

CLAUSE NOTES

Tasmanian Health Organisations Bill 2011

- Clause 1** **Short Title**
- Clause 2** **Commencement**
Provides for the Act to commence on a day or days to be proclaimed.
- Clause 3** **Objects of Act**
Sets out the object of the Act and how it is to be achieved.
- Clause 4** **Interpretation**
Provides the definitions of specific terms used in this Act.
- Clause 5** **Meaning of “material personal interest”**
Provides the definition of this specific term. The definition is consistent with the definition used in the *Government Business Enterprise Act*.
- Clause 6** **Tasmanian Health Organisations established**
This clause creates the Tasmanian Health Organisations by reference to Schedule I. This is required to meet the requirements of D11 of Schedule D of the National Health Reform Agreement.
- Clause 7** **Operational areas of Tasmanian Health Organisations**
Defines the geographical boundaries of each Tasmanian Health Organisation, by reference to Schedule 2.
- Clause 8** **Establishment, &c., of Tasmanian Health Organisations may be altered by the Governor**
This Clause permits the creation, dissolution, amalgamation, division or change of name of a Tasmanian Health Organisation by order from the Governor. This clause is required to allow future flexibility to adapt to changing circumstances and to not bind future governments to the decision of the current Tasmanian Government to establish three local hospital networks.
An order making a change to a Tasmanian Health Organisation is

a regulation and is thus subject to Parliamentary approval.

Clause 9

Legal entity of Tasmanian Health Organisations

Establishes Tasmanian Health Organisations as independent statutory authorities. This is a requirement of the National Health Reform Agreement (14 b. and D1)

Clause 10

Purposes of Tasmanian Health Organisations

Statement of broad purposes of Tasmanian Health Organisations as service providers responsible for the overall health of its population and the provision of care and treatment. The purposes make explicit the purposes of Tasmanian Health Organisations implicit in sections D2-D4 of Schedule D of the National Health Reform Agreement.

Clause 11

Functions of Tasmanian Health Organisations

Sets out the functions of Tasmanian Health Organisations. The functions are consistent with the roles and responsibilities of local hospital networks as outlined in sections D2-D7 of Schedule D the National Health Reform Agreement.

Clause 12

Powers of Tasmanian Health Organisations

Sets out the powers given to Tasmanian Health Organisations to enable them to perform their functions under the Act. These powers are required to enable Tasmanian Health Organisations to meet the requirements of D4 and D5 of Schedule D of the National Health Reform Agreement.

Clause 13

Limitations on powers of Tasmanian Health Organisations

Sets out those powers that can only be exercised with the explicit approval of the responsible Ministers. These powers chiefly relate to matters around borrowing and quasi borrowing activities and other matters of a financial or corporate governance nature.

Clause 14

Governing councils

Establishes governing councils for Tasmanian Health Organisations and provides for their accountability to the responsible Ministers. This is a requirement of D14 of Schedule D of the National Health Reform Agreement.

- Clause 15** **Composition of membership**
- Sets out the skills and experience required for membership of governing councils. This is consistent with the requirements of DI6 and DI7 of Schedule D of the National Health Reform Agreement.
- Clause 16** **Appointment of members**
- Provides for the responsible Ministers to appoint the members of governing councils and sets minimum and maximum numbers of members for governing councils. This meets the requirements of DI9 of Schedule D of the National Health Reform Agreement. This clause also allows for common membership and a common chair of Tasmanian Health Organisations if required.
- Clause 17** **Acting Members**
- Provides for the appointment of acting members to cover absent members other than the chairperson.
- Clause 18** **Acting chairperson**
- Provides for the appointment of an acting chairperson in the absence of the chairperson.
- Clause 19** **Disclosure of interest of members**
- Requires governing council members to disclose material personal interests and sets out the procedures for dealing with a member's material personal interests and provides for exemptions in limited circumstances.
- Clause 20** **Members to act honestly, &c.**
- Requires governing council members to act honestly and exercise due care and diligence in the performance of their duties and provides penalties for failing to do so.
- Clause 21** **Recovery of improper profit**
- Allows the recovery of any improper profit made by a governing council member breaching section 20.

