

TASMANIA

TASMANIAN HEALTH ORGANISATIONS BILL 2011

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TASMANIAN HEALTH ORGANISATIONS BILL 2011

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.

P. R. ALCOCK, *Clerk of the House*
27 October 2011

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

A BILL FOR

An Act to establish Tasmanian Health Organisations, to provide for the guidance and supervision of such organisations, to amend the *State Service Act 2000* consequent on the establishment of such organisations, and for related matters

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Tasmanian Health Organisations Act 2011*.

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2. Commencement

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

3. Object of Act

- (1) The object of this Act is to assist in the establishment of a public sector health system that delivers safe, high quality health services and health support services so as to improve, promote, protect and maintain the health of persons in Tasmania.
- (2) The object is mainly achieved by –
 - (a) establishing Tasmanian Health Organisations for the provision and coordination of health services and health support services in operational areas; and
 - (b) providing for State-wide health system management through enabling effective planning and coordination of the provision of health services and health support services across the State as a whole; and
 - (c) balancing the benefits of having both an operational area approach, and a State-wide approach, to the provision of health services and health support services.

4. Interpretation

In this Act, unless the contrary intention appears –

“**administrator**”, in relation to a Tasmanian Health Organisation, means a person who is appointed as an administrator of the organisation under section 70;

“**annual business plan**”, in relation to a Tasmanian Health Organisation for a financial year, means the annual business plan for that financial year that is produced by the organisation under section 50;

“**chairperson**”, in relation to a Tasmanian Health Organisation, means the person appointed under section 16(1) to be the chairperson of the organisation and includes a person taken to be the chairperson of the organisation under section 18(4);

“**chief executive officer**”, in relation to a Tasmanian Health Organisation, means the person appointed in accordance with section 28 to be the chief executive officer of the organisation;

“**committee member**” means a person who is, under Schedule 5, a member of a subcommittee;

“**corporate plan**”, in relation to a Tasmanian Health Organisation, means the corporate

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plan that is in effect in relation to the organisation under section 46, as amended, if at all, by an amendment to the plan under section 47 that has taken effect;

“deputy administrator”, in relation to a Tasmanian Health Organisation, means a person who is appointed as a deputy administrator of the organisation under section 71;

“employee”, in relation to a Tasmanian Health Organisation, means a person (other than the chief executive officer) who is employed or appointed under the *State Service Act 2000* for the purposes of the organisation;

“function” includes duty;

“governing council”, in relation to a Tasmanian Health Organisation, means the governing council of the organisation established under section 14;

“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;

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- (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, 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 by a Tasmanian Health Organisation or the Crown to provide health services;
- (b) the procurement or supply, or both, of goods, substances or services to providers of health services;

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- (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;

“hospital services” means services provided by or on behalf of a public hospital;

“material personal interest” – see section 5;

“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;

“member”, in relation to the governing council of a Tasmanian Health Organisation, means –

- (a) the chairperson of the governing council; or
- (b) a person who is a member of the governing council appointed under section 16(3); or

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(c) a person who is taken to be a member of the governing council under section 17(4);

“ministerial charter”, in relation to a Tasmanian Health Organisation, means the ministerial charter for the organisation that is in effect from time to time under section 39;

“ministerial representative”, in relation to a Tasmanian Health Organisation, means a person who is a ministerial representative appointed to the governing council of the organisation under Division 4 of Part 7;

“operational area”, in relation to a Tasmanian Health Organisation, means the operational area, in relation to that organisation, that is specified in Schedule 2;

“public hospital” means a hospital that is under the control of a Tasmanian Health Organisation;

“responsible Ministers” means –

- (a) the Minister; and
- (b) the Treasurer;

“Secretary” means Secretary of the Department;

“service agreement”, in relation to a Tasmanian Health Organisation, for a

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financial year, means the organisation’s service agreement for that financial year under section 44;

“subcommittee” means a subcommittee established under section 26 or 27 by the governing council of a Tasmanian Health Organisation;

“Tasmanian Health Organisation” means a Tasmanian Health Organisation established from time to time by section 6 and includes any subsidiary of the organisation;

“Treasurer’s Instructions” means –

- (a) the Treasurer’s Instructions referred to in section 35(1); and
- (b) the Treasurer’s Instructions issued under section 35(3).

5. Meaning of “material personal interest”

(1) In this section –

“partner”, in relation to a person, means a person with whom the person is in a personal relationship, within the meaning of the *Relationships Act 2003*;

“relative”, in relation to a person, means –

- (a) the spouse or partner of the person; and

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-
- (b) the parent or remoter linear ancestor of the person; and
 - (c) the child or remoter issue of the person; and
 - (d) the brother or sister of the person;

“relevant office” means the office of a member, a committee member, an administrator or a deputy administrator.

(2) In this Act –

“material personal interest”, in relation to a person who holds a relevant office, means –

- (a) a direct or indirect interest; or
- (b) a pecuniary or non-pecuniary interest; or
- (c) an interest of a relative of the person; or
- (d) an interest of an associated entity; or
- (e) an interest in a corporation, within the meaning of the Corporations Act; or
- (f) the person’s employment by a person with a direct or indirect interest in the Tasmanian Health Organisation to which the relevant office relates; or

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- (g) the holding by the person of an office where there arises, or may arise, a conflict between his or her duties in that office and his or her duties as a person who holds the relevant office; or
 - (h) the holding by the person of the office of director in another statutory authority or in the governing authority of another statutory authority; or
 - (i) any other interest that gives rise, or may give rise, to a conflict of interest.
- (3) A person who holds a relevant office does not have a material personal interest by reason only of also being a State Service officer or State Service employee.
- (4) A person who holds a relevant office in relation to a Tasmanian Health Organisation does not have a material personal interest by reason only of an interest in a contract with the organisation for goods or services –
 - (a) ordinarily supplied by the organisation; and
 - (b) supplied on the same terms as the goods or services are ordinarily supplied to other persons in the same situation.
- (5) In relation to a person who holds a relevant office, each of the following persons (in this

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section referred to as “**the other person**”) is an associated entity if the person who holds a relevant office or his or her relative has control over the other person:

- (a) a body corporate;
 - (b) a partnership or other unincorporated association of persons;
 - (c) a majority of trustees of a trust.
- (6) For the purposes of determining whether the person who holds a relevant office has control over the other person, the following matters may be taken into account:
- (a) whether the person who holds a relevant office or his or her relative is a shareholder in, a director or other officer of, or a trustee of, the other person;
 - (b) whether the person who holds a relevant office or his or her relative is a beneficiary in the trust of which the other person is a trustee;
 - (c) any other matter or relationship that is relevant.
- (7) For the purposes of determining whether the relative of a person who holds a relevant office has control over the other person, the following matters may be taken into account:
- (a) whether the relative, or his or her relative, is a shareholder in, a director or

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other officer of, or a trustee of, the other person;

- (b) whether the relative or his or her relative is a beneficiary in the trust of which the other person is a trustee;
- (c) any other matter or relationship that is relevant.

PART 2 – TASMANIAN HEALTH ORGANISATIONS

Division 1 – Establishment of Tasmanian Health Organisations

6. Tasmanian Health Organisations established

There are established by this section the Tasmanian Health Organisations specified from time to time in Schedule 1.

7. Operational areas of Tasmanian Health Organisations

- (1) The operational area for a Tasmanian Health Organisation is the operational area specified from time to time in Schedule 2 in respect of the organisation.
- (2) An operational area in respect of a Tasmanian Health Organisation may be specified in Schedule 2 by reference to a map, a document, or another instrument, that is not included in the Schedule.

8. Establishment, &c., of Tasmanian Health Organisations may be altered by Governor

- (1) The Governor, by order under subsection (2), may –
 - (a) dissolve a Tasmanian Health Organisation; or

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- (b) amalgamate 2 or more Tasmanian Health Organisations; or
 - (c) divide a Tasmanian Health Organisation into 2 or more Tasmanian Health Organisations; or
 - (d) alter the name of a Tasmanian Health Organisation.
- (2) The Governor, by order, for the purpose of dissolving, amalgamating, dividing, or altering the name of, one or more Tasmanian Health Organisations, may do any or all of the following:
- (a) amend Schedule 1 by inserting, altering or omitting the name of a Tasmanian Health Organisation;
 - (b) amend Schedule 2 by inserting, altering or omitting an operational area in respect of a Tasmanian Health Organisation;
 - (c) if the Governor amalgamates 2 or more Tasmanian Health Organisations, or divides a Tasmanian Health Organisation into 2 or more Tasmanian Health Organisations, transfer the assets and liabilities of one or both of the organisations to a Tasmanian Health Organisation or to the Crown.
- (3) The provisions of section 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under this section as if the

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order were regulations within the meaning of that Act.

- (4) An order under this section is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

9. Legal entity of Tasmanian Health Organisations

- (1) A Tasmanian Health Organisation –
- (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) represents the Crown.
- (2) The seal of a Tasmanian Health Organisation is to be kept and used as authorised by its governing council.
- (3) All courts and persons acting judicially must –
- (a) take judicial notice of the imprint of the seal of a Tasmanian Health Organisation on a document; and
 - (b) presume that the document was duly sealed by the Tasmanian Health Organisation.
- (4) All courts and persons acting judicially must take judicial notice of –

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- (a) the official signature of a person who is or has been a member of the governing council, or the chief executive officer, of a Tasmanian Health Organisation; and
- (b) the fact that the person holds or has held the office concerned.

