Health Service Auditor to conduct a Health Service Audit into:

(a) the accuracy of performance data provided by a Service (the ***relevant Service***); or

(b) why the relevant Service is not meeting performance standards, targets or measures set out in the SDA for the Service.

(2) The instrument of appointment must specify:

(a) the term of the appointment; and

(b) the nature of the audit to be conducted.

(3) The appointment of the Health Service Auditor ends if:

(a) the person resigns in writing to the System Manager; or

(b) the term of office expires; or

(c) the appointment ends under another condition of appointment.

59 Functions and powers of Health Service Auditor

(1) The function of a Health Service Auditor is to conduct a Health Service Audit.

(2) In conducting a Health Service Audit, a Health Service Auditor may enter any premises of facilities controlled by the relevant Service at any time the facility is open for business or otherwise available for entry.

(3) A Health Service Auditor may, in the exercise of his or her powers, require an employee of the Department or in the relevant Service to give to the auditor a document, including a document containing confidential information that:

(a) is relevant to the auditor's functions; and

(b) is in the possession or control of the employee.

(4) A Service, the COO of the Service, and an employee in the Service or the Department, must comply with a requirement by a Health Service Auditor under subsection (3).

60 Report by Health Service Auditor

(1) The Health Service Auditor appointed to conduct a Health Service Audit must prepare and provide a report to the System Manager in relation to the Health Service Audit.

(2) The report may make recommendations about any of the following:

(a) ways in which the accuracy of performance data and other data provided by the relevant Service may be improved;

(b) ways in which the performance of the relevant Service may be improved;

(c) whether specified health services should:

(i) continue to be provided by the relevant Service; or

(ii) be transferred to another Service or other entity; or

(iii) be discontinued.

(3) After considering the report, the System Manager may:

(a) issue a Health Service Directive to the relevant Service; and

(b) provide the report to the Board and the COO for the relevant Service.

Note for subsection (3)

The relevant Service must comply with a Health Service Directive – see section 52.

(4) If the report is provided to the relevant Service under subsection (3)(b), the COO of the Service must, after considering the report, take the action the COO considers appropriate in relation to the recommendations in the report.

Division 5 Performance improvement

61 Power of System Manager

(1) This section applies if the System Manager is of the opinion that:

(a) a Service (the ***relevant Service***) is failing to meet the requirements of the SDA for the Service; or

(b) the Service, or the Board for the Service, has not been performing its functions or exercising its powers in a satisfactory manner.

(2) The System Manager may require the relevant Service to develop a performance improvement plan to be approved by the System Manager.

62 Performance improvement plan

(1) A ***performance improvement plan*** is a plan that is developed by the relevant Service and submitted to the System Manager, by the date stipulated by the System Manager, for the System Manager's approval.

(2) A draft performance improvement plan must specify:

(a) the requirements of the SDA for the relevant Service, or the functions of the relevant Service or the Board for the relevant Service that are not being met or performed satisfactorily; and

(b) the steps the Board intends to implement in order to ensure the requirements of the SDA or the functions of the Service or the Board will be met or performed satisfactorily; and

(c) the date by which the steps will be implemented; and

(d) the performance measures that will allow the System Manager to determine if the unsatisfactory performance has been remedied; and

(e) any other matters the System Manager requires the plan to specify.

(3) The System Manager may require amendments to a draft performance improvement plan and, if so:

(a) the relevant Service must amend the draft plan as required by the System Manager; and

(b) the relevant Service must submit the amended draft plan for the System Manager's approval by the date stipulated by the System Manager.

(4) The Board for the relevant Service, and the COO of the Service, must comply with a performance improvement plan that has been approved by the System Manager.

63 Performance improvement adviser

(1) This section applies if, in the opinion of the System Manager, a relevant Service has failed to comply with a performance improvement plan for the Service.

(2) The Minister may, on the recommendation of the System Manager, appoint a performance improvement adviser to assist the Board for the relevant Service or the COO of the Service in complying with the performance improvement plan.

(3) A performance improvement adviser holds office on the terms and conditions set out in the instrument of appointment.

(4) The appointment of the performance improvement adviser ends if:

(a) the person resigns in writing to the System Manager; or

(b) the term of office expires; or

(c) the appointment ends under another condition of appointment.

(5) The role of a performance improvement adviser is to:

(a) observe and provide advice to the Board for the relevant Service or the COO of the Service on how to improve their performance to ensure that the requirements of the SDA for the Service, or the functions of the Service or the Board are being met or performed satisfactorily; and

(b) assist the Service in complying with the performance improvement plan.

(6) A performance improvement adviser may advise the System Manager, or the Board for the relevant Service, or the COO of the Service, on any matter relating to the Service during the adviser's appointment.

(7) The Board and the COO must give the adviser any assistance required by the adviser to perform the adviser's functions.

