

TASMANIA

TASMANIAN HEALTH SERVICE BILL 2018

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TASMANIAN HEALTH SERVICE BILL 2018

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
3 May 2018

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to continue the Tasmanian Health Service established under the *Tasmanian Health Organisations Act 2011*, to provide for the role of the Secretary and the Executive in relation to the Tasmanian Health Service, to repeal the *Tasmanian Health Organisations Act 2011*, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Tasmanian Health Service Act 2018*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Interpretation

In this Act, unless the contrary intention appears –

advisory panel means an advisory panel established under section 13(1);

employee, in relation to the THS, means a person who is, under section 23, made available to the THS for the purposes of the THS;

Executive means the Executive appointed under section 26(1);

function includes duty;

health institution means an institution (other than a hospital) by or at which health services or health support services are provided;

health service means any of the following:

- (a) a hospital service;
- (b) a medical service;
- (c) a paramedical service;
- (d) a community health service;
- (e) the supply or fitting of any prosthesis or therapeutic device;
- (f) any other service (including any service of a class, or description,

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that is prescribed) 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 –

but does not include a service prescribed to not be a health service;

health support service means a service that is provided in aid or support of a health service and includes, but is not limited to including, the following:

- (a) the professional, technical or other education or training of persons to be employed or engaged by the THS or the Crown to provide health services;
- (b) the procurement or supply, or both, of goods, substances or services to providers of health services;
- (c) the planning or construction of any building or facility for use in the provision of health services;
- (d) the provision of corporate services to providers of health services;
- (e) a service prescribed to be a health support service;

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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 (Tasmania); or
- (b) a member of a class of prescribed persons;

ministerial charter means the ministerial charter that is in effect from time to time under section 5;

public hospital means a hospital that is under the control of the THS;

Secretary means the Secretary of the Department;

service plan means a service plan approved under section 9;

THS means the Tasmanian Health Service continued under section 15 and includes any subsidiary of the THS.

PART 2 – MINISTERIAL CHARTER

4. Minister to issue ministerial charter

- (1) The Minister must issue a ministerial charter.
- (2) A ministerial charter is to specify the Minister's broad policy expectations for the Secretary and the THS.
- (3) A ministerial charter –
 - (a) may not extend or limit the functions and powers of the THS or the Secretary; and
 - (b) may not prevent the performance and exercise by the THS, or the Secretary, of the functions and powers of the THS, or the Secretary, respectively.
- (4) A ministerial charter is to be in writing and signed by the Minister.
- (5) The Minister, in writing, signed by the Minister, may, of his or her own motion or on the request of the Secretary, amend or revoke the ministerial charter.
- (6) The Minister must cause a copy of a ministerial charter, and any amendment or revocation of a ministerial charter, to be laid before each House of Parliament within 10 sitting-days of that House after the charter, amendment or revocation, as the case may be, has been signed by the Minister.

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5. When ministerial charter takes effect

- (1) The Minister is to provide to the Secretary and the Executive a copy of the ministerial charter and of an amendment or revocation of the ministerial charter.
- (2) A ministerial charter, and an amendment or revocation of a ministerial charter, take effect on a day specified in the charter, amendment or revocation, as the case may be.
- (3) A day specified in a charter, amendment or revocation as the day on which the charter, amendment or revocation takes effect is to be a day that is not earlier than the day on which a copy of the charter, the amendment or the revocation is provided to the Secretary and the Executive under subsection (1).

6. THS and Secretary to comply with ministerial charter

- (1) The THS must conduct the business and affairs of the THS in a manner that is consistent with the ministerial charter.
- (2) The Secretary must carry out his or her functions, and exercise his or her powers, under this Act in a manner that is consistent with the ministerial charter.
- (3) If the ministerial charter and the service plan in relation to a financial year, are inconsistent, the service plan prevails, for the financial year, to the extent of the inconsistency.

