

TASMANIA

**TASMANIAN HEALTH ORGANISATIONS
AMENDMENT BILL 2012**

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**TASMANIAN HEALTH ORGANISATIONS
AMENDMENT BILL 2012**

*(Brought in by the Minister for Health, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to amend the *Tasmanian Health Organisations Act 2011*

Be it enacted by His 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:

1. Short title

This Act may be cited as the *Tasmanian Health Organisations Amendment Act 2012*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Tasmanian Health Organisations Act 2011** is referred to as the Principal Act.

*No. 51 of 2011

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4. Section 79 amended (Regulations)

Section 79 of the Principal Act is amended by inserting after subsection (4) the following subsections:

- (5) Regulations made before 1 July 2013 may contain provisions of a savings or transitional nature –
 - (a) consequent on the enactment of, or for furthering the purposes of, this Act; or
 - (b) 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 from time to time.
- (6) A provision referred to in subsection (5) may take effect on and from 1 July 2012 or a later date, including a date before the notification of the provision in the *Gazette*.
- (7) To the extent to which a provision referred to in subsection (5) takes effect from a date 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, a Tasmanian Health Organisation or an authority of the State), the rights of that person existing before the notification; or
- (b) to impose liabilities on any person (other than the State, a Tasmanian Health Organisation or an authority of the State), in respect of anything done or omitted to be done before the notification.

5. Sections 81A, 81B and 81C inserted

After section 81 of the Principal Act, the following sections are inserted in Part 8:

81A. 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

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out, any building work that relates to a building that is –

- (a) used, or occupied, wholly or in part, by a Tasmanian Health Organisation; or
- (b) intended by a Tasmanian Health Organisation to be used or occupied wholly or in part by the organisation –

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 –

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- (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
- (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 an essential safety and health feature of a building;

commencement date means the date on which this section commences;

contract includes a contract, agreement, arrangement and undertaking;

contractor means –

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- (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 safety and health feature has the same meaning as it has in the *Building Act 2000*;

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 a Tasmanian Health Organisation; or

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- (b) intended by a Tasmanian Health Organisation to be used wholly or in part by the organisation –

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 date or the date on which any other provision of this Act commences.
 - (3) This section does not apply to a relevant contract to which a Tasmanian Health Organisation is a party.
 - (4) Subject to subsection (7), any loss or damage incurred or suffered by a Tasmanian Health Organisation 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 date or the date 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 if the Crown had incurred or suffered that loss or damage instead of the Tasmanian Health Organisation that incurred or suffered the loss or damage.

(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 a Tasmanian Health Organisation on or after the date specified in a notice under clause 4 of Schedule 6 to be the date on which the relevant contract is transferred under that clause by the Crown to the Tasmanian Health Organisation.

- (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 any Tasmanian Health Organisation that uses, or that 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 any Tasmanian Health Organisation that uses or occupies, or that 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.

81B. Application of certain occupation agreements

- (1) In this section –

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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.
- (3) This section does not apply to an occupation agreement in respect of any period after the date specified in a notice under clause 4 of Schedule 6 to be the date on which the occupation agreement is transferred to a Tasmanian Health Organisation in accordance with that clause.
- (4) A Tasmanian Health Organisation that uses or occupies any premises to which an occupation agreement relates is taken to be a part of the Crown for the purposes of that occupation agreement.

81C. Certain provisions to take effect from 1 July 2012

If the *Tasmanian Health Organisations Amendment Act 2012* does not

commence on or before 1 July 2012, a provision of this Act that is inserted or amended by that Act is to be taken to have commenced on 1 July 2012.

6. Schedule 6 amended (Transitional and Savings Provisions)

Schedule 6 to the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *commencement day* in clause 1:

contract includes a contract, agreement, arrangement and undertaking;

State tax means any of the following, if imposed by any Act or law of Tasmania:

- (a) a fee, including an application fee and registration fee;
 - (b) a tax, including a duty;
 - (c) a charge;
- (b) by omitting paragraph (a) from clause 4(1) and substituting the following paragraph:

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- (a) transfer, to a Tasmanian Health Organisation specified in the notice, on the day specified in the notice as the day on which the transfer is to occur –
 - (i) any contract to which the Crown is a party; and
 - (ii) any property or right vested in the Crown; and
 - (iii) any liability of the Crown, or obligation of the Crown, whether actual, prospective or contingent; and
- (c) by inserting in clause 4(1)(b) “contract,” after “such”;
- (d) by inserting the following subclause after subclause (1) in clause 4:
 - (1A)** A day specified in a notice under subclause (1) as the date on which a transfer is to occur –
 - (a) may, if the notice is published in the *Gazette* before 1 July 2013, be a date before or after the date of the notice but not a date before 1 July 2012; or

- (b) may, if the notice is published in the *Gazette* after 1 July 2013, only be a date after the date on which the notice is published.
- (e) by omitting from clause 4(2)(d) “notice.” and substituting “notice; and”;
- (f) by inserting the following paragraph after paragraph (d) in clause 4(2):
 - (e) the Crown ceases to be a party to a contract specified in the notice unless the notice provides otherwise or except to the extent specified in the notice.
- (g) by inserting the following subclauses after subclause (3) in clause 4:
 - (4)** On and after the day specified in a notice under subclause (1) –
 - (a) a contract specified in the notice is taken to have been made by the Tasmanian Health Organisation, specified in the notice, in place of the Crown; and
 - (b) a reference to the Crown in a contract specified in the notice is taken to be, or include, as appropriate,

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a reference to the
Tasmanian Health
Organisation specified in
the notice.

(5) A person who is a party to a contract that is the subject of a notice under subclause (1) is not entitled to –

- (a) terminate that contract; or
- (b) claim that there has been a breach or default of the contract; or
- (c) claim any remedy –

by reason only of the transfer by virtue of a notice under subclause (1) of that contract or of property, a right, or an obligation, to which that contract relates or arising from that contract.

(6) No State tax is payable in respect of –

- (a) the transfer under this clause of any contract, property, right or obligation; or
- (b) anything the Minister certifies as having been

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done as a consequence of
that transfer.

- (7) The Minister, by notice published in the *Gazette*, may amend or revoke a notice published under subclause (1).

7. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.