64 Performance improvement personnel

(1) This section applies if, in the opinion of the System Manager, a relevant Service has failed to comply with a performance improvement plan for the Service.

(2) The Minister may, on the recommendation of the System Manager, appoint the number of persons that the Minister considers appropriate as performance improvement personnel to perform specified functions or exercise specified powers of the relevant Service, or the Board of the relevant Service, in order to improve the performance of the Service or the Board.

(3) Performance improvement personnel may be appointed for a relevant Service at the same time as a performance improvement plan is in place for the Service.

(4) The instrument appointing performance improvement personnel must specify:

(a) the requirements of the SDA for the relevant Service or the functions of the Service, or the Board for the relevant Service, that are not being met or performed satisfactorily; and

(b) the functions or powers of the Board that the personnel will assume in order to remedy performance; and

(c) the period for which the personnel are appointed.

(5) Performance improvement personnel hold office on the terms and conditions set out in their respective instruments of appointment.

(6) Performance improvement personnel may advise the System Manager, or the Board for the relevant Service, or the COO of the Service, on any matter relating to the Service during the personnel's appointment.

(7) The Board and the COO must give the performance improvement personnel any assistance required by the personnel to perform the personnel's functions.

65 Dissolution of Board

(1) The Minister may dissolve the Board for a Service:

(a) on the recommendation of the System Manager; or

(b) at any time on the Minister's own initiative if the Minister considers it appropriate to do so.

(2) If the Minister is considering dissolving the Board for a Service, the Minister may (but need not) give the Board notice in writing:

(a) of the nature of the concerns the Minister has about the actions or decisions of the Board or the Service; and

(b) setting out the actions or decisions the Minister considers would be appropriate for the Board to take in order to resolve those concerns.

(3) If notice is given to a Board under subsection (2), the Board must have regard to the Minister's concerns.

66 Appointment of Service administrator

(1) If the Board for a Service is dissolved or is otherwise unable to function, the Minister must, in writing, appoint a qualified person (who may be the CEO) to administer the Service (the *Service administrator*).

(2) Until a Service administrator is appointed, the System Manager has the powers and functions of the Board.

(3) Once appointed, the Service administrator has the functions and powers of the Board for the term specified in the instrument of appointment.

(4) The Service administrator may resign at any time in writing.

(5) The Minister may, at any time, terminate the appointment of a person as Service administrator and appoint another person to be the Service administrator.

(6) The Service administrator of a Service ceases to hold office when a new Board is appointed, unless the Minister determines otherwise.

Part 7 Offences

67 Obstruction of authorised officer

(1) A person commits an offence if:

(a) the person obstructs another person; and

(b) the other person is an authorised officer; and

(c) the person knows the officer is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Strict liability applies to subsection (1)(b).

(3) In this section:

obstruct includes hinder and resist.

68 Misleading information

(1) A person commits an offence if:

(a) the person gives information to another person; and

(b) the other person is an authorised officer; and

(c) the person knows the information is misleading; and

(d) the person knows the officer is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) A person commits an offence if:

(a) the person gives a document to another person; and

(b) the other person is an authorised officer; and

(c) the person knows the document contains misleading information; and

(d) the person knows the officer is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the authorised officer's attention; and

(b) to the extent to which the person can reasonably do so – gives the officer the information necessary to remedy the misleading aspect of the document.

(5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

69 Falsely representing to be authorised officer

A person commits an offence if:

(a) the person represents, by words or conduct, that the person or another person is an authorised officer; and

(b) the person knows the representation is false.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

70 Confidentiality

(1) A person commits an offence if:

(a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and

(b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public; or

(c) the person is authorised by law to disclose the information.

(3) Without limiting subsection (2)(c), a person is authorised to disclose information in any of the following circumstances:

(a) the information is provided to the Commonwealth by the System Manager;

(b) the information is provided to the System Manager under an SDA or a Health Service Directive;

(c) the information is provided as part of an investigation into a Service, a Health Service Inquiry or a Health Service Audit.

Part 8 Administrative matters relating to Boards

Division 1 Board members

71 Eligibility for appointment

(1) To be eligible for appointment as a member of a Board for a Health Service, a person must have skills or experience appropriate to the Board's role of governing and managing the Service.

(2) The required skills and experience of the members of the Board should include the following:

(a) management of a large and complex organisation (including commercial and financial management skills);

(b) clinical skills;

(c) skills in public health;

(d) expertise or experience in health management;

(e) an understanding of the legal issues that might affect the Health Service;

(f) expertise, knowledge or experience in Aboriginal health issues;

(g) other skills and experience considered necessary or desirable by the Minister.

72 Employees not eligible

(1) An employee of the Department is not eligible for appointment as a Board member.