PART 3 – FUNCTIONS OF SECRETARY

Division 1 – General functions of Secretary

7. Role of Secretary

The Secretary is responsible to the Minister for the performance of the THS and the Executive.

8. Functions of Secretary under this Act

The Secretary has the following functions under this Act:

- (a) planning for the delivery by the THS, over the long term, of health services and health support services, including by planning for the provision of infrastructure;
- (b) assisting the Minister to determine the health services, and the health support services, that are to be provided by the THS in a financial year by submitting for the approval of the Minister the service plan for the financial year;
- (c) monitoring the delivery by the THS of health services, and health support services, in accordance with the service plan for a financial year;
- (d) ensuring the performance and exercise by the Executive of the functions and powers of the Executive and the THS;

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- (e) ensuring that there are appropriate mechanisms, including by way of advisory panels, for consultation and engagement between the THS and persons interested in the delivery by or on behalf of the THS of health services and health support services.

Division 2 – Service plans

9. Service plan

- (1) The Secretary, after consultation with the THS, is to provide to the Minister, before 1 June in a year, a proposed service plan that is to apply to the THS for the following financial year.
- (2) The Minister, after receiving a proposed service plan under subsection (1) or (3), may –
 - (a) approve the proposed service plan; or
 - (b) request the Secretary to alter the proposed service plan and provide to the Minister a further proposed service plan as so altered.
- (3) The Secretary, if requested to do so by the Minister under subsection (2)(b), may provide to the Minister a proposed service plan altered as requested.
- (4) The Minister is to approve under subsection (2), before 30 June in a year, a proposed service plan that is to apply to the THS for the following financial year.

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- (5) If the Minister approves a proposed service plan under subsection (2), the service plan, as amended if at all under section 11, applies to the THS for the following financial year.
- (6) The Minister must, as soon as practicable after approving a service plan, provide a copy of the plan to the Secretary and the Executive.
- (7) The Minister must cause to be laid before each House of Parliament a copy of a service plan approved by the Minister under this section, within 10 sitting-days of that House after approving the service plan.

10. Contents of service plan

- (1) A service plan must include –
 - (a) a schedule of services to be provided by or on behalf of the THS and the estimated funding to be provided in relation to the provision of those services; and
 - (b) performance standards, performance targets and performance measures for the THS; and
 - (c) standards of patient care and service delivery; and
 - (d) requirements for the THS to report on its performance, as required by or under another provision of this Act or otherwise; and

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- (e) a performance management process that is to be in continuous operation in respect of the THS.
- (2) A service plan may include provisions in respect of a matter, relating to the functions or powers of the THS, that the Secretary thinks fit, including a provision that limits the functions or powers of the THS or specifies how the functions or powers of the THS are to be performed or exercised in relation to the matter.
- (3) Despite subsection (2), a provision of a service plan –
 - (a) may not prevent the THS from –
 - (i) performing or exercising a function or power that the THS must, under this or any other Act, perform or exercise; or
 - (ii) otherwise complying with this or any other Act; and
 - (b) may not extend the functions and powers of the THS.

11. Amendment of service plan

- (1) The Secretary, after consultation with the THS, may provide to the Minister a proposed amendment of the service plan for a financial year.

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- (2) The Minister, after receiving a proposed amendment of a service plan under subsection (1) or (3), may –
- (a) approve the proposed amendment of the service plan; or
 - (b) request the Secretary to alter the proposed amendment of the service plan and provide to the Minister a further proposed amendment of the service plan as so altered.
- (3) The Secretary, if requested to do so by the Minister under subsection (2)(b), may provide to the Minister a proposed amendment of a service plan altered as requested.
- (4) If the Minister approves a proposed amendment of a service plan under subsection (2)(a), the service plan is amended in accordance with the amendment, on and from the date on which notice of the approval of the amendment is provided to the Executive under subsection (6).
- (5) A service plan for a financial year may be amended under subsection (1) at any time before or during the financial year.
- (6) The Minister, as soon as practicable after approving an amendment of a service plan, must provide a copy of the amendment to the Secretary and the Executive.
- (7) The Minister must cause to be laid before each House of Parliament a copy of an amendment of a service plan, approved by the Minister under

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this section, within 10 sitting-days of that House after approving the amendment.