Division 2 – Purposes, functions and powers of Tasmanian Health Organisations

10. Purposes of Tasmanian Health Organisations

- (1) The primary purposes of a Tasmanian Health Organisation are –
 - (a) to promote and maintain the health of persons; and
 - (b) to provide care and treatment to, and ease the suffering of, persons with health problems.
- (2) A Tasmanian Health Organisation is to perform its functions, and exercise its powers, other than for the purpose of financial gain.

11. Functions of Tasmanian Health Organisations

The functions of a Tasmanian Health Organisation are as follows:

- (a) generally to improve, promote, protect and maintain the health of persons to whom the organisation is required under

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its service agreement to provide health services;

- (b) to conduct and manage public hospitals, health institutions, health services, and health support services, that are under the organisation's control;
- (c) to ensure the effective provision of health services, and health support services, that are purchased by the organisation;
- (d) to provide effective and safe care that achieves and maintains the standards of patient care, and service delivery, set out in the organisation's service agreement;
- (e) to manage the organisation's budget, as determined by the organisation's service agreement, 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 organisation's control; and
 - (ii) the efficient and economic delivery of health services, and health support services, that are purchased by the organisation; and
 - (iii) the efficient and economic use of its resources;

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- (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;
- (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 it by this Act or any other Act or that are prescribed.

12. Powers of Tasmanian Health Organisations

Subject to section 13, a Tasmanian Health Organisation has the following powers:

- (a) to acquire, hold, dispose of and otherwise deal with property;
- (b) to enter into contracts;
- (c) to receive gifts, donations or bequests;

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- (d) to manage trust funds for any trust it registers in accordance with section 13(1)(n);
- (e) to participate in partnerships, trusts and joint ventures and in arrangements for the sharing of profits;
- (f) to manage and maintain property;
- (g) to charge fees for the delivery of services and to waive, on the grounds of financial hardship, all or part of such fees;
- (h) all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers.

13. Limitations on powers of Tasmanian Health Organisations

- (1) Despite section 12, a Tasmanian Health Organisation may only exercise the following powers with the approval of the responsible Ministers and in accordance with any terms or conditions of the approval:
 - (a) borrow funds;
 - (b) establish an overdraft;
 - (c) acquire, dispose, lease, mortgage, charge, hypothecate, or otherwise transfer or encumber, any interest in real property;

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- (d) invest the funds of the organisation;
- (e) pledge, charge or encumber any of the organisation's property;
- (f) create a subsidiary;
- (g) charge fees other than as prescribed from time to time under this or any other Act;
- (h) waive, on the grounds of financial hardship, fees for the delivery of services;
- (i) indemnify any person from liability or guarantee the payment of money or the performance of services by another person;
- (j) make a charitable donation;
- (k) 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;
- (l) enter into an agreement with –
 - (i) a government other than the Tasmanian government; or

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- (ii) a government agency that is not a Tasmanian government agency;
 - (m) participate in partnerships, trusts and joint ventures and in arrangements for the sharing of profits;
 - (n) register a trust;
 - (o) register a company.
- (2) A Tasmanian Health Organisation does not have power to make a political donation.
- (3) A Tasmanian Health Organisation 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.
- (4) The responsible Ministers may grant an approval under subsection (1) in respect of a particular matter or a class of matters.

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Part 3 – Governing Councils of Tasmanian Health Organisations

**PART 3 – GOVERNING COUNCILS OF TASMANIAN
HEALTH ORGANISATIONS**

*Division 1 – Establishment and membership of governing
councils*

14. Governing councils

- (1) There is established, for each Tasmanian Health Organisation, the governing council of the organisation.
- (2) The governing council of a Tasmanian Health Organisation consists of –
 - (a) the chairperson; and
 - (b) the other members of the governing council.
- (3) The governing council of a Tasmanian Health Organisation is accountable to the responsible Ministers for the performance of its functions, and the exercise of its powers, under this Act.

15. Composition of membership

The responsible Ministers must ensure, so far as practicable, that the members of the governing council of a Tasmanian Health Organisation who are appointed under section 16 collectively have –

- (a) skills and experience necessary to oversee and provide guidance to the large

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- and complex organisation that is a
Tasmanian Health Organisation; and
- (b) skills and experience in health management, business management and financial management; and
 - (c) clinical expertise; and
 - (d) an understanding of the health needs of the persons to whom the services of the organisation will be provided; and
 - (e) any other skills or experience that the Ministers consider are required.

16. Appointment of members

- (1) The responsible Ministers are to appoint a person to be a member of the governing council of a Tasmanian Health Organisation and its chairperson.
- (2) In addition to the chairperson appointed under subsection (1), there are to be not less than 4, and not more than 8, members of the governing council of a Tasmanian Health Organisation.
- (3) The responsible Ministers are to appoint persons to be the members of the governing council of a Tasmanian Health Organisation referred to in subsection (2).
- (4) A chief executive officer of a Tasmanian Health Organisation is not eligible to be a member of

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the governing council of a Tasmanian Health Organisation.

- (5) Schedule 3 applies to the members of the governing council of a Tasmanian Health Organisation.
- (6) A person may be appointed to be a member (including the chairperson) of more than one governing council of a Tasmanian Health Organisation.

17. Acting members

- (1) If a member (other than the chairperson) of the governing council of a Tasmanian Health Organisation is absent from duty or otherwise unable to perform the functions of a member, the responsible Ministers may appoint a person to act as a member of the governing council in the place of the member.
- (2) Section 16(4), (5) and (6) apply in relation to a person appointed under subsection (1) to act as a member.
- (3) Despite subsection (2), clause 1(1) of Schedule 3 does not apply in relation to a person appointed under subsection (1) to act as a member.
- (4) A person who is appointed under subsection (1) to act as a member of the governing council of a Tasmanian Health Organisation is taken to be a member of the governing council of the

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Tasmanian Health Organisation while his or her appointment continues.

- (5) The appointment of a person under subsection (1) to act as a member of the governing council of a Tasmanian Health Organisation terminates when the member in whose place the member is appointed to act as a member –
- (a) resumes the performance of the functions of a member; or
 - (b) vacates office as a member.
- (6) Subsection (5) does not limit the application of clause 5 of Schedule 3 to a person who is appointed under subsection (1) to act as a member of the governing council of a Tasmanian Health Organisation.

18. Acting chairperson

- (1) If the chairperson of the governing council of a Tasmanian Health Organisation is absent from duty or otherwise unable to perform the functions of the chairperson, the responsible Ministers may appoint a person to act as the chairperson of the governing council in the place of the chairperson.
- (2) Section 16(4), (5) and (6) apply in relation to a person appointed under subsection (1) to act as the chairperson of the governing council of a Tasmanian Health Organisation.

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- (3) Despite subsection (2), clause 1(1) of Schedule 3 does not apply in relation to a person appointed under subsection (1) to act as the chairperson of the governing council of a Tasmanian Health Organisation.
- (4) A person who is appointed under subsection (1) to act as the chairperson of the governing council of a Tasmanian Health Organisation is taken to be the chairperson of the governing council while his or her appointment continues.
- (5) The appointment of a person under subsection (1) to act as the chairperson of the governing council of a Tasmanian Health Organisation terminates when the chairperson in whose place the person is appointed to act as the chairperson –
 - (a) resumes the performance of the functions of the chairperson; or
 - (b) vacates office as the chairperson.
- (6) Subsection (5) does not limit the application of clause 5 of Schedule 3 to a person appointed to act as the chairperson of the governing council of a Tasmanian Health Organisation.

19. Disclosure of interest of members

- (1) A member of the governing council of a Tasmanian Health Organisation who has a material personal interest in a matter that is being considered, or is about to be considered,

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by the governing council must, as soon as practicable after the relevant facts come to his or her knowledge, disclose to the governing council the nature of the interest.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Unless the governing council of a Tasmanian Health Organisation otherwise determines, a member of the governing council who has made a disclosure under subsection (1) in relation to a matter must not –
 - (a) be present during any deliberation of the governing council in relation to the matter; or
 - (b) take part in any decision of the governing council in relation to the matter.
- (3) A member of the governing council of a Tasmanian Health Organisation who has made a disclosure under subsection (1) must not –
 - (a) be present during any deliberation of the governing council for the purpose of making a determination under subsection (2) in relation to the member; or
 - (b) take part in making a determination under subsection (2) in relation to the member.
- (4) Subsection (1) does not apply –

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- (a) in respect of a contract for goods or services, supplied by a Tasmanian Health Organisation, if the goods or services are ordinarily supplied by the Tasmanian Health Organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or
- (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

20. Members to act honestly, &c.

- (1) A member must act honestly in the performance and exercise of his or her functions and powers as a member.

Penalty: Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (2) In performing and exercising the functions and powers of a member, a member must exercise the same degree of care and diligence that a person in a similar position in a corporation, within the meaning of the Corporations Act, is required to exercise.

Penalty: Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 2 years, or both.

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- (3) A member or former member of a Tasmanian Health Organisation must not use improperly, whether within Tasmania or elsewhere, information acquired as a member, so as to –
- (a) gain, directly or indirectly, a personal advantage or an advantage for another person; or
 - (b) cause damage to a Tasmanian Health Organisation; or
 - (c) cause harm to a person to whom health services have been provided by, or on behalf of, a Tasmanian Health Organisation.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

21. Recovery of improper profit

If a person is found guilty of an offence under section 20 –

- (a) the Tasmanian Health Organisation of which the person is or was a member may recover from the person in a court of competent jurisdiction as a debt due to it any profit made by that person or another person as a result of the commission of the offence; and
- (b) a Tasmanian Health Organisation may recover from the person in a court of

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competent jurisdiction as a debt due to it an amount equal to any loss and damage it suffered as a result of the commission of the offence.