(2) A person employed by, or contracted to, a Service is not eligible for appointment as a member of the Board for that Service.

(3) For this section:

(a) the CEO is considered to be an employee of the Department; and

(b) the COO of a Service is considered to be an employee in the Service.

73 Term of appointment

(1) A member holds office for the period, not exceeding 4 years, specified in his or her instrument of appointment.

(2) A member is eligible for reappointment but, subject to subsection (3), must not serve more than 3 consecutive terms.

(3) However, if the Minister is satisfied that exceptional circumstances warrant the appointment of a person who would otherwise be ineligible for appointment because of subsection (2), the Minister may appoint the person.

74 Vacation of office

A Board member ceases to hold office if:

(a) the member resigns by giving written notice of resignation to the Minister; or

(b) the member's term of office comes to an end and the member is not reappointed; or

(c) the member is convicted of an indictable offence or sentenced to imprisonment for an offence; or

(d) the member's appointment is terminated under section 75; or

(e) the Board is dissolved under section 65.

75 Termination of appointment

(1) The Minister may terminate the appointment of a person as a Board member for any of the following reasons:

(a) inability, inefficiency, incompetence, misconduct, misbehaviour or mental or physical incapacity;

(b) the person has failed to disclose a material personal interest;

(c) the person is absent, except on leave granted by the Board, from 3 meetings of the board within a 12 month period;

(d) the person is found guilty of an offence against section 70;

(e) the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a member;

(f) the person is disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001;

(g) the member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit.

(2) Despite subsection (1), the Minister may terminate the appointment of a person as a Board member at any time without giving reasons.

Division 2 Duties of Board members

76 Duties of Board members

(1) A Board member must:

(a) in the performance of the functions and exercise of the powers as a member:

(i) act honestly; and

(ii) act in good faith and for a proper purpose; and

(iii) act in the best interests of the Service, the Public Health System and the public; and

(b) perform the functions and exercise the powers of a Board member with the care, diligence and skill of a reasonable person in the position of a Board member having regard to the functions of the Service in providing public health services with public money; and

(c) not improperly use his or her position as a Board member, or information obtained through the position, to gain an advantage for himself or herself or another person, or to cause detriment to the Service; and

(d) avoid conflicts of interest between his or her duties to the Service and his or her personal interests.

Note for subsection (1)(d)

Section 83 provides a duty to disclose a personal interest.

(2) If there is conflict between the matters mentioned in subsection (1)(a), the public interest prevails.

(3) These duties are in addition to, and do not derogate from, any duty under a law (including the common law) in force in the Territory relating to the duties or liabilities of a person because of the person's office or employment.

Division 3 Business of Board

77 Holding meetings

(1) The Board for a Service must meet as often as is necessary for the performance of its functions.

(2) The chairperson of the Board for a Service:

(a) may convene an extraordinary meeting at any time; and

(b) must convene a meeting when requested in writing to do so by at least the number of members forming a quorum for a meeting of the Board; and

(c) must convene a meeting if required by a previous resolution of the Board; and

(d) must convene a meeting if directed by the System Manager:

(i) under a Health Service Directive; or

(ii) as an action under section 56(3)(a).

(3) Meetings of the Board for a Service are to be held at the times and places the chairperson decides.

(4) The COO of the Service must make the necessary arrangements to enable the Board to meet.

(5) For subsection (3), the meetings must, from time to time, be held at each place where a hospital controlled by the Service is located.

78 Quorum

A quorum for a meeting of the Board is one-half the number of current members or, if one-half is not a whole number, the next highest whole number.

79 Presiding member at meetings

(1) The chairperson of a Board must preside at all meetings of the Board at which he or she is present.

(2) If the chairperson is absent from a meeting, the deputy chairperson of the Board must preside.

(3) If the chairperson and deputy chairperson are both absent from a meeting, the other Board members must elect a Board member who is present at the meeting to preside.

80 Procedures at meetings

(1) A question at a meeting of a Board is decided by a majority of votes of the members present and, if they are equally divided, the presiding member has a deciding vote.

(2) A Board may hold meetings, or allow members to take part in meetings, by telephone, video conference or another form of communication and a member participating in that manner is taken to be present at the meeting.

(3) The chairperson of a Board may invite any person to attend a Board meeting to provide information or advice in relation to any matter that is, or may be, of interest to the Board in performing its functions.

81 Minutes

A Board must keep proper minutes of its proceedings and decisions.

82 Resolution without meeting

A resolution of a Board is valid even though not passed at a meeting, if:

(a) notice of the proposed resolution was given to all members in accordance with procedures established by the Board; and

(b) a majority of members agree in writing to the proposed resolution.

83 Disclosure of interest

(1) This section applies if a member of a Board for a Service has a personal interest in a matter being considered, or about to be considered, by the Board.