Division 3 – Management of THS performance

12. Directions

- (1) The Secretary, by notice in writing, may give the THS directions in relation to the performance of the functions, or the exercise of the powers, of the THS.
- (2) A direction given under subsection (1) to the THS –
 - (a) may limit the performance or exercise of the functions or powers of the THS but may not prevent the THS from –
 - (i) performing or exercising a function or power that the THS must, under this or any other Act, perform or exercise; or
 - (ii) otherwise complying with this or any other Act; and
 - (b) may not extend the functions and powers of the THS.
- (3) If a direction given under subsection (1) and the service plan in relation to a financial year are inconsistent, the service plan prevails in relation to the financial year to the extent of the inconsistency.

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- (4) A direction given under subsection (1) may not refer to the health care or health services provided to a particular person unless –
- (a) the Secretary has received advice, in writing, from a medical practitioner, that it is necessary for the health of the person that an action be taken, or not taken, by the THS; and
 - (b) the direction is in accordance with that advice.

Division 4 – Advisory panels

13. Advisory panels

- (1) The Secretary may establish the advisory panels that he or she considers appropriate.
- (2) An advisory panel is to consist of –
 - (a) the members that the Secretary considers appropriate; and
 - (b) a chairperson appointed by the Secretary.
- (3) An advisory panel has the function of providing to the Secretary, or the Executive, the advice that the Secretary requests the advisory panel to provide to the Secretary, or the Executive, respectively.
- (4) Schedule 1 has effect in relation to members of advisory panels.

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14. Provision of information to advisory panels

- (1) A person may provide information to an advisory panel.
- (2) A person who provides information to an advisory panel –
 - (a) cannot, by virtue of providing the information, be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act –
 - (i) in relation to which the Department is the responsible Department; or
 - (ii) in relation to which another department, one of the primary functions of which relates to human health, is the responsible Department; and
 - (b) does not, to the extent that he or she has acted in good faith, incur any civil or criminal liability in respect of providing the information.
- (3) A person who is, or has been, a member of an advisory panel must not, either directly or indirectly, record, divulge or make use of information obtained by the panel that identifies, or that could reasonably be expected to lead to the identification of, the person to whom the information relates, except –

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- (a) to the extent necessary for the performance of the functions of that advisory panel; or
- (b) in other prescribed circumstances.

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PART 4 – TASMANIAN HEALTH SERVICE

Division 1 – Continuance of THS

15. Tasmanian Health Service continued

- (1) The Tasmanian Health Service established under the *Tasmanian Health Organisations Act 2011*, as in force immediately before that Act is repealed by this Act, is, by this subsection, continued as a body corporate of the same name.
- (2) The Tasmanian Health Service continued under subsection (1) (*the THS*) –
 - (a) has perpetual succession; and
 - (b) is to have a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) subject to this Act, may do, and be subject to, all other things that a body corporate may, by law, do and be subject to, and that are necessary for, or incidental to, the purposes for which the THS is constituted or the performance of its functions; and
 - (e) represents the Crown.
- (3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the THS affixed to a document and are to presume that it was duly affixed.

Division 2 – Purposes, powers and functions of THS

16. Purposes of THS

- (1) The primary purposes of the THS are –
 - (a) to promote and maintain the health of persons who are in Tasmania; and
 - (b) to ensure the provision of care and treatment to, and the easing of the suffering of, persons with health problems in Tasmania.
- (2) Nothing in subsection (1) is to be taken to prevent the THS from performing or exercising its functions or powers, outside Tasmania, if it is permitted to do so by an approval under section 20(2).
- (3) The THS is to perform and exercise its functions and powers other than for the purpose of financial gain.