- Clause 22** **Functions of governing councils**
- Sets out the functions of THO governing councils. The functions are consistent with the roles and responsibilities of local hospital network governing councils as outlined in sections D14-D15 of Schedule D the National Health Reform Agreement.
- Clause 23** **Powers of governing councils**
- Gives governing councils the powers to enable them to perform their functions under the Act.
- Clause 24** **Delegation by governing councils**
- Allows governing councils to delegate functions or powers, other than the power of delegation.
- Clause 25** **Meetings of governing councils**
- By reference to Schedule 4 of the Act this sets out the procedures for meetings of the governing council.
- Clause 26** **Audit and risk sub-committees**
- Requires a governing council to establish an audit and risk sub-committee and provides its function and specifies its membership and procedures by reference to Schedule 5.
- Clause 27** **Other sub-committees**
- Allows a governing council to establish other sub-committees as required.
- Clause 28** **Chief executive officer**
- Provides for the appointment of the chief executive officer under section 29 of the *State Service Act*. This appointment will be by the Premier or delegate as required under the *State Service Act*, but the appointment will only be made on the recommendation of the governing council. This effectively makes the chief executive officer a State Service agency head. The powers and delegations under the *State Service Act* are thus held by each chief executive officer. This allows the chief executive officer to recruit staff under the *State Service Act*.
- Due to the requirements of the *State Service Act*, the appointment will be recommended by the governing council and be appointed by the Premier under that Act rather than

appointed by the governing council with the approval of the State Health Minister as required by section D19 of Schedule D of the National Health Reform Agreement. The Australian Government has approved the Tasmanian process as it is virtually equivalent to the requirements of the National Health Reform Agreement.

An appointment of a CEO under section 29 of the *State Service Act* is consistent with usual practice for Government Business Enterprises that are agencies such as, for example, the Port Arthur Management Authority.

Clause 29 Powers and functions of chief executive officer

Outlines the role and functions of the chief executive officer as operational manager of a Tasmanian Health Organisation and specifies that the chief executive officer will be accountable to the governing council. This is as required by D19 of Schedule D of the National Health Reform Agreement. Most of the powers and functions of the chief executive officer are specified through the *State Service Act* by virtue of the chief executive officer being an appointment under Section 29 of the *State Service Act* and do not need to be restated in this Act.

Clause 30 Employees

Provides for employment of staff by Tasmanian Health Organisations under the *State Service Act*.

Clause 31 Funds of Tasmanian Health Organisations

Describes the sources of funding for Tasmanian Health Organisations and how funds may be used. The clause specifies in very broad terms that funding can be used to meet the requirements of the Tasmanian Health Organisation but does not restrict how Tasmanian Health Organisations apply their budget. This clause is to meet the requirement of Sections D2 and D5 a. of Schedule D of the National Health Reform Agreement that local hospital networks will have their own budget, and make active decisions about the management of their budget.

Clause 32 Authorised deposit-taking institution accounts

Permits a Tasmanian Health Organisation, with the approval of the Treasurer, to establish its own separate bank accounts. This is a Requirement of D13 of Schedule D of the National Health Reform Agreement. Treasurer approval is consistent with usual practice for Government Business Enterprises.

- Clause 33 Accounting records**
- Requires a governing council to keep adequate accounting records that properly represent the financial position of the organisation and comply with Treasurer’s Instructions and directions from the Treasurer. This is part of the financial accountability framework the State is required to implement under Section 12 of Schedule D of the National Health Reform Agreement and is consistent with usual practice for Government Business Enterprises.
- Clause 34 Financial statements**
- Requires a governing council to produce financial statements that comply with the *Financial Management and Audit Act 1990*, Treasurer’s Instructions, any other relevant legislation and directions from the Treasurer. This is part of the financial accountability framework the State is required to implement under Section 12 of Schedule D of the National Health Reform Agreement and is consistent with usual practice for Government Business Enterprises.
- Clause 35 Treasurer’s Instructions**
- Applies standard Treasurer’s Instructions to Tasmanian Health Organisations and allows specific Treasurer’s Instructions to be issued to Tasmanian Health Organisations. This clause also specifies the matters that may be covered by Treasurer’s Instructions and how Instructions may be varied. This is part of the financial accountability framework the State is required to implement under Section 12 of Schedule D of the National Health Reform Agreement and is consistent with usual practice for Government Business Enterprises.
- Clause 36 Matters relating to Audit Act 2008**
- Recognises the responsible Ministers as the relevant Minister for the purposes of the Audit Act. This is consistent with usual practice for Government Business Enterprises.
- Clause 37 Effect of Financial Agreement Act 1994**
- Specifies that Tasmanian Health Organisations must follow the Treasurer’s requirements to ensure compliance with the Agreement within the meaning of the *Financial Agreement Act 1994*. This is consistent with usual practice for Government Business Enterprises.