Division 2 – Functions and powers of governing councils

22. Functions of governing councils

The governing council of a Tasmanian Health Organisation has the following functions:

- (a) to ensure that the organisation provides effective and safe health care to, and improves health outcomes for, persons to whom health services are to be provided under the organisation's service agreement;
- (b) to ensure that the organisation performs its functions, and exercises its powers, in a satisfactory manner;
- (c) to ensure that the organisation complies with this Act or any other Act that applies in relation to the organisation;
- (d) to negotiate the organisation's service agreement in accordance with Division 3 of Part 5;
- (e) to ensure that –
 - (i) the organisation delivers the services that it has agreed, under

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- the organisation's service agreement, to provide; and
- (ii) the organisation delivers those services in accordance with the performance standards set out in the organisation's service agreement; and
 - (iii) the organisation delivers those services in accordance with the budget set out in the organisation's annual business plan; and
 - (iv) the organisation delivers those services in accordance with the organisation's corporate plan;
- (f) to ensure that systems are in place to enable the services that the organisation is required to deliver under the organisation's service agreement to be provided efficiently and economically;
 - (g) to monitor the organisation's performance against the performance measures set out in the service agreement;
 - (h) to confer with the chief executive officer of the organisation as to the performance measures to be included in the organisation's service agreement;
 - (i) to consult with the State government and persons or bodies with an interest in

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- health within the organisation's operational area;
- (j) to ensure that the objectives specified in the organisation's ministerial charter and corporate plan are achieved;
 - (k) to formulate, and ensure the implementation of, policy in respect of the operation of the organisation;
 - (l) to ensure that policies required under section 42 to be implemented by the organisation are implemented, in so far as they are not inconsistent with the organisation's service agreement;
 - (m) to provide advice to the Minister in respect of anticipated future capital investment requirements of the organisation and the planning of service delivery by the organisation;
 - (n) to ensure that appropriate corporate and clinical governance procedures are in place in relation to the organisation;
 - (o) any other functions conferred on it by this Act or any other Act or that are prescribed.

23. Powers of governing councils

Subject to this Act, the governing council of a Tasmanian Health Organisation has the powers necessary to perform its functions.

24. Delegation by governing councils

The governing council of a Tasmanian Health Organisation may delegate to a person any of its functions or powers, other than this power of delegation.

25. Meetings of governing councils

Schedule 4 has effect with respect to the meetings of the governing council of a Tasmanian Health Organisation.

Division 3 – Governing council subcommittees

26. Audit and risk subcommittees

- (1) The governing council of a Tasmanian Health Organisation must establish an audit and risk subcommittee, consisting of members of the council.
- (2) An audit and risk subcommittee is to provide advice, to the governing council that established it, in respect of any matters about which such committees are required, under the Treasurer's Instructions, to provide advice.
- (3) An audit and risk subcommittee must comply with any Treasurer's Instructions that apply to the subcommittee.

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- (4) Schedule 5 has effect with respect to the membership and meetings of an audit and risk subcommittee.

27. Other subcommittees

- (1) The governing council of a Tasmanian Health Organisation may establish any subcommittee, consisting of members of the governing council, that it considers appropriate to provide advice to the governing council in relation to –
- (a) the functions and powers of the organisation; and
 - (b) the functions and powers of the governing council; and
 - (c) the functions and powers of the chief executive officer of the organisation.
- (2) The governing council of a Tasmanian Health Organisation may refer to a subcommittee established by the organisation under subsection (1) a matter relating to a function or power mentioned in that subsection.
- (3) A subcommittee established under subsection (1) by the governing council of a Tasmanian Health Organisation is to provide advice to the governing council in respect of –
- (a) any matter for the purposes of which the subcommittee was established; or

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- (b) any matter referred to it by the governing council under subsection (2).
- (4) Schedule 5 has effect with respect to the membership and meetings of a subcommittee established under subsection (1).

PART 4 – OPERATION OF TASMANIAN HEALTH ORGANISATIONS

Division 1 – Staffing

28. Chief executive officer

- (1) Subject to and in accordance with the *State Service Act 2000*, a person may be appointed as the chief executive officer of a Tasmanian Health Organisation.
- (2) The chief executive officer of a Tasmanian Health Organisation is to be appointed in accordance with subsection (1) on the recommendation of the governing council of the organisation.
- (3) The office of the chief executive officer of a Tasmanian Health Organisation is taken to be an office created under section 29 of the *State Service Act 2000*.
- (4) A person is not to be appointed for a period of more than 5 years as the chief executive officer of a Tasmanian Health Organisation.
- (5) Despite subsection (4), a person may be re-appointed as the chief executive officer of a Tasmanian Health Organisation.
- (6) The remuneration payable to the chief executive officer of a Tasmanian Health Organisation in accordance with the *State Service Act 2000* is to be determined under that Act after consultation with the governing council of the organisation.

29. Powers and functions of chief executive officer

- (1) The chief executive officer of a Tasmanian Health Organisation is responsible for the administration and management of the operation of the organisation.
- (2) The chief executive officer of a Tasmanian Health Organisation is accountable to the governing council of the organisation for the performance of his or her responsibilities or functions, and the exercise of his or her powers, under this Act.
- (3) The chief executive officer of a Tasmanian Health Organisation –
 - (a) must perform any responsibilities or functions, and exercise any powers, imposed on him or her by or under this or any other Act; and
 - (b) may perform any functions, and exercise any powers, delegated to him or her by the governing council of the organisation; and
 - (c) may exercise any other powers granted to him or her by or under this or any other Act.

30. Employees

Subject to and in accordance with the *State Service Act 2000*, persons may be employed or

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appointed for the purposes of a Tasmanian Health Organisation.

Division 2 – Financial matters

31. Funds of Tasmanian Health Organisations

- (1) The funds of a Tasmanian Health Organisation consist of –
 - (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 organisation as fees or charges; and
 - (c) any money otherwise received by the organisation in the course of performing its functions or exercising its powers; and
 - (d) any money received by the organisation as a gift, donation or bequest; and
 - (e) any money received by the organisation from any other source.
- (2) The funds of a Tasmanian Health Organisation are to be applied –
 - (a) in remunerating the relevant officers in respect of the organisation; and

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- (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the organisation, or the governing council of the organisation, in the performance and exercise of the functions and powers of the organisation or governing council.
- (3) For the purposes of subsection (2)(a), the relevant officers in respect of a Tasmanian Health Organisation are –
- (a) the members of the governing council of the organisation; and
 - (b) the chief executive officer of the organisation; and
 - (c) any employees of the organisation; and
 - (d) any committee member in respect of a subcommittee of the organisation; and
 - (e) any ministerial representative appointed to the governing council of the organisation; and
 - (f) any interim chairperson appointed for the organisation under clause 2 of Schedule 6; and
 - (g) an administrator or deputy administrator in respect of the organisation.

32. Authorised deposit-taking institution accounts

A Tasmanian Health Organisation, with the approval in writing of the Treasurer, may open and maintain the authorised deposit-taking institution accounts that it considers necessary.

33. Accounting records

- (1) The governing council of a Tasmanian Health Organisation is to ensure that –
 - (a) accounting records that correctly record and explain the transactions (including any transactions as trustee) and financial position of the organisation are kept; and
 - (b) those records are kept in a manner that –
 - (i) allows true and fair accounts of the organisation to be prepared from time to time; and
 - (ii) allows the accounts of the organisation to be conveniently and properly audited or reviewed; and
 - (iii) complies with the Treasurer's Instructions; and
 - (iv) complies with any directions of the Treasurer given under subsection (2); and

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- (c) 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.
- (2) The Treasurer may give directions in writing to the governing council of a Tasmanian Health Organisation in relation to the manner or form in which accounting records are to be kept.

34. Financial statements

- (1) The financial statements of a Tasmanian Health Organisation in respect of a financial year are to be prepared in accordance with the *Financial Management and Audit Act 1990*, the Treasurer's Instructions and any other law that applies to such organisations.
- (2) The financial statements are to comply with any direction given under subsection (3).
- (3) The Treasurer, in writing, may give directions to the governing council of a Tasmanian Health Organisation in respect of the form of the financial statements.

35. Treasurer's Instructions

- (1) The Treasurer, by notice in writing to a Tasmanian Health Organisation, may modify the application to the organisation of the Treasurer's Instructions, issued under the *Financial*

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Management and Audit Act 1990, that, under that Act, apply to and in relation to a Tasmanian Health Organisation as an Agency within the meaning of that Act.

- (2) If the Treasurer issues a notice under subsection (1) to a Tasmanian Health Organisation modifying the application to the organisation of the Treasurer's Instructions issued under the *Financial Management and Audit Act 1990*, the Treasurer's Instructions that apply to and in relation to the organisation under that Act are to be taken to be, for the purposes of this Act and the *Financial Management and Audit Act 1990*, modified in accordance with the notice.
- (3) The Treasurer may issue instructions, in writing, in respect of guidelines, principles, practices and procedures to be observed by Tasmanian Health Organisations, governing councils or audit and risk subcommittees, in relation to –
 - (a) corporate plans; and
 - (b) annual reports; and
 - (c) financial management; and
 - (d) any other prescribed matter.
- (4) Without limiting the generality of subsection (3), Treasurer's Instructions in respect of corporate plans may specify that the corporate plan of a Tasmanian Health Organisation must specify the organisation's objectives, policies and programs.