17. Functions of THS

The THS has the following functions:

- (a) to ensure that the broad policy expectations of the Minister, as specified in the ministerial charter, are achieved;
- (b) to provide the health services, and health support services, that it is required, under the relevant service plan, to provide, and to provide those services to the

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standards, and within the budget, set out in that plan;

- (c) to conduct and manage public hospitals, health institutions, health services, and health support services, that are under the THS's control;
- (d) to ensure the effective provision of health services, and health support services, that are purchased by the THS;
- (e) to manage the THS's budget, as determined by the service plan, and its other funds, so as to ensure –
 - (i) the efficient and economic operation of the public hospitals, health institutions, health services, and health support services, that are under the THS's control; and
 - (ii) the efficient and economic delivery of health services, and health support services, that are purchased by the THS; and
 - (iii) the efficient and economic use of its resources;
- (f) to consult and collaborate, as appropriate, with other providers of health services and health support services, in the planning and delivery of health services and health support services;

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- (g) to provide training and education relevant to the provision of health services and health support services;
- (h) to undertake research and development relevant to the provision of health services and health support services;
- (i) to collect health data, and provide health data, for the purposes of research and reporting and for any other purposes that may be prescribed;
- (j) any other functions conferred on the THS by this Act or any other Act or that are prescribed.

18. Performance of certain functions not mandatory

- (1) Nothing in this Act is to be taken to require the THS to perform a function of the THS, or to perform a function of the THS in a manner, or to an extent, if the performance of the function, or the performance of the function in that manner, or to that extent –
 - (a) is not expressly stated to be a function that the THS must perform, or a function that must be performed in that manner or to that extent; or
 - (b) is not required under the relevant service plan to be performed by the THS; or

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- (c) would be in contravention of a direction given to the THS by the Secretary under this or any other Act; or
 - (d) would be in contravention of a requirement imposed by or under this or any other Act.
- (2) A function is not, by reason only that it is specified in a provision of this Act to be a function of the THS, to be taken to be a function that the THS must perform.

19. Powers of THS

Subject to section 20, the THS has the following powers:

- (a) to acquire, hold, dispose of and otherwise deal with property;
- (b) to enter into contracts, other than contracts of employment;
- (c) to receive gifts, donations or bequests;
- (d) to manage trust funds for any trust that the THS registers in accordance with section 20(1)(j);
- (e) to participate in partnerships, trusts and joint ventures and in arrangements for the sharing of profits;
- (f) to manage and maintain property;

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- (g) to charge fees for the delivery of services and to waive all or part of such fees;
- (h) to do all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers.

20. Limitations on powers of THS

- (1) Despite section 19, the THS may only exercise the following powers with the approval of the Minister and Treasurer under subsection (2) and in accordance with any terms or conditions of the approval:
 - (a) establish an overdraft;
 - (b) acquire, dispose of, lease, mortgage, charge, hypothecate, or otherwise transfer or encumber, any interest in real property;
 - (c) invest the funds of the THS;
 - (d) pledge, charge or encumber any of the THS's property;
 - (e) create a subsidiary;
 - (f) indemnify any person from liability or guarantee the payment of money or the performance of services by another person;
 - (g) make a charitable donation;

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- (h) apply for or obtain endorsement by the Australian Tax Office as –
 - (i) a deductible gift recipient under the category of public benevolent institution; or
 - (ii) a charitable fund, charitable institution, health promotion charity or income tax exempt fund;
 - (i) participate in partnerships, trusts and joint ventures and in arrangements for the sharing of profits;
 - (j) register a trust;
 - (k) register a company;
 - (l) provide services outside Tasmania's territorial boundaries.
- (2) The Minister and the Treasurer may, jointly, grant an approval for the purposes of subsection (1) in respect of a particular matter or a class of matters.
- (3) Despite section 19, the THS may only exercise the following powers with the approval of the Minister under subsection (4) and in accordance with any terms or conditions of the approval:
- (a) charge fees other than as prescribed from time to time under this or any other Act;
 - (b) waive fees for the delivery of services;

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- (c) enter into an agreement with –
 - (i) a government other than the Tasmanian government; or
 - (ii) a government agency that is not a Tasmanian government agency.
- (4) The Minister may grant an approval for the purposes of subsection (3) in respect of a particular matter or a class of matters or in respect of a particular person or class of persons, or both.
- (5) The THS does not have power to make a political donation.
- (6) The THS must not use its funds (including any money or other assets that it receives by grant, contribution or otherwise) for any purpose other than the performance of its functions or the exercise of its powers.

