

TASMANIA

**NORTH WEST MATERNITY (EMPLOYEE
ENTITLEMENTS) BILL 2023**

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NORTH WEST MATERNITY (EMPLOYEE ENTITLEMENTS) BILL 2023

(Brought in by the Minister for Health, the Honourable Guy Barnett)

A BILL FOR

An Act to provide for the transfer of certain employees of the North West Private Hospital in order to facilitate the transfer of maternity services at that hospital to the Department of Health

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *North West Maternity (Employee Entitlements) Act 2023*.

2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention appears –

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Part 1 – Preliminary

eligibility notice means a notice given to a person under section 4;

eligible employee means a person who is given an eligibility notice under section 4;

former employer means Healthe Care Burnie Pty Ltd (ABN 34 121 815 807);

transfer notice, in relation to an eligible employee, means the notice given to the employee under section 7(1);

transfer period means the period commencing on 4 December 2023 and ending on 31 May 2024, inclusive.

PART 2 – TRANSFER PROCESS

4. Minister to determine eligibility to transfer

- (1) The Minister may give a person notice, in writing, that the person is eligible to transfer, under this Act, to the Department as a State Service employee if, at the time at which the notice is given, the person –
 - (a) is an employee of the former employer; and
 - (b) is employed, by the former employer, to work at the private hospital, within the meaning of the *Health Service Establishments Act 2006*, that –
 - (i) is located at 21 Brickport Road, Burnie; and
 - (ii) operates under the registered business name of North West Private Hospital.
- (2) A notice given under subsection (1) –
 - (a) is to be in such form as the Minister determines; and
 - (b) may be given before, or during, the transfer period; and
 - (c) may specify, but is not required to specify, the terms and conditions that

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apply to the transfer of the eligible employee.

- (3) The Minister may withdraw an eligibility notice, given to an eligible employee under this section, at any time before the eligible employee makes an election under section 5 in respect of the notice.

5. Eligible employee may elect to transfer

- (1) An eligible employee who receives an eligibility notice may elect to transfer to the Department as a State Service employee.
- (2) An election under subsection (1) by an eligible employee –
 - (a) is to be made, in writing, in the manner and form specified in the eligibility notice; and
 - (b) may only be made –
 - (i) after the eligible employee has received an eligibility notice; and
 - (ii) before, or during, the transfer period.
- (3) If an eligible employee receives an eligibility notice and does not wish to transfer to the Department under this Act, the eligible employee is to notify the Minister, in writing and in accordance with the eligibility notice, of that fact.

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- (4) The refusal of a transfer, made by an eligible employee under subsection (3) –
- (a) does not affect, and may not be used as grounds to affect, the eligible employee’s employment by the former employer; and
 - (b) does not prevent –
 - (i) the Minister from giving that eligible employee another eligibility notice under this Act; and
 - (ii) the eligible employee from making an election under subsection (1) in respect of a subsequent eligibility notice.

6. Consultation to occur before transfer of eligible employee

- (1) In this section –

relevant person means –

- (a) the Minister; or
 - (b) a person appointed, or approved, by the Minister for the purposes of this section.
- (2) After receiving an election to transfer made by an eligible employee under section 5(1), the Minister is to ensure that a relevant person consults with the eligible employee in respect of

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the transfer of the eligible employee, under this Act, to the Department.

- (3) A consultation under subsection (2) may be held in such manner as the relevant person, conducting the consultation, considers appropriate in the circumstances.
- (4) Persons present at a consultation with an eligible employee under subsection (2) may include, but are not limited to, the following persons:
 - (a) the eligible employee;
 - (b) the relevant person conducting the consultation;
 - (c) a representative of the former employer;
 - (d) a representative of, or support person for, the eligible employee;
 - (e) if requested by the eligible employee, a representative of an organisation, which protects the rights of workers, of which the eligible employee is a member.

7. Minister may transfer eligible employee

- (1) After the completion of a consultation in respect of an eligible employee under section 6, the Minister may notify the eligible employee, in writing, that the eligible employee is a State Service employee of the Department, on the terms and conditions specified in the notice.

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- (2) If an eligible employee receives a notice under subsection (1) –
- (a) the eligible employee is taken, in accordance with Part 3, to be a State Service employee of the Department; and
 - (b) the eligible employee is taken to be employed on the terms and conditions specified in the notice; and
 - (c) Part 3 applies in respect of the transfer of the employee to the Department as a State Service employee.
- (3) The Minister may withdraw a notice given to an eligible employee under subsection (1) if, before the employee transfer date for the employee, within the meaning of Part 3 –
- (a) the employee ceases to be employed by the former employer; or
 - (b) the employee ceases to be employed by the former employer –
 - (i) to work at the private hospital specified in section 4(1)(b); or
 - (ii) in the position or role that forms the basis of the Minister giving the employee an eligibility notice under this Act; or
 - (c) other prescribed circumstances occur or exist.