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

Allows the Minister to direct a Tasmanian Health Organisation to use certain administrative services, medical services or contractual arrangements. This clause is designed to specify certain services that Tasmanian Health Organisations must use (i.e. Tasmanian Ambulance Service, Tasmanian Risk Management Fund, centralised Business Support Network for a range of administrative services etc). The exact make up of services is yet to be determined and will be subject to internal commissioning and policy decisions. It will be essential for meeting the requirements of Section 17 of the National Health Reform Agreement for no net increase in bureaucracy and is also needed to achieve scale efficiencies in a small jurisdiction such as Tasmania.

It is expected that the services that Tasmanian Health Organisations are required to use will need to demonstrate value for money and that there will need to be a greater transparency of costs for such services.

Clause 39**Ministerial charters**

Provides the process for issuing a ministerial charter to provide broad policy direction to a Tasmanian Health Organisation and sets out the process to vary a ministerial charter. The clause also requires the ministerial charter to be laid before each House of Parliament. This is consistent with usual practice for Government Business Enterprises. The ministerial charter provides a basis for the development of strategic and operational plans as required under D14 a. of Schedule D of the National Health Reform Agreement.

Clause 40**Contents of ministerial charters**

Specifies that a ministerial charter is to provide broad policy direction to a Tasmanian Health Organisation and that a ministerial charter may limit the functions and powers of a Tasmanian Health Organisation but may not extend the functions and powers of a Tasmanian Health Organisation. The charter may not prevent a Tasmanian Health Organisation from performing a function or exercising a power it is required to perform or from complying with any Act. This is consistent with usual practice for Government Business Enterprises.

Clause 41**Compliance with ministerial charters**

Requires a Tasmanian Health Organisation to comply with its

charter unless there is an inconsistency with its service agreement. This is consistent with usual practice for Government Business Enterprises. In the case of inconsistency the service agreement prevails to the extent of the inconsistency.

Clause 42 Ministerial policy

Requires Tasmanian Health Organisations to comply with ministerial policies. This clause is to be used to ensure consistent application of policies on a state wide basis to ensure Tasmanians have the same access to services and are subject to consistent policies regardless of where they live. Inconsistent application of policies was a major failing of previous regional health boards.

This will be important in implementing consistent rules for activity based funding and consistent state wide application of programs such as the Patient Travel Assistance Scheme, the Community Equipment Scheme etc. This clause is also necessary to allow for consistent reporting to national health reform bodies and as a mechanism to ensure compliance with national or state clinical standards. This is consistent with the requirements of D5 d. and f. of Schedule D of the National Health Reform Agreement.

This clause will assist in meeting the requirement of sections 1 f. i. and 8 a. of the National Health Reform Agreement that States are the systems managers of public hospitals.

Tasmanian Health Organisations will be responsible for their own local operational policies.

Clause 43 Ministerial directions

Allows the responsible Ministers to give direction to a Tasmanian Health Organisation. It is expected this power will seldom be used but it provides the responsible Ministers with the mechanism to be the ultimate source of accountability. As the responsible Ministers are directly accountable to Parliament for the overall performance of the health system, this is the appropriate line of accountability. This provides a mechanism to give direction quickly to resolve critical issues.

This clause will assist in meeting the requirement of sections 1 f. i. and 8 a. of the National Health Reform Agreement that States are the systems managers of public hospitals.

This clause is also consistent with usual practice for Government Business Enterprises.

Clause 44 **Minister and Tasmanian Health Organisations to enter into service agreements**

Requires the Minister and a Tasmanian Health Organisation to sign an annual service agreement by no later than 30 June of the financial year prior to the financial year to which the service agreement relates. The clause also allows the Minister to determine the service agreement if agreement cannot be reached with the governing council.

This is consistent with the requirements of clause D5 b. and c. of Schedule D of the National Health Reform Agreement.