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- (5) Treasurer's Instructions may be issued in accordance with subsection (3) –
- (a) so as to apply –
 - (i) at all times or at a time specified in the Treasurer's Instructions; or
 - (ii) to all Tasmanian Health Organisations, governing councils or audit and risk subcommittees or to the Tasmanian Health Organisations, governing councils or audit and risk subcommittees specified in the Treasurer's Instructions; and
 - (b) so as to confer a discretionary authority on a person or body, or a class of persons or bodies, specified in the Treasurer's Instructions.
- (6) It is the duty of a member of the governing council of a Tasmanian Health Organisation, the chief executive officer of a Tasmanian Health Organisation and any employee of a Tasmanian Health Organisation to comply with –
- (a) any requirement of the Treasurer's Instructions referred to in subsection (1) that is applicable to that organisation; and
 - (b) any requirement of the Treasurer's Instructions issued in accordance with subsection (3) that is applicable to that organisation.

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- (7) If there is an inconsistency between the Treasurer's Instructions issued in accordance with subsection (3) and the Treasurer's Instructions referred to in subsection (1) (including such instructions the application of which is modified in accordance with subsection (1)) –
- (a) the Treasurer's Instructions issued in accordance with subsection (3) prevail, in relation to a Tasmanian Health Organisation, to the extent of the inconsistency; and
 - (b) the Treasurer's Instructions that apply to and in relation to the organisation under the *Financial Management and Audit Act 1990* (including such instructions the application of which is modified in accordance with subsection (1)) are to be taken to be, for the purposes of that Act, not applicable to and in relation to the organisation, to the extent of the inconsistency.

36. Matters relating to *Audit Act 2008*

For the purposes of section 19 of the *Audit Act 2008*, a reference in that section to the relevant Minister is to be taken to be a reference to the responsible Ministers.

37. Effect of *Financial Agreement Act 1994*

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

Division 3 – Operational matters

38. Certain services, &c., to be used by Tasmanian Health Organisation

- (1) The Minister, by notice in writing to a Tasmanian Health Organisation, may direct the organisation to ensure that –
 - (a) certain administrative functions that are required to be performed, or that the organisation requires to have performed, be performed by the State Service Agency, unit of administration, person or body specified in the direction; and
 - (b) certain health services and health support services that the organisation is required to provide in the performance of its functions are provided by the State Service Agency, unit of administration, person or body specified in the direction; and

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- (c) the organisation enters into particular contracts or arrangements, including financial arrangements, specified in the direction in relation to –
 - (i) insurance or indemnifying the organisation; or
 - (ii) any other matter that the Minister specifies in the direction; or
 - (iii) any other matter that may be prescribed.
- (2) A Tasmanian Health Organisation to which a direction is given under subsection (1) must comply with the direction.

**PART 5 – MINISTERIAL GUIDANCE AND
DIRECTION**

Division 1 – Ministerial charters

39. Ministerial charters

- (1) The responsible Ministers must issue a ministerial charter for a Tasmanian Health Organisation.
- (2) A ministerial charter is to be in writing and signed by the responsible Ministers.
- (3) The responsible Ministers, at any time at their discretion, may amend or revoke a ministerial charter for a Tasmanian Health Organisation.
- (4) The responsible Ministers, at the request of a Tasmanian Health Organisation, may amend or revoke the organisation's ministerial charter.
- (5) An amendment or revocation of a ministerial charter is to be in writing and signed by the responsible Ministers.
- (6) The responsible Ministers must provide to the governing council of a Tasmanian Health Organisation –
 - (a) a copy of the organisation's ministerial charter; and
 - (b) a copy of an amendment or revocation of the ministerial charter for the organisation.

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- (7) The responsible Ministers must consult with the governing council of a Tasmanian Health Organisation before or while preparing –
 - (a) a ministerial charter for the organisation;
or
 - (b) an amendment or revocation of the organisation’s ministerial charter.
- (8) A Tasmanian Health Organisation’s ministerial charter, or any amendment or revocation of a Tasmanian Health Organisation’s ministerial charter, takes effect on a day specified in the charter, amendment or revocation, as the case may be.
- (9) A day specified in a charter, amendment or revocation as the day in which the charter, amendment or revocation takes effect is to be a day not earlier than the day on which a copy of the charter, amendment or revocation is provided to the governing council of the Tasmanian Health Organisation.
- (10) The responsible Ministers 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 responsible Ministers.

40. Contents of ministerial charters

- (1) A Tasmanian Health Organisation’s ministerial charter is to specify the responsible Ministers’ broad policy expectations for the Tasmanian Health Organisation.
- (2) A Tasmanian Health Organisation’s ministerial charter may limit the functions and powers of the organisation and the performance and exercise of those functions and powers.
- (3) A Tasmanian Health Organisation’s ministerial charter –
 - (a) despite subsection (2), may not prevent the organisation from –
 - (i) performing a function, or exercising a power, that the organisation must, under this or any other Act, perform or exercise; or
 - (ii) otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the organisation.

41. Compliance with ministerial charters

- (1) The governing council of a Tasmanian Health Organisation must ensure that the business and affairs of the organisation are conducted in a

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manner that is consistent with the organisation’s ministerial charter.

- (2) If a Tasmanian Health Organisation’s ministerial charter and its service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

Division 2 – Ministerial policy and directions

42. Ministerial policy

- (1) The Minister, by notice in writing to all Tasmanian Health Organisations, may require the implementation by the organisations of a policy, specified in the notice, that is to apply to all such organisations in respect of a function or power of Tasmanian Health Organisations.
- (2) A Tasmanian Health Organisation must implement a policy specified in a notice to the organisation under subsection (1).
- (3) If a policy specified in a notice to a Tasmanian Health Organisation under subsection (1) and the organisation’s service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

43. Ministerial directions

- (1) After consulting with the governing council of a Tasmanian Health Organisation, the responsible

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Ministers, by notice in writing, may give the governing council directions in relation to –

- (a) the functions and powers of the organisation; or
 - (b) the functions and powers of the governing council.
- (2) A direction given under subsection (1) may not refer to the health care or health services provided to a particular person.
- (3) A direction given under subsection (1) to the governing council of a Tasmanian Health Organisation –
- (a) may not prevent the organisation or the governing council from –
 - (i) performing a function, or exercising a power, that the organisation or governing council must, under this or any other Act, perform or exercise; or
 - (ii) otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the organisation or the governing council.
- (4) The governing council of a Tasmanian Health Organisation and the organisation's chief executive officer must comply with any direction

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given to the governing council under subsection (1) by the responsible Ministers.

- (5) If a direction given under subsection (1) to the governing council of a Tasmanian Health Organisation and the organisation's service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

Division 3 – Service agreements

44. Minister and Tasmanian Health Organisations to enter into service agreements

- (1) There is to be, in respect of a Tasmanian Health Organisation, before 30 June in a year, a service agreement for the following financial year between the Minister and the governing council of the organisation.
- (2) If the Minister and the governing council of a Tasmanian Health Organisation are, before 30 June in a year, able to agree as to the contents of the service agreement in respect of the organisation for the following financial year, the service agreement for that financial year is to be as agreed.
- (3) If the Minister and the governing council of a Tasmanian Health Organisation are not, before 30 June in a year, able to agree as to the contents of the service agreement in respect of the organisation for the following financial year, the

service agreement for that financial year is to be as determined by the Minister.

- (4) A service agreement in respect of a Tasmanian Health Organisation for a financial year may, at any time before or during the financial year, be amended by agreement in writing between the Minister and the governing council of the organisation.
- (5) A service agreement in respect of a Tasmanian Health Organisation for a financial year may be amended by notice in writing by the Minister to the organisation, if the Minister and the organisation are unable to agree as to the amendment.

45. Contents of service agreements

- (1) A service agreement in respect of a Tasmanian Health Organisation must include –
 - (a) a schedule of services to be provided by or on behalf of the organisation and the funding to be provided in relation to the provision of those services; and
 - (b) performance standards, performance targets and performance measures for the organisation; and
 - (c) standards of patient care and service delivery; and
 - (d) requirements for the organisation to report on its performance, as required by

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or under another provision of this Act or otherwise; and

- (e) a performance management process that is to be in continuous operation in respect of the organisation.
- (2) A service agreement in respect of a Tasmanian Health Organisation may include provisions in respect of a matter, relating to the functions or powers of such an organisation, that the Minister thinks fit and specifies in the agreement.
- (3) Despite subsection (2), a provision of a service agreement in respect of a Tasmanian Health Organisation –
 - (a) may not prevent the organisation from –
 - (i) performing a function, or exercising a power, that the organisation must, under this or any other Act, perform or exercise; or
 - (ii) otherwise complying with any Act; and
 - (b) may not extend the functions and powers of the organisation.

**PART 6 – GOVERNING COUNCIL PLANS AND
REPORTS**

Division 1 – Corporate plans

46. Corporate plans

- (1) The governing council of a Tasmanian Health Organisation must provide to the responsible Ministers a draft of a corporate plan for the organisation not later than 90 days before the day on which it is intended that the corporate plan will take effect.
- (2) A Tasmanian Health Organisation’s corporate plan must –
 - (a) relate to the period specified in the Treasurer’s Instructions issued under section 35(3) in relation to corporate plans as the period to which a corporate plan is to relate; and
 - (b) be in the form specified, in the Treasurer’s Instructions issued under section 35(3) in relation to corporate plans, as the form in which corporate plans are to be kept; and
 - (c) contain the information specified, in the Treasurer’s Instructions issued under section 35(3) in relation to corporate plans, as the information required to be contained in a corporate plan, including but not limited to any information,

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specified in those instructions, as to the organisation's objectives, policies and programs; and

- (d) be consistent with the organisation's ministerial charter.

- (3) The responsible Ministers may authorise the governing council of a Tasmanian Health Organisation to provide to them the draft of a corporate plan under subsection (1) by a day that is after the end of the 90-day period referred to in that subsection.