(2) The member must disclose to the other members, as soon as practicable after the relevant facts come to the member's knowledge:

(a) the nature and extent of the interest; and

(b) how the interest relates to the matter mentioned in subsection (1).

(3) The disclosure must be recorded in the minutes of the meeting.

(4) For this section, a member has a personal interest in a matter if the member:

(a) has a direct or indirect financial interest in the matter otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which the member is not a director; or

(b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as being likely to, inhibit or prevent the member from exercising independent judgment about the matter.

84 Effect of personal interest

(1) If a member has a personal interest in a matter that is required to be disclosed under section 83:

(a) the member must not take part in any deliberation or decision of the Board about the matter; and

(b) the member must be disregarded for the purpose of constituting the quorum of the Board for the deliberation or decision; and

(c) the quorum for the deliberation or decision is a majority of members entitled to participate in the deliberation or decision.

(2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Board about the matter.

85 Committees of Board

(1) The Regulations may prescribe certain committees for this section.

(2) The Board for a Service:

(a) must establish the prescribed committees; and

(b) may establish other committees of the Board for effectively and efficiently performing its functions.

Example for subsection (2)(b)

A Board may establish an Audit and Risk Committee to advise the Board on such matters.

(3) The Board is to decide the terms of reference of a committee.

(4) The functions of a committee are to advise and make recommendations to the Board about matters, within the scope of the Board's functions, referred by the Board to the committee.

(5) The procedures of a committee are:

(a) as determined by the Board; or

(b) otherwise – as the committee determines for itself.

(6) A committee may, with the approval of the Board, obtain assistance, advice and information from any person.

86 Other Board procedures

For matters other than as provided by this Act or the Regulations, a Board must determine the procedure for its meetings, including, for example, calling and conducting meetings.

87 Variation of matters in this Division

A regulation may vary a matter set out in this Division and the variation applies accordingly.

Part 9 Other matters

88 Application of *Information Act*

(1) The Department and the Services are, for the *Information Act*, taken to be the one public sector organisation.

(2) The effect of subsection (1) is that information may be disclosed to the Department by a Service despite that the information:

(a) is health information about a person; or

(b) may allow a particular person to be identified.

(3) An application for access to information may be addressed to the CEO, even if the information is held by a Service.

(4) The CEO may require a Service to provide information in order for the CEO to deal with an application mentioned in subsection (3).

(5) The Service must comply with the requirement.

89 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

90 Donations

(1) A Service must deal with any money donated to the Service or a hospital controlled by the Service as trust money.

(2) If a donor identified the purpose for which a donation may be used, the donation must be dealt with by the Service in accordance with that purpose.

(3) If no purpose is identified by the donor, the Service must deal with the donation for a purpose consistent with the Service's priorities.

91 Regulations

The Administrator may make regulations under this Act.

Part 10 Repeal and Transitional provisions

Division 1 Definitions

92 Definitions

In this Part:

commencement day means the day on which section 93 commences.

repealed Act means the *Hospital Networks Governing Councils Act 2012* as in force immediately before the commencement day.

Division 2 Repeal

93 Repeal

(1) The *Hospital Networks Governing Councils Act 2012* (Act No. 12 of 2012) is repealed.

(2) The hospital networks established under the repealed Act, and their governing councils, are abolished.

Division 3 Transitional matters

94 Money held in trust

(1) This section applies if the governing council of a hospital network (the ***network***) established under the repealed Act was, immediately before the commencement of this section, holding trust money from donations or otherwise.

(2) On the commencement, the money is taken to be held on trust by the Service responsible for providing the health services previously provided by the network, and the COO of the Service must make the arrangements to transfer the trust money into a trust account in the Service's name.

95 Transitional regulations

(1) A regulation may provide for a matter of a transitional nature:

(a) because of the enactment of this Act; or

(b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.

(2) The regulation may have retrospective operation to a day not earlier than the commencement day.

(3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The regulation must declare it is made under this section.

(5) This section, and each regulation made under it, expires 1 year after the commencement day.

Part 11 Consequential amendments

Division 1 Medical Services Act

96 Act amended

This Division amends the *Medical Services Act*.

97 Section 8 amended

(1) Section 8(1)

omit

(1) The

insert

The

(2) Section 8(1), before "Act,"

insert

Act or any other

(3) Section 8(2) and (3)

omit

Division 2 National Health Funding Pool and Administration (National Uniform Legislation) Act

98 Act amended

This Division amends the *National Health Funding Pool and Administration (National Uniform Legislation) Act.*

99 Section 3 amended

Section 3(1), definition ***local hospital network***, note

omit

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Health Services Act 2014 (Act No. 18, 2014)

Assent date	2 June 2014
Commenced	1 July 2014 (*Gaz* S42, 24 June 2014)