21. Delegation

The THS, by instrument in writing, may delegate to a person, or a class of persons, specified in the instrument, the performance or exercise of the functions or powers of the THS under this Act or any other Act (other than this power of delegation) that are specified in the instrument.

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22. THS subject to direction of Secretary

The THS must comply with any direction of the Secretary given to the THS under this or any other Act.

23. Employees

The THS may make arrangements, with the Secretary, for State Service officers, or State Service employees, of the Department to be made available to the THS for the purposes of the THS.

24. Volunteers

The THS may make use of the services provided by volunteers.

25. THS to be local hospital network

The THS is intended to be a local hospital network for the purposes of the National Health Reform Agreement between the Commonwealth and the States that was agreed to by the Council of Australian Governments on 2 August 2011, as that Agreement is amended from time to time.

Division 3 – Executive

26. Appointment of persons to constitute Executive

- (1) The Secretary may appoint a person, or persons, who are employees to be, or to be a member of, the Executive.

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- (2) A person appointed to be, or to be a member of, the Executive holds that office in conjunction with State Service employment.
 - (3) The Secretary may terminate the appointment of a person to be, or to be a member of, the Executive.
 - (4) Without limiting the Secretary's power under subsection (3), the Secretary may terminate the appointment of a person to be, or to be a member of, the Executive if the Secretary is satisfied that, during the period in which the person was, or was a member of, the Executive, the person failed to take all reasonable steps to ensure the compliance by the THS with –
 - (a) a direction given to the THS by the Secretary under this or any other Act; or
 - (b) a requirement imposed on the THS by or under this or any other Act.

27. Role of Executive

- (1) The Executive is responsible to the Secretary for –
 - (a) the administration and management of the THS; and
 - (b) the performance and exercise by the THS of the functions and powers of the THS; and
 - (c) compliance with any directions given to the THS under this Act.

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- (2) Any matter or thing done by the Executive in the name of, or on behalf of, the THS is to be taken to have been done by the THS.

28. Functions of Executive

The functions of the Executive are –

- (a) to administer and manage the THS; and
- (b) to perform and exercise the functions and powers of the THS; and
- (c) to ensure that the health services, and health support services, that the THS is required, under the relevant service plan, to provide, are provided by the THS to the standards, and within the budget, set out in that plan; and
- (d) to manage and monitor, and report to the Secretary on, the administration and financial performance of the THS, as required by the Secretary; and
- (e) to establish appropriate management and administrative structures for the THS; and
- (f) any other functions specified by the Secretary.

29. Liability

- (1) A person who is, or constitutes, the Executive does not incur any personal liability in respect of

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any act done, or omitted to be done, in good faith, in the performance or exercise, or the purported performance or exercise, of any function or power of the Executive under this Act.

- (2) Subsection (1) does not preclude the Crown or the THS from incurring liability that a person would, but for that subsection, incur.

30. Annual report

- (1) The Executive is to cause to be prepared, and to submit to the Secretary before 30 September in a year, a report (an *annual report*) in relation to the previous financial year.
- (2) The annual report in relation to a financial year is to include –
- (a) the financial statements of the THS for the financial year; and
 - (b) a copy of the Auditor-General’s opinion, in relation to the financial statements, provided to the Executive under section 19 of the *Audit Act 2008*; and
 - (c) a report on the operations of the THS during the financial year; and
 - (d) a report on the performance of the THS during the financial year; and
 - (e) any other information that the Executive considers to be appropriate or necessary to properly inform the Parliament as to

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the performance and progress of the THS during the financial year.