- (4) If the governing council of a Tasmanian Health Organisation provides a draft corporate plan to the responsible Ministers under subsection (1), the responsible Ministers may –
 - (a) approve the draft corporate plan; or
 - (b) by notice in writing to the organisation, advise the organisation that the Ministers require the amendments specified in the notice to be made to the draft corporate plan.

- (5) The responsible Ministers may only approve under subsection (4) a draft corporate plan provided to them under subsection (1) if the draft corporate plan complies with subsection (2).

- (6) A corporate plan takes effect –
 - (a) on the first day of the financial year next commencing after its approval by the responsible Ministers; or

- (b) if a day for its commencement is specified in that approval, on that day.

47. Amendments to corporate plans

- (1) The governing council of a Tasmanian Health Organisation may, at any time, provide to the responsible Ministers an amendment to the organisation's corporate plan.
- (2) An amendment to a corporate plan may be, but is not required to be, in the form of a new corporate plan that replaces the existing corporate plan.
- (3) If the governing council of a Tasmanian Health Organisation provides to the responsible Ministers an amendment to a corporate plan under subsection (1), the responsible Ministers may –
 - (a) approve the amendment; or
 - (b) by notice in writing to the organisation, advise the organisation that the Ministers require the amendments specified in the notice to be made to the amendment to the corporate plan.
- (4) The responsible Ministers may only approve an amendment to a corporate plan provided to them under subsection (1) if the corporate plan, as so amended, will comply with section 46(2).

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- (5) An amendment to a corporate plan provided to the responsible Ministers under subsection (1) takes effect –
 - (a) when it has been approved by the responsible Ministers; or
 - (b) if a day for its commencement is specified in the approval of the responsible Ministers, on that day.

- (6) The approval of an amendment to a corporate plan may specify that the amendment is to take effect on –
 - (a) the day when it has been approved by the responsible Ministers; or
 - (b) a day that is later than the day when the amendment has been approved by the responsible Ministers; or
 - (c) a day that is earlier than the day when the amendment has been approved by the responsible Ministers.

48. Tasmanian Health Organisations to operate in accordance with corporate plans

- (1) Except if the responsible Ministers approve otherwise under subsection (2), a Tasmanian Health Organisation must –
 - (a) act in accordance with the organisation’s corporate plan; and

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- (b) ensure that a subsidiary of the organisation acts in accordance with the organisation's corporate plan.
- (2) The responsible Ministers, by notice in writing to a Tasmanian Health Organisation, may approve the Tasmanian Health Organisation, or a subsidiary of the Tasmanian Health Organisation, acting, after the notice is given, otherwise than in accordance with the organisation's corporate plan.

49. Ministers to be notified if development may affect achievement of corporate plan, &c.

The governing council of a Tasmanian Health Organisation is to notify the responsible Ministers, as soon as practicable, of any developments that, in the opinion of the governing council, may –

- (a) prevent or significantly affect the achievement of the objectives specified in the organisation's corporate plan; or
- (b) significantly affect any other policy or program specified in the organisation's corporate plan.

Division 2 – Annual business plans

50. Annual business plans

- (1) The governing council of a Tasmanian Health Organisation is to produce, within 30 days after it enters into a service agreement for a financial year, the organisation's annual business plan for the financial year.
- (2) A Tasmanian Health Organisation's annual business plan for a financial year is to set out –
 - (a) how the Tasmanian Health Organisation intends to meet the requirements of the organisation's service agreement during that financial year; and
 - (b) a budget specifying how the organisation's funds are to be expended to meet the requirements of the organisation's service agreement during that financial year.
- (3) Subsection (2) does not limit the matters that may be included in a Tasmanian Health Organisation's annual business plan.
- (4) A Tasmanian Health Organisation is to provide to the responsible Ministers a copy of the organisation's annual business plan as soon as practicable after the plan is produced under subsection (1).

51. Tasmanian Health Organisations to operate in accordance with annual business plans

A Tasmanian Health Organisation must –

- (a) act in accordance with its annual business plan; and
- (b) ensure that a subsidiary of the organisation acts in accordance with the organisation’s annual business plan.

Division 3 – Reports

52. Progress reports

(1) In this section –

“progress reports”, in relation to a Tasmanian Health Organisation, means reports as to the extent to which the organisation is meeting the requirements of the organisation’s annual business plan.

(2) A responsible Minister, by notice in writing to a Tasmanian Health Organisation, may determine –

- (a) the progress reports that the Minister requires the organisation to provide to him or her; and
- (b) the dates by which the organisation is to provide progress reports to him or her.

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- (3) A Tasmanian Health Organisation is to comply with the requirements of a notice given to the organisation under subsection (2).

53. Annual reports

- (1) The governing council of a Tasmanian Health Organisation must ensure that an annual report for the immediately previous financial year is prepared in respect of the organisation.
- (2) The annual report in respect of a Tasmanian Health Organisation for a financial year is to include –
- (a) the organisation’s financial statements, for the financial year, prepared in accordance with section 34; and
 - (b) a copy of the Auditor-General’s report, in respect of the financial statements, that is provided under section 19 of the *Audit Act 2008* to the organisation’s governing council; and
 - (c) a summary of the organisation’s corporate plan; and
 - (d) a report on the organisation’s operations; and
 - (e) a report on the organisation’s performance; and
 - (f) the details of any directions given to the organisation by a Minister under this Act

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and any action taken by the governing council of the organisation in respect of those directions; and

- (g) any other information a responsible Minister requires under subsection (4), including but not limited to information relating to the members of the governing council of the organisation, its chief executive officer and its employees; and
 - (h) any other information the governing council of the organisation considers is appropriate or necessary to properly inform the responsible Ministers and the Parliament as to the performance and progress of the organisation.
- (3) The governing council of a Tasmanian Health Organisation is to certify an annual report for a financial year in respect of the organisation and to provide a copy of it to the responsible Ministers by 30 September of the year in which the report is prepared.
- (4) A responsible Minister, by notice in writing to the governing council of a Tasmanian Health Organisation, may require the council to include in the annual report in respect of the organisation the information specified in the notice.

54. Tabling of annual reports

- (1) The Minister is to lay, before each House of Parliament, a copy of a Tasmanian Health

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Organisation's annual report that is provided to the Minister under section 53, within 4 months after the end of the financial year to which the annual report relates.

- (2) If the Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, the Minister, before the expiration of that period, is to lay before each House of Parliament a statement specifying –
 - (a) the reasons for the failure to comply with that subsection; and
 - (b) an estimate of the day by which a copy of the annual report may be ready to be laid before each House of Parliament.
- (3) If the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (1), or by the day specified in a statement referred to in subsection (2), because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –
 - (a) provide a copy of the annual report to the Clerk of that House of Parliament immediately after the expiration of that period or that day; and
 - (b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

55. Annual report under *State Service Act 2000* not required

Section 36 of the *State Service Act 2000* does not apply in relation to a Tasmanian Health Organisation.

56. Minister may request reports

- (1) A responsible Minister, by notice in writing to a Tasmanian Health Organisation, may require the organisation to provide –
 - (a) to a person or body specified in the notice; and
 - (b) within the period specified in the notice –
a report in relation to the relevant information, specified in the notice, that the Minister requires for the purposes of this Act.
- (2) A notice under subsection (1) may require reports under that subsection to be given regularly within the particular periods set in the notice.
- (3) For the purposes of subsection (1), the relevant information in respect of a Tasmanian Health Organisation is –
 - (a) plans, reports, or financial statements (including audited financial statements), in respect of the organisation; and

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- (b) any other information in respect of the organisation or its operations, other than information that identifies, or may identify, a person to whose health the information relates.
- (4) A Tasmanian Health Organisation is to comply with the requirements of a notice given to the organisation under subsection (1).
- (5) Nothing in this section is to be taken to limit the provision of information by a Tasmanian Health Organisation.

57. Governing council to notify responsible Ministers of developments affecting financial viability, &c.

The governing council of a Tasmanian Health Organisation is to notify the responsible Ministers as soon as practicable of any developments that, in the opinion of the governing council, may significantly affect the financial viability or operating ability of the organisation.

**PART 7 – PERFORMANCE MANAGEMENT OF
TASMANIAN HEALTH ORGANISATIONS**

Division 1 – Review and audit

58. Review and audit

- (1) The Minister, at any time, may authorise a person or persons to conduct a review or audit of any aspect of the operations or performance of a Tasmanian Health Organisation.
- (2) A member of the governing council, the chief executive officer, and an employee, of a Tasmanian Health Organisation must provide all reasonable assistance to a person authorised under subsection (1) to conduct a review or audit of the operations or performance of the organisation.

Division 2 – What constitutes unsatisfactory performance

59. Unsatisfactory performance

For the purposes of this Part, a Tasmanian Health Organisation is performing unsatisfactorily if the Minister is of the opinion that –

- (a) the organisation has failed to meet the requirements of the organisation's service agreement or its corporate plan;
or

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- (b) the organisation, or the governing council of the organisation, has not been performing its functions, or exercising its powers, in a satisfactory manner.

Division 3 – Performance improvement plans

60. Minister may require governing council to produce performance improvement plans

- (1) The Minister, by notice in writing to the governing council of a Tasmanian Health Organisation, may require the governing council to produce a performance improvement plan, if the organisation is performing unsatisfactorily.
- (2) A notice under subsection (1) to the governing council of a Tasmanian Health Organisation –
 - (a) is to specify –
 - (i) the requirements of the organisation’s service agreement or corporate plan that are not being met; or
 - (ii) the functions or powers of the organisation or governing council that are not being performed or exercised in a satisfactory manner; and
 - (b) is to require the governing council to prepare a performance improvement plan; and

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- (c) is to specify any matters that the Minister requires the performance improvement plan to contain; and
- (d) is to specify the reports that are to be submitted to the Minister in relation to the carrying out of the performance improvement plan, if the plan is approved, and the dates by which those reports are to be submitted; and
- (e) is to specify a date by which the performance improvement plan is to be submitted to the Minister for his or her approval.