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- (4) For the avoidance of doubt, if the Minister withdraws a notice under subsection (3) in respect of an eligible employee –
- (a) for the purposes of subsection (2), the eligible employee is taken not to have received the withdrawn notice; and
 - (b) nothing prevents the Minister from giving that eligible employee –
 - (i) another notice under subsection (1); or
 - (ii) a subsequent eligibility notice under this Part.

PART 3 – EFFECT OF TRANSFER

8. Interpretation of Part

(1) In this Part –

employee transfer date, in relation to a transferred employee, means the later of the following dates:

- (a) 4 December 2023;
- (b) the date on which the employee is taken to be a State Service employee under section 7;

transferred employee means an eligible employee who has been given a transfer notice under section 7 which has not been withdrawn under that section.

(2) For the purposes of this Part, continuous employment, in respect of a person, has the same meaning as in the *Long Service Leave (State Employees) Act 1994*.

9. Certain service taken to be continuous

If a transferred employee was employed by the former employer on the day immediately before the employee transfer date for the employee, the period of time for which a transferred employee was continuously employed by the former employer before that date is taken to form part of the transferred employee's continuous employment for the purpose of calculating leave

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or other entitlements, in respect of the employee,
under this Act or the *State Service Act 2000*.

10. Continuation of entitlements

- (1) On the employee transfer date for a transferred employee, the transferred employee, subject to this Act –
 - (a) is taken to have been employed by the Department on the same terms and conditions as the employee was employed by the former employer immediately before the employee transfer date for the employee; and
 - (b) retains, subject to subsection (3) –
 - (i) all leave entitlements, other than an entitlement to long service leave, that the employee has accrued while working for the former employer as if the entitlement to the leave were accrued under the *State Service Act 2000*; and
 - (ii) all other entitlements that are specified in the transfer notice given to the transferred employee; and
 - (c) retains all entitlements to the period of long service leave which the employee is, on the employee transfer date for the

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employee, entitled to take under the *Long Service Leave Act 1976*.

- (2) For the avoidance of doubt, the terms and conditions referred to in subsection (1)(a) include, but are not limited to, terms and conditions relating to –
- (a) registration requirements, conditions on practice, scope of practice requirements and requirements for continuing education and training; and
 - (b) probation, performance management and supervision requirements; and
 - (c) the basis on which an employee was employed by the former employer, whether permanent, contract or casual; and
 - (d) the hours to be worked by an employee and the conditions that apply to that work.
- (3) For the avoidance of doubt, a transferred employee does not retain, on the employee transfer date for the employee –
- (a) an entitlement to which subsection (1)(b) or (c) does not apply; and
 - (b) specifically –
 - (i) any time in lieu, however described, that a transferred employee has accrued while

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- working for the former employer;
and
 - (ii) an entitlement to a period of long service leave in respect of a transferred employee, if, on the employee transfer date for the employee, the employee is not yet entitled to take the leave under the *Long Service Leave Act 1976*; and
 - (iii) an entitlement to “on-call” leave, being leave that the employee is entitled to solely on the basis that the employee has participated in the on-call roster while employed by the former employer.
- (4) Despite subsections (1) and (3), a transferred employee is entitled to the equivalent of 0.866 weeks leave for each completed year of continuous employment with the former employer if –
- (a) prior to the employee transfer date for the employee, the transferred employee did not take, in respect of those years of continuous employment –
 - (i) a period of long service leave under the *Long Service Leave Act 1976*; or
 - (ii) a payment under the *Long Service Leave Act 1976* in lieu of long service leave; and

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- (b) on the employee transfer date for the employee, the transferred employee –
 - (i) has not retained an entitlement to a period of long service leave, in accordance with subsection (3)(b), in respect of those years of continuous employment; and
 - (ii) did not retain an entitlement to a period of long service leave, under subsection (1)(c), in respect of those years of continuous employment.
- (5) On and from the employee transfer date for a transferred employee, and subject to this Act, the transferred employee –
 - (a) is entitled to claim, in accordance with the *State Service Act 2000*, any leave or other entitlement that has been accrued, and retained, by the employee in accordance with –
 - (i) this Act or the *State Service Act 2000*; and
 - (ii) any relevant award, agreement or other Act; and
 - (b) is not entitled to compensation, or another form of consideration or payment, solely due to the transfer of the employee under this Act; and