- (3) The Secretary is to submit to the Minister, before 15 October in a year, the annual report in relation to the previous financial year submitted to the Secretary under subsection (1).
- (4) The Minister is, before 31 October in a year, to table before both Houses of Parliament the annual report submitted to him or her under subsection (3) in respect of the previous financial year.
- (5) If the Minister is unable to comply with subsection (4) because, after the annual report is submitted to the Minister and before 31 October in a year, a House of Parliament is not sitting, the Minister is to be taken to have complied with that subsection if the Minister –
 - (a) provides a copy of the annual report to the Clerk of the House of Parliament as soon as practicable after 31 October; and
 - (b) tables a copy of the annual report before the House of Parliament within the next 7 sitting-days of the House.
- (6) Section 36 of the *State Service Act 2000* does not apply in respect of the THS.

Division 4 – Financial matters

31. Funds of THS

- (1) The funds of the THS consist of –

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- (a) any money received from the Commonwealth or the State, whether directly or through an authority established under an enactment of the Commonwealth or the State; and
 - (b) any money received by the THS as fees or charges; and
 - (c) any money otherwise received by the THS in the course of performing its functions or exercising its powers; and
 - (d) any money received by, or for the purposes of, the THS as a gift, donation or bequest; and
 - (e) any money received by the THS from any other source.
- (2) The funds of the THS are to be applied –
- (a) in remunerating the employees of the THS; and
 - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the THS in the performance and exercise of the functions and powers of the THS.

32. Authorised deposit-taking institution accounts

The THS may, with the approval in writing of the Treasurer, open and maintain the authorised deposit-taking institution accounts that it considers necessary.

33. Accounting records

- (1) The THS is to ensure that –
 - (a) accounting records, that correctly record and explain the transactions (including any transactions as trustee) and financial position of the THS, are kept; and
 - (b) those records are retained for a period of not less than 7 years after the completion of the transaction to which they relate or another longer period that the Treasurer determines by notice in writing to the THS.
- (2) The Treasurer may give directions in writing to the THS in relation to the manner or form in which accounting records are to be kept.

34. Effect of *Financial Agreement Act 1994*

If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires the THS to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the THS must comply with that requirement.

35. Notification to Secretary and Ministers of certain developments

- (1) The Executive is to notify the Secretary as soon as practical of any development that, in the opinion of the Executive, may significantly

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affect the financial position or operating ability of the THS.

- (2) The Secretary is to notify the Minister and the Treasurer as soon as practical of any development that, in the opinion of the Secretary, may significantly affect the financial position or operating ability of the THS.

PART 5 – MISCELLANEOUS

36. Certain instruments not statutory rules

- (1) The following instruments are not statutory rules within the meaning of the *Rules Publication Act 1953*:
- (a) a direction, notice, or instrument in writing, issued under this Act by the Secretary;
 - (b) a ministerial charter or service plan or an amendment of a ministerial charter or service plan.
- (2) An instrument referred to in subsection (1) is not to be taken to be an instrument of a legislative character for the purposes of section 38A of the *Acts Interpretation Act 1931*.

37. Transitional and savings provisions

- (1) In this section –
- chief executive officer* means the chief executive officer, within the meaning of the former Act, of the former body corporate;
- commencement day* means the day on which the former Act is repealed by this Act;
- former Act* means the *Tasmanian Health Organisations Act 2011*;

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former body corporate means the body corporate that, immediately before the commencement day, was referred to in Schedule 1 to the former Act as the Tasmanian Health Service;

governing council means the governing council, within the meaning of the former Act, of the former body corporate.