61. Performance improvement plans

- (1) A performance improvement plan under section 60(1) in relation to a Tasmanian Health Organisation is to specify –
 - (a) the steps the governing council of the organisation intends to take that, if implemented, will ensure that –
 - (i) the requirements of the organisation’s service agreement or corporate plan; or
 - (ii) the functions or powers of the organisation or governing council –

that are specified in accordance with section 60(2)(a) in the notice to the

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- council under section 60(1), are met or performed or exercised in a satisfactory manner; and
- (b) the date by which the steps are to be implemented; and
 - (c) the performance measures that are to be set and achieved so that the Minister is able to determine whether –
 - (i) the requirements of the service agreement or corporate plan are being met; or
 - (ii) the functions or powers of the organisation or governing council are being performed or exercised in a satisfactory manner.
- (2) The governing council of a Tasmanian Health Organisation to which a notice under section 60(1) is issued must, by the date specified in the notice under section 60(2)(e), submit a performance improvement plan to the Minister for his or her approval.
- (3) If a performance improvement plan is submitted to the Minister under subsection (2) by a Tasmanian Health Organisation, the Minister may by notice in writing to the organisation –
- (a) approve the plan; or
 - (b) advise the organisation that the Minister requires the amendments specified in the

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notice to be made to the plan by the date specified in the notice.

- (4) If the Minister issues to a Tasmanian Health Organisation a notice under subsection (3) requiring amendments to be made to a performance improvement plan, the organisation must, by the date specified in the notice, submit to the Minister for approval a performance improvement plan amended as required by the notice.

62. Governing councils, &c., to comply with performance improvement plans

The governing council and the chief executive officer of a Tasmanian Health Organisation to which a performance improvement plan that has been approved under section 61(3)(a) relates are to comply with the requirements of the plan.

Division 4 – Ministerial representatives

63. Minister may appoint ministerial representatives to governing councils

- (1) The Minister, by instrument in writing, may appoint not more than 2 ministerial representatives to the governing council of a Tasmanian Health Organisation.
- (2) The Minister may only appoint a ministerial representative under subsection (1) to the

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governing council of a Tasmanian Health Organisation if –

- (a) the organisation is performing unsatisfactorily; and
 - (b) the Minister is of the opinion that the appointment of a ministerial representative will assist the governing council to improve the performance of the organisation.
- (3) In determining whether to appoint a ministerial representative under subsection (1) to the governing council of a Tasmanian Health Organisation, the Minister must have regard to –
- (a) the financial performance of the organisation; and
 - (b) the safety and quality of the health services, and other services, provided by or on behalf of the organisation; and
 - (c) whether the organisation is complying with its service agreement or corporate plan; and
 - (d) whether the governing council has requested such an appointment.
- (4) The Minister may appoint a ministerial representative to the governing council of a Tasmanian Health Organisation whether or not the governing council has requested such an appointment.

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- (5) The Minister must give notice to the governing council of a Tasmanian Health Organisation of the appointment of a ministerial representative to the governing council.
- (6) A ministerial representative appointed to the governing council of a Tasmanian Health Organisation is not a member of the governing council.

64. Terms of appointment of ministerial representatives

- (1) The instrument of appointment of a ministerial representative to the governing council of a Tasmanian Health Organisation –
 - (a) must specify the terms and conditions of appointment of the ministerial representative; and
 - (b) subject to subsection (6), may specify the remuneration, if any, to which the ministerial representative is entitled.
- (2) Subject to subsections (7) and (8), a ministerial representative holds office for the period specified in his or her instrument of appointment.
- (3) A period specified in the instrument of appointment of a ministerial representative must not be more than 12 months.
- (4) A person appointed as a ministerial representative is eligible for re-appointment.

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- (5) A ministerial representative is entitled to be reimbursed any reasonable expenses incurred in performing his or her functions as a ministerial representative.
- (6) A ministerial representative who is a State Service officer or State Service employee is not entitled to remuneration under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (7) A ministerial representative may resign his or her office by notice in writing signed by him or her and delivered to the Minister.
- (8) The Minister, in writing, may revoke the appointment of a person as a ministerial representative.

65. Functions of ministerial representatives

The functions of a ministerial representative appointed to the governing council of a Tasmanian Health Organisation are –

- (a) to attend meetings of the governing council and observe its decision-making processes; and
- (b) to provide advice or information to the governing council to assist it in understanding its obligations under this or any other Act; and

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- (c) to advise the Minister and the Secretary on any matter relating to the organisation or the governing council; and
- (d) to assist the governing council to meet the requirements of the organisation's performance improvement plan, if any.

66. Obligations of governing councils to ministerial representatives

The governing council of a Tasmanian Health Organisation must –

- (a) permit a ministerial representative appointed to the governing council to attend any meeting of the governing council; and
- (b) provide to a ministerial representative appointed to the governing council information, or a copy of any notice or other document provided to the members of the governing council, at the same time as the information, notice or other document is provided to the members.

Division 5 – Performance improvement teams

67. Minister may appoint performance improvement teams

- (1) The Minister, by notice in writing to the governing council of a Tasmanian Health

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Organisation, may declare that a performance improvement team has been appointed in respect of the organisation.

- (2) The Minister may only declare that a performance improvement team has been appointed in respect of a Tasmanian Health Organisation if the organisation is performing unsatisfactorily.
- (3) A notice under subsection (1) in relation to a Tasmanian Health Organisation is to specify –
 - (a) the requirements of the service agreement or corporate plan that are not being met or the functions or powers of the organisation, or of the governing council of the organisation, that are not being performed or exercised in a satisfactory manner; and
 - (b) why the appointment of the performance improvement team is necessary; and
 - (c) the period for which the performance improvement team is to be in existence; and
 - (d) the functions or powers of the organisation, or governing council, that the team is to perform or exercise, in order to ensure that –
 - (i) the requirements of the organisation's service agreement or corporate plan that are not being met will be met; or

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- (ii) the functions or powers of the organisation or governing council that are not being performed or exercised satisfactorily will be performed or exercised satisfactorily.
- (4) The Minister is to appoint one or more persons to be members of a performance improvement team.
- (5) A person may only be appointed under subsection (4) if the person is a State Service officer or a State Service employee.
- (6) The members of a performance improvement team in respect of a Tasmanian Health Organisation have the functions and powers of the organisation, or of the governing council of the organisation, that are specified in the notice under subsection (1) in which the appointment of the team is declared.

68. Assistance to be provided to performance improvement teams

- (1) The governing council of a Tasmanian Health Organisation in relation to which a performance improvement team is appointed under section 67 must provide to a member of the team appointed under section 67(4) the assistance necessary to enable the team to perform the team's functions, and exercise the team's powers, under this Act.
- (2) A person must not, without reasonable excuse –

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- (a) refuse to assist a member of a performance improvement team appointed under section 67(4) to perform a function, or exercise a power, of the team; or
- (b) hinder or obstruct a member of a performance improvement team appointed under section 67(4) who is performing or exercising, or attempting to perform or exercise, a function or power of the team.

Penalty: Fine not exceeding 2 000 penalty units.

Division 6 – Dissolution of governing councils

69. Minister may dissolve governing council

- (1) The Minister, by notice in writing to the governing council of a Tasmanian Health Organisation, may dissolve the governing council.
- (2) The Minister may only dissolve the governing council of a Tasmanian Health Organisation under subsection (1) if the Minister is of the opinion that –
 - (a) the governing council has ceased to be able to perform its responsibilities or functions, or exercise its powers, in a satisfactory manner; and

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- (b) no other action that the Minister may take under this Part in relation to the organisation will enable the governing council to perform its functions, or exercise its powers, in a satisfactory manner.
- (3) If the Minister dissolves the governing council of a Tasmanian Health Organisation under subsection (1), the Minister is to lay a copy of the reasons for the dissolution of the council before each House of Parliament within 21 sitting-days of that House after the dissolution.
- (4) If the Minister dissolves the governing council of a Tasmanian Health Organisation under subsection (1), the Minister has all the functions and all the powers of the organisation, until he or she appoints, if at all, an administrator of the organisation.

70. Administrators

- (1) If the Minister dissolves the governing council of a Tasmanian Health Organisation under section 69(1), the Minister may appoint an administrator of the organisation.
- (2) Subject to subsection (3), an administrator of a Tasmanian Health Organisation appointed under subsection (1) –
 - (a) has all the functions and powers of the governing council of the organisation;
and

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- (b) is subject to the provisions of this Act, apart from section 19, clause 1(1) of Schedule 3 and clauses 4 and 5 of Schedule 3, as if he or she were a member of the governing council.
- (3) An administrator of a Tasmanian Health Organisation appointed under subsection (1) does not, without the approval in writing of the Minister, have the power to –
 - (a) incur expenditure on behalf of the organisation; or
 - (b) enter into a contract of or for services that are to be provided to or on behalf of the organisation.

71. Deputy administrators

- (1) An administrator of a Tasmanian Health Organisation may appoint persons to be deputy administrators of the organisation.
- (2) A deputy administrator of a Tasmanian Health Organisation has the functions and powers that an administrator has under section 70(2).
- (3) Section 70(3) applies in relation to a deputy administrator of a Tasmanian Health Organisation as if a reference in that subsection to an administrator were a reference to a deputy administrator.