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- (c) is not entitled to seek compensation, or another form of consideration or payment, from the Department or State, in respect of an action taken by the former employer before the employee transfer date for the employee; and
 - (d) is not entitled to commence legal proceedings, against the Department or State, if the proceedings –
 - (i) relate to a right or liability that had accrued, and was in existence, immediately before the employee transfer date for the employee; and
 - (ii) do not relate to a decision of, or action by, the Department or State; and
 - (iii) if this Act had not commenced, could have been instituted by the transferred employee against the former employer.
- (6) For the avoidance of doubt, nothing in subsection (5) prevents a transferred employee from seeking compensation, consideration or payment from, or commencing legal proceedings against, the former employer in respect of actions taken by, or not taken by, the former employer before the employee transfer date for the employee.

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11. Application of *State Service Act 2000*

On the employee transfer date for a transferred employee –

- (a) the *State Service Act 2000* applies to the transferred employee; and
- (b) the transferred employee is taken to be a State Service employee of the Department.

PART 4 – MISCELLANEOUS

12. Minister to determine disputes

- (1) The Minister is to determine a dispute under this Act if there is a dispute in respect of –
 - (a) whether an employee has been given a notice under this Act or is eligible to be transferred under this Act; or
 - (b) the terms or conditions of the transfer of an employee under this Act; or
 - (c) any other matter in relation to a transferred employee, within the meaning of Part 3; or
 - (d) any other prescribed matter or circumstance.
- (2) Before the Minister determines a dispute under this Act, the Minister is to consult with the former employer and any other such person that the Minister considers appropriate in the circumstances.
- (3) The decision of the Minister, under this section, in respect of a dispute is final and is not subject to further appeal or review.

13. Delegation

The Minister may delegate to any person, by written instrument, any of the Minister's

functions or powers under this Act, other than this power of delegation.

14. Information sharing

- (1) Subject to subsection (2) –
 - (a) the Minister, or the Secretary of the Department, may share information with the former employer; and
 - (b) the former employer may share information with the Minister, or the Secretary of the Department, if requested to do so by the Minister or Secretary.
- (2) The Minister, or the Secretary of the Department, may only share or request information, under subsection (1), if the Minister or Secretary is satisfied that the information –
 - (a) is necessary, for the purposes of this Act, to determine one or more of the following:
 - (i) which employees are to be issued an eligibility notice;
 - (ii) the terms and conditions of employment for an employee, including the leave and other entitlements of that employee;
 - (iii) any other prescribed matter; or
 - (b) is necessary to ensure that the Department has all of the relevant

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information in respect of a transferred employee, within the meaning of Part 3, for the Department to have a complete employment history for the transferred employee; or

- (c) is necessary, or convenient, for any prescribed purpose.
- (3) The former employer must comply with a request made by the Minister, or the Secretary of the Department, under subsection (1).
- (4) A person providing information under this section –
- (a) cannot, by virtue of providing the information, be held to have –
 - (i) breached any code of professional etiquette or ethics; or
 - (ii) departed from any accepted standards of professional conduct; or
 - (iii) contravened any Act; and
 - (b) to the extent that the person has acted in good faith, incurs no civil or criminal liability in respect of providing the information under this section.

15. Effect of notices under this Act

Unless otherwise specified in this Act, a notice under this Act is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

16. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) clarify, or amend, the status, entitlement or rights of employees transferred under this Act; and
 - (b) provide for the preservation, continuation, variation or revocation of a decision of the former employer; and
 - (c) provide for the preservation, or transfer, of information and documents held by the former employer in respect of an employee transferred, or eligible for transfer, under this Act; and
 - (d) provide for any other incidental, transitional or ancillary matter in respect of this Act.
- (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.

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Part 4 – Miscellaneous

- (4) The regulations may authorise any matter to be from time to time determined, approved, applied or regulated by any person specified in the regulations.
- (5) Regulations made under subsection (1), for a transitional purpose –
 - (a) may take effect on –
 - (i) the day on which this Act commences; or
 - (ii) such other day as is specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made or this Act commences.
 - (b) may not reduce, or limit, any entitlements to which an employee is entitled under this Act except where the reduction, or limitation, is required for the entitlements and rights to be consistent with an award or agreement that applies and comes into force, in respect of the employee, after the commencement of this Act.

17. Administration of Act

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

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- (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.