- (2) A decision by the governing council, or the chief executive officer, before the commencement day is to be taken to have been made by the THS.
- (3) A service agreement, within the meaning of the former Act, entered into by the Minister and the former body corporate in relation to the 2018-2019 financial year, is to be taken to be a service plan under this Act for that financial year.
- (4) The financial statements, in relation to the former body corporate, that, but for the repeal of the former Act, the governing council would have been required, under section 27 of the *Financial Management and Audit Act 1990*, to prepare in relation to the 2017-2018 financial year are to be prepared by a person appointed by the Minister for that purpose.
- (5) The annual report, in relation to the former body corporate, that, but for the repeal of the former Act, the governing council would have been required, under section 53 of the former Act, to prepare in relation to the 2017-2018 financial year is to be prepared by a person appointed by the Minister for that purpose.

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- (6) Despite any provision of the *State Service Act 2000* or the *Financial Management and Audit Act 1990*, the Agency responsible for the administration of this Act is not required to prepare or provide, in the annual report, or the financial statements, in respect of the Agency in relation to the 2017-2018 financial year, any information or financial statements in relation to the THS.

38. Employees under former Act transferred

A person who was, immediately before the commencement of this section, an employee within the meaning of the *Tasmanian Health Organisations Act 2011* is to be taken to be a person made available under section 23 to the THS for the purposes of the THS, until the Secretary determines otherwise or the person ceases to be a State Service officer or a State Service employee, as the case may be.

39. Liabilities, &c., in respect of certain contracts

- (1) In this section –

building includes a part of a building;

building contract means a contract, made between the Crown and one or more other persons, pursuant to which one or more of the other persons has carried out, has agreed to carry out, or is carrying out, any building work that relates to a building that is –

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- (a) used, or occupied, wholly or in part, by the THS; or
- (b) intended by the THS to be used or occupied wholly or in part by the THS –

but does not include a procurement contract;

building work means –

- (a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building; and
- (b) adding to a building; and
- (c) excavating or filling incidental to an activity referred to in paragraph (a) or (b); and
- (d) all work carried out in conjunction with work referred to in paragraph (a), (b) or (c), including but not limited to –
 - (i) work in relation to any system or service in or for a building; and
 - (ii) the preparation of plans and specifications; and
 - (iii) work carried out by an architect, engineer or building designer; and

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- (e) work carried out in the vicinity of a building for a purpose related to the use or occupation of that building; and
- (f) any work for the maintenance of the essential building services of a building;

commencement day means the day on which this section commences;

contract includes a contract, agreement, arrangement and undertaking;

contractor means –

- (a) in relation to a building contract, a person who, as a party to the contract, has carried out, or has agreed to carry out, any building work to which the contract relates; and
- (b) in relation to a procurement contract, a person who, as a party to the contract, supplies, agrees to supply, or has supplied, goods, substances or services;

Crown means the Crown in right of Tasmania;

essential building services has the same meaning as it has in the *Building Act 2016*;

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procurement contract means a contract, made between the Crown and one or more other persons, pursuant to which one of the other persons supplies, agrees to supply, or has supplied, to the Crown, goods, substances, or services, that are –

- (a) used, wholly or in part, by the THS; or
- (b) intended by the THS to be used wholly or in part by the THS –

but does not include a building contract;

relevant contract means –

- (a) a building contract; or
- (b) a procurement contract.

- (2) This section applies to a relevant contract whether the contract is made before or after the commencement day or the day on which any other provision of this Act commences.
- (3) This section does not apply to a relevant contract to which the THS is a party.
- (4) Subject to subsection (7), any loss or damage incurred or suffered by the THS arising out of –
 - (a) any breach or repudiation of a relevant contract by the contractor; or
 - (b) the termination of a relevant contract by the Crown because of the repudiation of the contract by the contractor; or

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- (c) the termination of a relevant contract by the Crown pursuant to the exercise of a right to terminate the contract set out in the contract; or
- (d) the termination of a relevant contract pursuant to the exercise, by any other person, of a statutory power in connection with the bankruptcy or insolvency of the contractor –

is taken to be loss or damage incurred or suffered by the Crown.