Clause 45 **Contents of service agreements**

Specifies the content of a service agreement in general terms. The required contents are consistent with the requirements of clause D8 of Schedule D of the National Health Reform Agreement.

Clause 46 **Corporate plans**

Requires a Tasmanian Health Organisation to have a corporate plan and sets out the approvals process. This will be a long term strategic plan but updated annually. Meets the requirement for a strategic plan as required under D14 a. and D15 b. of Schedule D of the National Health Reform Agreement. Consistent with usual practice for Government Business Enterprises.

Clause 47 **Amendments to corporate plans**

Allows for amendment of a corporate plan and sets out the approvals process. Consistent with usual practice for Government Business Enterprises.

Clause 48 **Tasmanian Health Organisations to operate in accordance with corporate plans**

Requires a Tasmanian Health Organisation to act in accordance with its corporate plan. Consistent with usual practice for Government Business Enterprises.

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

Requires the governing council to give notification to the responsible Ministers of any developments with potential to

affect the implementation of the corporate plan.

Clause 50

Annual business plans

Requires a Tasmanian Health Organisation to have an annual business plan. The annual business plan will describe how a Tasmanian Health Organisation intends to meet its service agreement requirements and how it will spend its funds. This meets the requirement for an operational plan as required under D14 a. and D15 b. of Schedule D of the National Health Reform Agreement.

Clause 51

Tasmanian Health Organisations to operate in accordance with annual business plans

Requires a Tasmanian Health Organisation to act in accordance with its annual business plan.

Clause 52

Progress reports

Requires a Tasmanian Health Organisation to provide progress reports to the responsible Ministers. This clause will assist in meeting the requirement of sections 1 f. i. and 8 a. of the National Health Reform Agreement that States are the systems managers of public hospitals.

Clause 53

Annual reports

Requires a Tasmanian Health Organisation to produce an annual report. This is consistent with usual practice for Government Business Enterprises.

Clause 54

Tabling of annual reports

Sets out the timeline for tabling the annual report before Parliament. This is consistent with usual practice for Government Business Enterprises.

Clause 55

Annual report under *State Service Act 2000* not required

Exempts the Tasmanian Health Organisation from the annual report requirements in Section 36 of the *State Service Act* as the annual report process is specified in Section 50 of this Bill.

Clause 56

Minister may request reports

Allows the Minister to request reports by specifying by notice in writing the relevant information required. This can be used to require regular or ad hoc reports on the operations of a Tasmanian Health Organisation. This clause will assist in meeting the requirement of sections 1 f. i. and 8 a. of the

National Health Reform Agreement that States are the systems managers of public hospitals. It also meets the requirements of section D5 f. of Schedule D of the National Health Reform Agreement.

This clause will also facilitate the provision of data by the State to national bodies as required under section B93 of Schedule B of the National Health Reform Agreement.

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

Requires the governing council to give notification to the responsible Ministers of any developments affecting financial viability. This is similar to insolvent trading provisions that are the usual practice for Government Business Enterprises.

Clause 58 **Review and audit**

Provides for the Minister to authorise a review or audit of Tasmanian Health Organisation operations and for a Tasmanian Health Organisation to provide assistance to the reviewer or auditor. This is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement and to meet the requirements of D5 g., D12 and D13 of Schedule D of the National Health Reform Agreement.

Clause 59 **Unsatisfactory performance**

Defines unsatisfactory performance for the purposes of Part 7 of the Bill. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

Clause 60 **Minister may require governing council to produce performance improvement plans**

Provides the power for the Minister to request a Tasmanian Health Organisation to prepare a performance improvement plan. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

It is expected that this will be the usual method of dealing with performance issues and that more interventional options will

only be used in rare circumstances.

- Clause 61** **Performance improvement plans**
Describes the matters to be covered by a performance improvement plan.
- Clause 62** **Governing councils, &c., to comply with performance improvement plans**
Requires the Tasmanian Health Organisation to comply with a performance improvement plan.
- Clause 63** **Minister may appoint ministerial representatives to governing councils**
Provides the power for the Minister to appoint representatives in relation to a particular Tasmanian Health Organisation governing council and the conditions under which this can occur. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

This clause is designed to deal with serious performance issues of a corporate governance nature where problems arise from the corporate management and decision making processes of the governing council.
- Clause 64** **Terms of appointment of ministerial representatives**
Specifies the terms of appointment for ministerial representatives.
- Clause 65** **Functions of ministerial representatives**
Describes the functions of ministerial representatives.
- Clause 66** **Obligations of governing councils to ministerial representatives**
Requires the governing council to permit a ministerial representative to attend meetings and to receive meeting papers.
- Clause 67** **Minister may appoint performance improvement teams**
Provides the power for the Minister to appoint a performance improvement team, and the terms and conditions for the appointment, in relation to a particular Tasmanian Health

Organisation. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

This clause is designed to deal with performance issues of a service delivery nature where problems arise from the management or delivery of particular service units.

