

# NORTHERN TERRITORY OF AUSTRALIA

## HEALTH SERVICES ACT 2014

As in force at 1 July 2019

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 2019

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## 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 1983 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.

**capital works** means capital works as defined in clause 1.2.3 of the Treasurers Directions issued under the *Financial Management Act 1995*.

**CEO** means the Chief Executive Officer of the Department.

**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.

**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 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.

**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).

**Primary Health Network**, for the Territory, means the entity established as the Primary Health Network 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.

**PSEMA** means the *Public Sector Employment and Management Act 1993*.

**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 Primary Health Network 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 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.

## **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 1995*;
  - (b) the *Public Sector Employment and Management Act 1993*;
  - (c) the *Procurement Act 1995*;
  - (d) the *Medical Services Act 1982*.

*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 1995 and the Procurement Act 1995, 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 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.
- (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.

### **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;
  - (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) The COO of a Service, in performing the COO's functions, is:
  - (a) accountable to the CEO for:
    - (i) the performance of the Service in providing health services; and
    - (ii) the financial management of the Service; and
  - (b) subject to the lawful directions of the CEO.

### **33 Powers of COO**

The COO of a Service has the powers:

- (a) given by this Act; and
- (c) delegated by the CEO.

### **33A Delegation by COO**

- (1) The COO of a Service may delegate any of the COO's powers or functions under this Act to an appropriately qualified employee in the Service.
- (2) In this section:

***appropriately qualified*** means 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.*

## **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 1995* and the *Procurement Act 1995*, the CEO is the Accountable Officer for each Service.

## **Part 5 Service Delivery Agreement**

**37 Service Delivery Agreement**

- (1) A Service must enter into a Service Delivery Agreement (an **SDA**) for the Service with the System Manager.
- (2) The COO of 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 COO of 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.

**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.



**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.

**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 COO of 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 on Service to Minister**

- (1) The Department must give the Minister an annual report that includes information about the performance of each 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 COO of 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 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 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, 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 that are not being met or performed satisfactorily; and
  - (b) the steps the Service intends to implement in order to ensure the requirements of the SDA or the functions of the Service 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 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 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 COO of the relevant Service on how to improve their performance to ensure that the requirements of the SDA for the Service, or the functions of the Service 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 COO of the Service, on any matter relating to the Service during the adviser's appointment.



- (7) The COO of the Service 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 in order to improve the performance of the Service.
- (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 that are not being met or performed satisfactorily; and
  - (b) the functions or powers of the Service 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 COO of the Service, on any matter relating to the Service during the personnel's appointment.
- (7) The COO must give the performance improvement personnel any assistance required by the personnel to perform the personnel's functions.

## **Part 7 Offences**

### **67 Obstruction of authorised officer**

- (1) A person commits an offence if:
  - (a) the person intentionally obstructs another person; and



- (b) the other person is an authorised officer; and
- (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance

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 intentionally gives information to another person; and
- (b) the other person is an authorised officer; and
- (c) the information is misleading and the person has knowledge of that circumstance; and
- (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

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

(2) A person commits an offence if:

- (a) the person intentionally gives a document to another person; and
- (b) the other person is an authorised officer; and
- (c) the document contains misleading information and the person has knowledge of that circumstance; and
- (d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

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 intentionally represents, by words or conduct, that the person or another person is an authorised officer; and
- (b) the representation is false and the person has knowledge of that circumstance.

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

## **70 Offence to disclose certain information**

(1) A person commits an offence if:

- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
- (b) the information is confidential and the person is reckless in relation to that circumstance; and
- (c) the person intentionally engages in conduct; and
- (d) the conduct results in the disclosure of the information and the disclosure is not:
  - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
  - (ii) to a person who is otherwise entitled to the information; and



- 
- (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a charge for an offence against that subsection if the person has consented to the disclosure of the information.
- (4) Without limiting subsection (1)(d)(i), a disclosure is authorised for this Act 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.

*Note for section 70*

*In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

## **Part 9                      Other matters**

### **88                      Application of *Information Act***

- (1) The Department and the Services are, for the *Information Act 2002*, 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.



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## ENDNOTES

### 1 KEY

Key to abbreviations

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

### 2 LIST OF LEGISLATION

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

Assent date	2 June 2014
Commenced	1 July 2014 ( <i>Gaz</i> S42, 24 June 2014)

#### **Statute Law Revision Act 2017 (Act No. 4, 2017)**

Assent date	10 March 2017
Commenced	12 April 2017 ( <i>Gaz</i> G15, 12 April 2017, p 3)

#### **Health Services Amendment Act 2019 (Act No. 8, 2019)**

Assent date	28 March 2019
Commenced	1 July 2019 ( <i>Gaz</i> G19, 8 May 2019, p 4)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 7, 19, 36 and 88.

### 4 LIST OF AMENDMENTS

s 7	amd No. 8, 2019, s 4
s 9	amd No. 8, 2019, s 19
s 12	amd No. 8, 2019, s 5
pt 4	
div 3 hdg	rep No. 8, 2019, s 6
ss 21 – 29	rep No. 8, 2019, s 6
s 30	amd No. 8, 2019, s 7
s 32	amd No. 8, 2019, s 8
s 33	amd No. 8, 2019, s 9
s 33A	ins No. 8, 2019, s 10
s 37	amd No. 8, 2019, s 19



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s 39	rep No. 8, 2019, s 11
ss 42 – 43	rep No. 8, 2019, s 11
s 44	amd No. 8, 2019, s 12
s 46	amd No. 8, 2019, s 19
s 47	amd No. 8, 2019, s 13
s 52	amd No. 8, 2019, s 19
s 56	amd No. 8, 2019, s 19
ss 60 – 64	amd No. 8, 2019, s 19
ss 65 – 66	rep No. 8, 2019, s 14
s 67	amd No. 8, 2019, s 15
s 68	amd No. 8, 2019, s 16
s 69	amd No. 8, 2019, s 17
s 70	sub No. 8, 2019, s 18
pt 8 hdg	rep No. 8, 2019, s 18
pt 8	
div 1 hdg	rep No. 8, 2019, s 18
ss 71 – 75	rep No. 8, 2019, s 18
pt 8	
div 2 hdg	rep No. 8, 2019, s 18
s 76	rep No. 8, 2019, s 18
pt 8	
div 3 hdg	rep No. 8, 2019, s 18
ss 77 – 87	rep No. 8, 2019, s 18
s 95	exp No. 18, 2014, s 95(5)
pt 11 hdg	rep No. 4, 2017, s 9
pt 11	
div 1 hdg	rep No. 4, 2017, s 9
ss 96 – 97	rep No. 4, 2017, s 9
pt 11	
div 2 hdg	rep No. 4, 2017, s 9
ss 98 – 99	rep No. 4, 2017, s 9