- (5) For the avoidance of doubt, subsection (4) applies to a breach, repudiation, or termination, of a relevant contract whether the breach, repudiation or termination occurred before or after the commencement day or the day on which any other provision of this Act commences.
- (6) Without limiting subsection (4), the Crown may exercise the same rights in relation to loss or damage referred to in that section as it may have exercised if the Crown had incurred or suffered that loss or damage instead of the THS.
- (7) Subsections (4) and (6) do not apply to loss or damage, referred to in subsection (4), arising in relation to a relevant contract, that is incurred or suffered by the THS on or after the date on which the relevant contract was transferred under the *Tasmanian Health Organisations Act 2011* by the Crown to a Tasmanian Health Organisation within the meaning of that Act.

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- (8) A reference to the Crown in any indemnity or release given by a contractor to the Crown in a procurement contract is taken to also be a reference to the THS if the THS uses, or intends to use, any of the goods, substances or services that are supplied, or have been agreed to be supplied, by the contractor under the contract.
- (9) A reference to the Crown, in any indemnity or release given by a contractor to the Crown in a building contract, is taken to also be a reference to the THS if it uses or occupies, or intends to use or occupy, any building in respect of which the contractor has carried out, or has agreed to carry out, any building work.

40. Application of certain occupation agreements

- (1) In this section –

Crown means the Crown in right of Tasmania;

occupation agreement means a lease, an agreement for a lease, a licence, or a tenancy agreement, under which the Crown occupies, or has the right to occupy, any premises owned by another person.

- (2) This section applies to an occupation agreement whether it is made before or after the commencement of this section or the date on which any other provision of this Act commences.

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- (3) This section does not apply to an occupation agreement in respect of any period after the day on which, under the *Tasmanian Health Organisations Act 2011*, the occupation agreement was transferred to a Tasmanian Health Organisation within the meaning of that Act.
- (4) If the THS uses or occupies any premises to which an occupation agreement relates, the THS is taken to be a part of the Crown for the purposes of that occupation agreement.

41. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe fees that may be charged by the THS.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstances or otherwise, specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary, the Minister or the Treasurer.
- (5) The regulations may –

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- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; or
 - (b) provide for any of those savings or transitional matters to take effect on the day on which this section commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; or
 - (c) make provision consequent on, or for furthering the purposes of, the National Health Reform Agreement between the Commonwealth and the States that was agreed to by the Council of Australian Governments on 2 August 2011, as that Agreement is amended, or substituted, from time to time.
- (6) A provision referred to in subsection (5) may take effect on and from 1 July 2018 or on and from a later day, including a day before the notification of the provision in the *Gazette*.
- (7) To the extent to which a provision referred to in subsection (6) takes effect from a day that is before the notification of the provision in the *Gazette*, the provision does not operate so as –
- (a) to affect, in a manner prejudicial to any person (other than the State, the THS or an authority of the State), the rights of that person existing before the notification; or

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- (b) to impose liabilities on any person (other than the State, the THS or an authority of the State) in respect of anything done or omitted to be done before the notification.

42. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

43. Legislation repealed

The legislation specified in Schedule 2 is repealed.

SCHEDULE 1 – ADVISORY PANELS

Section 13(4)

1. Membership of advisory panels

- (1) A member of an advisory panel –
 - (a) is to be appointed for the period that the Secretary thinks fit; and
 - (b) may be removed from office by the Secretary by notice in writing addressed and delivered to that member; and
 - (c) may at any time resign his or her office by notice in writing addressed and delivered to the Secretary.
- (2) The terms and conditions of office of a member of an advisory panel, with respect to matters not provided for in this section, are as determined by the Secretary.

2. Meeting of advisory panels

- (1) Meetings of an advisory panel may be convened by the Secretary or by the chairperson of the advisory panel.
- (2) Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of an advisory panel is to be determined by the advisory panel.

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SCHEDULE 2 – LEGISLATION REPEALED

Section 43

Tasmanian Health Organisations Act 2011 (No. 51 of 2011)