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72. Terms of appointment of administrators and deputy administrators

- (1) Subject to this section and section 73, an administrator or deputy administrator holds office for the period, and on the conditions, specified in his or her instrument of appointment.
- (2) An administrator may, at any time, by notice in writing to the Minister, resign from office as an administrator.
- (3) A deputy administrator of a Tasmanian Health Organisation may, at any time, by notice in writing to the administrator of the organisation, resign from office as a deputy administrator.
- (4) The Minister may, at any time, terminate the appointment of an administrator or a deputy administrator.
- (5) The administrator of a Tasmanian Health Organisation may, at any time, terminate the appointment of a deputy administrator of the organisation.
- (6) An administrator, or a deputy administrator, of a Tasmanian Health Organisation ceases to hold office on the next appointment of members of the governing council of the organisation, unless the Minister determines otherwise.

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73. Disclosure of interest of administrators and deputy administrators

- (1) An administrator, or deputy administrator, of a Tasmanian Health Organisation who has a material personal interest in a matter to which –
- (a) the performance by him or her of the functions of the governing council of the Tasmanian Health Organisation; or
 - (b) the exercise by him or her of the powers of the governing council of the Tasmanian Health Organisation –

may relate must, as soon as practicable after the relevant facts come to the administrator's knowledge, disclose to the Minister the nature of the interest.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Subsection (1) does not apply –
- (a) in respect of a contract for goods or services, supplied by a Tasmanian Health Organisation, if the goods or services are ordinarily supplied by the Tasmanian Health Organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or
 - (b) in respect of an interest that arises only because the administrator or deputy

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administrator is also a State Service officer or State Service employee.

- (3) The Minister, after an administrator of a Tasmanian Health Organisation discloses to the Minister a material personal interest in a matter, is to, by notice in writing to the administrator –
- (a) authorise the administrator to continue, in relation to the matter, to perform a function, or exercise a power, of the governing council of the organisation; or
 - (b) advise the administrator that the administrator is not to continue in relation to the matter to perform a function, or exercise a power, of the governing council of the organisation; or
 - (c) terminate under section 72 the appointment of the administrator.
- (4) The Minister, after a deputy administrator of a Tasmanian Health Organisation discloses to the Minister a material personal interest in a matter, is to, by notice in writing to the deputy administrator –
- (a) authorise the deputy administrator to continue, in relation to the matter, to perform a function, or exercise a power, of the governing council of the organisation; or
 - (b) advise the deputy administrator that the deputy administrator is not to continue in relation to the matter to perform a

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function, or exercise a power, of the governing council of the organisation; or

- (c) terminate under section 72 the appointment of the deputy administrator.

PART 8 – MISCELLANEOUS

74. Certain persons disqualified from offices

A person is not eligible to be a chief executive officer, or a member of the governing council, of a Tasmanian Health Organisation, or to be concerned with, or take part in, the management of a Tasmanian Health Organisation, if, in the previous 5 years –

- (a) the person was convicted of an offence against this Act; or
- (b) the person, having been sentenced to a term of imprisonment in respect of an offence against this Act, was released from prison; or
- (c) the person has been convicted of an offence of dishonesty; or
- (d) the person was disqualified from managing a corporation under Part 2D.6 of the Corporations Act.

75. Indemnity

- (1) In this section –

“relevant person” means a member, a chief executive officer, a delegate of a Minister, a ministerial representative, an administrator, a deputy administrator and

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a member of a performance improvement team appointed under section 67(4).

- (2) A relevant person does not incur any personal liability in respect of 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 person under this Act.
- (3) Subsection (2) does not preclude the Crown or a Tasmanian Health Organisation from incurring liability that a person would, but for that subsection, incur.

76. Delegation by Ministers

- (1) A Minister may delegate to a State Service officer or a State Service employee any of the functions or powers of the Minister under this Act, other than this power of delegation.
- (2) A reference in this section to a function or power of a Minister includes a reference to a function or power that the Minister has in conjunction with another Minister under this Act.
- (3) The responsible Ministers may, under subsection (1), delegate to the same, or a different, State Service officer or a State Service employee any of the functions or powers of the responsible Ministers under this Act, other than this power of delegation.

77. Certain instruments are not statutory rules

- (1) The following instruments are not statutory rules within the meaning of the *Rules Publication Act 1953*:
 - (a) a notice issued by a Minister, or the responsible Ministers, under this Act;
 - (b) a ministerial charter or service agreement or an amendment of a ministerial charter or service agreement;
 - (c) Treasurer's Instructions issued in accordance with section 35(3).
- (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*.

78. Volunteers

A Tasmanian Health Organisation may make use of the services provided by volunteers.

79. 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 a Tasmanian Health Organisations.

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- (3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Treasurer or the Minister.

80. 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.

81. Transitional and savings provisions

Schedule 6 has effect.

82. Consequential amendments

The legislation specified in Schedule 7 is amended as specified in that Schedule.

**SCHEDULE 1 – TASMANIAN HEALTH
ORGANISATIONS**

Sections 6 and 8

1. Tasmanian Health Organisation – South
2. Tasmanian Health Organisation – North
3. Tasmanian Health Organisation – North West

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**SCHEDULE 2 – OPERATIONAL AREAS OF
TASMANIAN HEALTH ORGANISATIONS**

Section 4 and sections 7 and 8

**PART 1 – OPERATIONAL AREA OF TASMANIAN
HEALTH ORGANISATION - SOUTH**

The southern area.

**PART 2 – OPERATIONAL AREA OF TASMANIAN
HEALTH ORGANISATION – NORTH**

The northern area.

**PART 3 – OPERATIONAL AREA OF TASMANIAN
HEALTH ORGANISATION – NORTH WEST**

The north-western area.

**SCHEDULE 3 – MEMBERS OF GOVERNING
COUNCILS**

Sections 16, 17 and 18 and section 70

1. Term of office

- (1) A member is appointed for the period, of not more than 3 years, that is specified in the member's instrument of appointment.
- (2) A person who is or has been a member may, if he or she is eligible under this Act to be a member, be re-appointed as a member.
- (3) Despite subclause (2), a person who is or has been a member may not be appointed to be a member for a period of more than 9 years, whether or not those years are consecutive.

2. Holding of other office

The holder of an office who is required by or under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in conjunction with the office of a member; or
- (b) accepting any remuneration payable to a member.

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3. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

4. Remuneration and conditions of employment

- (1) A member is entitled to be paid the remuneration and allowances that the responsible Ministers determine.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on the conditions in relation to matters, not provided for by this Act, that are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member vacates office if –
 - (a) he or she dies; or
 - (b) he or she resigns by notice in writing signed by him or her and delivered to the Minister; or

- (c) he or she is removed from office under this clause; or
 - (d) the governing council of which he or she is a member is dissolved under section 69.
- (2) The responsible Ministers, by notice in writing to a member, may remove the member from office if the member –
- (a) is absent from 3 consecutive meetings of the governing council without the permission of the other members; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for 12 months or longer; or
 - (d) has been convicted of an offence of dishonesty; or
 - (e) is convicted of an offence under this Act; or
 - (f) ceases to be eligible under this Act to hold the office; or

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- (g) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Tasmanian Health Organisation in respect of which he or she is a member, other than a contract for goods or services supplied by the organisation, if those goods or services are ordinarily supplied by the organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or
 - (h) fails to disclose a material personal interest as required under section 19.
- (3) The responsible Ministers, by notice in writing to a member, may remove the member from office if satisfied that the member is unable to perform, or is not performing, adequately or competently the duties of office.

6. Proceedings, &c., valid despite vacancy, &c., in office

- (1) An act or proceeding of –
 - (a) the governing council of a Tasmanian Health Organisation; or
 - (b) a person acting under any direction of the governing council of a Tasmanian Health Organisation –

is not invalidated by reason only that at the time when the act or proceeding was done, taken or

commenced there was a vacancy in the office of a member.

- (2) All acts and proceedings of the governing council of a Tasmanian Health Organisation, or of a person acting under a direction of the governing council of a Tasmanian Health Organisation, are, despite the subsequent discovery –
- (a) of a defect in the appointment of a member of the governing council; or
 - (b) that any other person was disqualified from acting as, or incapable of being, a member –

as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member of the governing council, and as if the governing council had been properly constituted.

7. Presumptions

In any proceedings to which a Tasmanian Health Organisation or the governing council of a Tasmanian Health Organisation is a party, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the governing council; or
- (b) the appointment of a member of the governing council.

**SCHEDULE 4 – MEETINGS OF GOVERNING
COUNCILS**

Section 25

1. Convening of meetings

- (1) The chairperson of the governing council of a Tasmanian Health Organisation –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other members of the governing council; and
 - (c) must convene a meeting if a meeting is to be convened in accordance with a resolution of a previous meeting of the governing council.
- (2) If the chairperson of the governing council of a Tasmanian Health Organisation is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened by –
 - (a) 2 or more other members of the governing council; or
 - (b) a person authorised to do so by the governing council.
- (3) A meeting of the governing council of a Tasmanian Health Organisation may only be convened if reasonable notice of the meeting is given to the members of the governing council.

- (4) The governing council of a Tasmanian Health Organisation is to determine what constitutes reasonable notice for the purposes of subclause (3).

2. Presiding at meetings

- (1) The chairperson of the governing council of a Tasmanian Health Organisation is to preside at all meetings of the governing council at which he or she is present.
- (2) If the chairperson of the governing council of a Tasmanian Health Organisation is not present at a meeting of the governing council, a member elected by the members present at the meeting is to preside at the meeting.