Clause 68 Assistance to be provided to performance improvement teams

Requires a Tasmanian Health Organisation to render assistance to a performance improvement team.

Clause 69 Minister may dissolve governing council

Permits the Minister to dissolve a governing council and outlines the conditions under which this can occur. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

This clause is required to deal with performance issues of a serious nature where the governing council is unable or unwilling to perform its functions in a satisfactory manner and no other action is available to remedy the situation.

Clause 70 Administrators

Permits the Minister to appoint an administrator to a Tasmanian Health Organisation and provides for the functions and powers of an administrator. This clause is required to help the State meet its management requirements under clause 8 of the National Health Reform Agreement (especially clause 8 c.) and to meet the requirements of D5 g. and D12 of Schedule D of the National Health Reform Agreement.

This clause is required to deal with corporate governance of a Tasmanian Health Organisation where a governing council has been dissolved and a new governing council is yet to be appointed.

Clause 71 Deputy administrators

Permits an administrator to appoint deputies.

- Clause 72** **Terms of appointment of administrators or deputy administrators**
- Specifies the terms of appointment of administrators or deputy administrators and how appointments may be terminated.
- Clause 73** **Disclosure of interest of administrators and deputy administrators**
- Requires administrators and deputy administrators to disclose material personal interests.
- Clause 74** **Certain persons disqualified from offices**
- Disqualifies certain persons from holding office due to criminal convictions or corporate disqualifications.
- This is consistent with usual practice for Government Business Enterprises.
- Clause 75** **Indemnity**
- Provides a general indemnity for specific offices created within the Bill.
- Staff members of the Tasmanian Health Organisation are state servants and so are covered under *State Service Act* indemnity arrangements.
- Clause 76** **Delegation by Ministers**
- Provides a power of delegation for individual ministers and the responsible Ministers collectively. All powers, other than the power of delegation, may be delegated.
- Clause 77** **Certain instruments are not statutory rules**
- Specifies that notices issued by a Minister under this Act or Treasurer's Instructions are not statutory rules.
- Clause 78** **Volunteers**
- Provides for Tasmanian Health Organisation to make use of volunteer services (i.e. hospital auxiliaries).
- Clause 79** **Regulations**
- Provides for regulations to be made under this Act.
- Clause 80** **Administration of Act**
- Provides a temporary assignment of the Act to the Minister for Health and the Department of Health and Human Services until

a permanent assignment is made under the *Acts Administration Act*.

- Clause 81** **Transitional and savings provisions**
Provides a reference to the transitional and savings provisions in Schedule 6.
- Clause 82** **Consequential Amendments**
Provides a reference to the consequential amendments in Schedule 7.
- Schedule 1** **Tasmanian Health Organisations**
Provides a list of Tasmanian Health Organisations.
- Schedule 2** **Operational areas of Tasmanian Health Organisations**
Specifies the geographic boundaries of Tasmanian Health Organisations.
- Schedule 3** **Members of Governing Councils**
Specifies administrative arrangements for members of governing councils including term of office, remuneration and vacation of office.
- Schedule 4** **Meetings of Governing Councils**
Specifies procedures for meetings of the governing councils.
- Schedule 5** **Sub-Committees**
Specifies administrative arrangements and meeting procedures for sub-committees of governing councils.
- Schedule 6** **Transitional and savings provisions**
Provides transitional provisions in relation to the appointment of an interim chairperson for a Tasmanian Health Organisation, the transfer of staff to Tasmanian Health Organisations, the transfer of property to Tasmanian Health Organisations and the procedures for dealing with legal matters.
- Schedule 7** **Consequential Amendments**
Includes Tasmanian Health Organisations as State Service Agencies for the purposes of the *State Service Act*.