3. Quorum and voting

- (1) At a meeting of the governing council of a Tasmanian Health Organisation, a quorum is constituted by the majority of the total number of members of the council.
- (2) A meeting of the governing council of a Tasmanian Health Organisation at which a quorum is present is competent to transact any business of the governing council.
- (3) At a meeting of the governing council of a Tasmanian Health Organisation –

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- (a) the member presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of the governing council of a Tasmanian Health Organisation where a member is excluded from being present and taking part in the consideration and decision of the governing council in relation to a matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of members specified as constituting a quorum in subclause (1), less the number of members so excluded.

4. Conduct of meetings

- (1) Subject to this Act, the governing council of a Tasmanian Health Organisation may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The governing council of a Tasmanian Health Organisation may permit members to participate in a particular meeting, or all meetings, of the council by –
 - (a) telephone; or

- (b) video conference; or
 - (c) any other means of communication approved by the governing council.
- (3) A member who participates in a meeting of the governing council of a Tasmanian Health Organisation under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the governing council of a Tasmanian Health Organisation may allow a person to attend a meeting of the governing council for the purpose of advising or informing it on any matter.

5. Resolutions without meetings

- (1) If all members of the governing council of a Tasmanian Health Organisation sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the governing council –
- (a) held on the day on which the document is signed; or
 - (b) held, if the members do not sign it on the same day, on the day on which the last of the members signs the document; or
 - (c) if it is not signed by all the members before the next meeting of the governing

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council, if it is passed by the council at a meeting of the council.

- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are taken to constitute one document.

6. Minutes

The governing council of a Tasmanian Health Organisation must keep minutes of its proceedings.

7. Procedure generally

Except as provided in this Act, the governing council of a Tasmanian Health Organisation may regulate its own proceedings.

8. Presumptions as to resolutions and quorums

In any proceedings to which a Tasmanian Health Organisation or the governing council of a

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Tasmanian Health Organisation is a party, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the governing council;
and
- (b) the presence of a quorum at any meeting of the governing council.

SCHEDULE 5 – SUBCOMMITTEES

Section 26(4) and section 27(4)

1. Membership

- (1) A subcommittee of a Tasmanian Health Organisation consists of the number of persons appointed to be members of the subcommittee under subclause (2).
- (2) The governing council of a Tasmanian Health Organisation is to appoint the number of persons it thinks fit to be members of a subcommittee of the organisation.
- (3) The governing council of a Tasmanian Health Organisation is to appoint a member of a subcommittee of the organisation to be the chairperson of the subcommittee.

2. Conditions of appointment

- (1) A member of a subcommittee is entitled to be paid the remuneration and allowances the responsible Ministers determine.
- (2) A member of a subcommittee who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member of a subcommittee holds office for the period, and on the conditions, the governing

council specifies in the member's instrument of appointment as a member of the subcommittee.

3. Meetings

- (1) Meetings of a subcommittee of a Tasmanian Health Organisation are to be held in accordance with any directions given by the governing council of the organisation.
- (2) A subcommittee of a Tasmanian Health Organisation may, with the approval of the governing council of the organisation, obtain assistance, information and advice from any person.
- (3) Except as otherwise determined by the governing council of the Tasmanian Health Organisation, a subcommittee of the organisation may regulate the calling of, and the conduct of business at, its meetings.

**SCHEDULE 6 – TRANSITIONAL AND SAVINGS
PROVISIONS**

Section 81

1. Interpretation of this Schedule

In this Schedule –

“**commencement day**” means the day on which section 6 commences;

“**transferring employee**” means a person who, immediately before the commencement day, was a State Service employee, or State Service officer, appointed or employed for the purposes of the department responsible for the administration of the *Health Act 1997*.

2. Interim chairperson

- (1) If, by 31 March 2012, section 6 has not commenced, the responsible Ministers, by instrument in writing, may appoint a person to be the interim chairperson for a Tasmanian Health Organisation.
- (2) A person may be appointed to be the interim chairperson for more than one Tasmanian Health Organisation.
- (3) The interim chairperson for a Tasmanian Health Organisation is entitled to be paid the remuneration and allowances that the

responsible Ministers determine and specify in the interim chairperson's instrument of appointment.

- (4) The interim chairperson for a Tasmanian Health Organisation who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (5) The interim chairperson for a Tasmanian Health Organisation holds office on the conditions specified in his or her instrument of appointment.
- (6) The interim chairperson for a Tasmanian Health Organisation may, before 30 June 2012 –
 - (a) negotiate, and agree to, under section 44, the service agreement for the Tasmanian Health Organisation for the following financial year; and
 - (b) provide to the responsible Ministers under section 46 a draft corporate plan for the Tasmanian Health Organisation or an amendment to such a plan under section 47; and
 - (c) produce under section 50 an annual business plan for the Tasmanian Health Organisation for the following financial year –

as if the Tasmanian Health Organisation had been established before the commencement day

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and as if he or she were the governing council of the organisation.

- (7) A person who has been appointed to be the interim chairperson for a Tasmanian Health Organisation ceases to hold that office –
- (a) if the person dies or resigns from that office; or
 - (b) if the Minister terminates the appointment of the person to that office; or
 - (c) when section 6 commences –

whichever occurs first.

3. Minister may transfer employees to another Agency

- (1) The Minister, by notice published in the *Gazette*, may specify that, on and after the commencement day or a later day specified in the notice –
- (a) a particular transferring employee who is specified in the notice; or
 - (b) a transferring employee who is a member of a class that is specified in the notice –

is to be taken to have been appointed under the *State Service Act 2000* for the purposes of the Tasmanian Health Organisation specified in the notice.

- (2) The Minister, by notice published in the *Gazette*, may provide for any matters that are incidental to the transfer of employment of transferring employees to a Tasmanian Health Organisation.
- (3) A person who is specified in, or a member of a class specified in, a notice under subclause (1) to be taken to have been appointed under the *State Service Act 2000* for the purposes of a Tasmanian Health Organisation, is to be taken, on and after the commencement day or the later day, as specified in the notice, to have been appointed under the *State Service Act 2000* for those purposes.
- (4) Nothing in subclause (3) is to be taken to prevent the transfer or termination of the appointment or employment of a person, to whom that subclause applies, under the *State Service Act 2000*.
- (5) A notice for the purposes of subclause (1) may be combined with any other notice under this Schedule.

4. Property

- (1) The Minister, by notice published in the *Gazette*, may –
 - (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, any property or right vested in the Crown and any liability of the Crown or obligation

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- of the Crown, whether actual,
prospective or contingent; and
- (b) provide for any matters that are incidental to the transfer of any such property, right, liability or obligation.
- (2) On the day specified in the notice under subclause (1) –
- (a) property specified in that notice vests in the Tasmanian Health Organisation specified in the notice in accordance with the transfer specified in the notice; and
- (b) a right specified in that notice becomes a right of the Tasmanian Health Organisation specified in the notice in accordance with the transfer specified in the notice; and
- (c) liabilities specified in that notice become the liabilities of the Tasmanian Health Organisation specified in the notice in accordance with the transfer specified in the notice; and
- (d) an obligation specified in that notice becomes an obligation of the Tasmanian Health Organisation specified in the notice in accordance with the transfer specified in the notice.
- (3) A notice for the purposes of subclause (1) may be combined with any other notice under this Schedule.

5. Legal matters

(1) In this clause –

“transfer notice” means a notice under clause 4.

(2) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, unless otherwise specified in a transfer notice, a legal proceeding that –

(a) had been instituted by or against the Crown and was pending immediately before that day; and

(b) relates to that transferred property or transferred liability –

may be continued by or against the Crown.

(3) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, a legal proceeding that –

(a) had been instituted by or against the Crown and was pending immediately before that day; and

(b) relates to that transferred property or transferred liability –

may be continued by or against the organisation if a transfer notice specifies that that legal

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proceeding is, or legal proceedings of a class which includes that legal proceeding are, to be continued by or against the organisation.

- (4) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, unless otherwise specified in a transfer notice, a legal proceeding that –
- (a) could have been instituted by or against the Crown to enforce a right that had accrued, and was in existence, immediately before that day; and
 - (b) relates to that transferred property or transferred liability –

may be continued by or against the Crown.

- (5) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, a legal proceeding that –
- (a) could have been instituted by or against the Crown to enforce a right that had accrued, and was in existence, immediately before that day; and
 - (b) relates to that transferred property or transferred liability –

may be instituted by or against the organisation if a transfer notice specifies that that legal

proceeding is, or legal proceedings of a class which includes that legal proceeding are, to be continued by or against the organisation.

- (6) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, unless otherwise specified in a transfer notice, a judgment or order of a court obtained by or against the Crown before that day in relation to that transferred property or transferred liability may be enforced by or against the Crown.
- (7) On and after the day, specified in a transfer notice, on which transferred property vests in, or transferred liabilities become the liabilities of, a Tasmanian Health Organisation, a judgment or order of a court obtained by or against the Crown before that day in relation to that transferred property or transferred liability may be enforced by or against the organisation, if a transfer notice specifies that that judgment or order is, or judgments or orders of a court of a class which includes that judgment or order are, to be enforced by or against the organisation.

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SCHEDULE 7 – CONSEQUENTIAL AMENDMENTS

Section 82

State Service Act 2000

1. Schedule 1 is amended by inserting after

Tasmanian Dairy Industry Authority	Chairperson of the Tasmanian Dairy Industry Authority
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in Part 2 the following items:

Tasmanian Organisation – North	Health	Chief executive officer
Tasmanian Organisation – South	Health	Chief executive officer
Tasmanian Organisation – North West	Health	Chief executive officer