

Hospital Foundations Bill 2018

Amendments during consideration in detail to be moved by
The Honourable the Minister for Health and Minister for Ambulance
Services

1 **Clause 2 (Commencement)**

Page 10, line 9, ‘and 2.’—

omit, insert—

and 2;

(c) part 10, divisions 5 to 8.

2 **After clause 155**

Page 91, after line 12—

insert—

Division 5 Amendment of Hospital and Health Boards Act 2011

156 Act amended

This division amends the *Hospital and Health
Boards Act 2011*.

157 Amendment of s 34 (Delegation by health service chief executive)

Section 34(1), after ‘under this Act’—

insert—

or another Act

Division 6 Amendment of Justice and Other Information Disclosure Act 2008

158 Act amended

This division amends the *Justice and Other Information Disclosure Act 2008*.

159 Amendment of schedule (Dictionary)

- (1) Schedule, definition *chief executive*, of a treatment order agency—

insert—

- (f) a health service chief executive under the *Hospital and Health Boards Act 2011*.

- (2) Schedule, definition *treatment order agency*—

insert—

- (f) a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

Division 7 Amendment of Mental Health Act 2016

160 Act amended

This division amends the *Mental Health Act 2016*.

161 Insertion of new ss 497A and 497B

Chapter 12, part 6, division 3—

insert—

497A Prosecuting authority to give chief psychiatrist notice of ending of order

The prosecuting authority for the relevant offence must, within 7 days after the forensic order or treatment support order for the person ends under section 497(2), give the

chief psychiatrist written notice that the order has ended under that section on a stated day.

479B Disclosure of particular information on ending of order

- (1) The chief psychiatrist must, within 7 days after receiving notice under section 497A of the ending of the forensic order or treatment support order for the person, give the chief executive (justice) written notice under subsection (2).
- (2) The notice must state each period for which the category of the forensic order or treatment support order, or of any previous related order, was inpatient.

Note—

See section 797A for the effect of a period for which the category of a forensic order or treatment support order is inpatient.

- (3) The chief executive (justice) must, within 7 days after receiving the notice, give a copy of the notice to—
 - (a) the director of public prosecutions; and
 - (b) if the person is a child—the chief executive (youth justice); and
 - (c) if the person has at any time been in, or immediately after the relevant appearance is in, the custody of the chief executive (corrective services) in relation to the relevant offence—the chief executive (corrective services).

Note—

See the *Corrective Services Act 2006*, section 7 for when a person is taken to be in the custody of the chief executive (corrective services).

(4) In this section—

previous related order, in relation to a forensic order or treatment support order (each a *relevant order*), means—

- (a) a forensic order that ended or was revoked on the making of the relevant order; or
- (b) a forensic order that ended or was revoked on the making of the forensic order mentioned in paragraph (a).

Notes—

- 1 See section 461 for the making of a forensic order (mental health) or forensic order (disability) for a person subject to a forensic order (Criminal Code).
- 2 See section 457 for the making of a forensic order (disability) on the revocation of a forensic order (mental health).
- 3 See section 450 for the making of a treatment support order on the revocation of a forensic order (mental health).

relevant appearance, for a person who was subject to a forensic order or treatment support order that ended under section 497(2), means the appearance of the person at the mention of the proceeding for the relevant offence that resulted in the ending of the order.

162 Insertion of new s 797A

After section 797—

insert—

797A Particular periods counted as imprisonment or detention

- (1) This section applies to a period for which a person—

- (a) is a classified patient in relation to an offence; or
 - (b) is subject to a forensic order or treatment support order in relation to an offence, if the category of the order is inpatient; or
 - (c) is detained in an authorised mental health service, in relation to an offence, under—
 - (i) a court examination order; or
 - (ii) an order made under section 124(1)(b), 183(c)(ii), 193(2) or 551(4)(b).
- (2) The period is—
- (a) for the *Penalties and Sentences Act 1992*—taken to be imprisonment already served by the person under the sentence for the offence, unless the sentencing court orders otherwise; or
- Note—*
- See the *Penalties and Sentences Act 1992*, section 159A in relation to time held in presentence custody.
- (b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted as part of the person’s period of imprisonment or period of detention for the offence.
- (3) However, subsection (2) does not apply to a period for which the person is granted bail for the offence.

163 Replacement of ch 20, hdg (Transitional provisions)

Chapter 20, heading—

omit, insert—

Chapter 20 Transitional provisions for Act No. 5 of 2016

164 Insertion of new ch 21

After chapter 20—

insert—

Chapter 21 Transitional provision for Hospital Foundations Act 2018

864 Application of s 797A to particular periods

- (1) Section 797A applies, and is taken always to have applied, as if the reference in section 797A(1) to a period included a reference to a period during the designated period.
- (2) If section 797A(2)(a) or (b), as applied under subsection (1), applies in relation to a person for a period during the designated period, the period is—
 - (a) for the *Penalties and Sentences Act 1992*—taken to be, and to have always been, imprisonment already served by the person under the sentence for the offence; or
 - (b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted, and is taken to have always been counted, as part of the person's period

of imprisonment or period of detention for the offence.

Note—

See also the repealed *Mental Health Act 2000*, section 543 in relation to particular periods taken to be imprisonment already served by a person or counted as part of a person's period of imprisonment or detention for an offence.

(3) In this section—

designated period means the period starting on 5 March 2017 and ending immediately before the commencement.

Division 8 Amendment of Penalties and Sentences Act 1992

165 Act amended

This division amends the *Penalties and Sentences Act 1992*.

166 Amendment of s 151B (Definitions for part)

(1) Section 151B, definition *review team*, paragraph (b)—

omit, insert—

(b) a representative of each treatment order agency, other than a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; and

(c) a representative of 1 Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

(2) Section 151B, definition *treatment order agency*,

paragraph (c)—

omit, insert—

- (c) a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17;

167 Amendment of s 151T (Review team obligations and requirement for court to consult)

Section 151T(2) and (3)—

omit, insert—

- (2) In administering a treatment order, the review team may—
 - (a) give a direction that is reasonably necessary to achieve the purposes of the treatment order; and
 - (b) consult with and be assisted by the chief executive (health).
- (3) In making an order or taking an action under this division in relation to a treatment order, the court—
 - (a) must consult with the review team for the order about whether the order or action is appropriate; and
 - (b) may consult with and be assisted by the chief executive (health).
- (4) In this section—

chief executive (health) means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

3 Long title

Long title, from ‘and the’ to ‘2009’—

omit, insert—

, the Fair Work (Commonwealth Powers) and Other Provisions Act 2009, the Hospital and Health Boards Act 2011, the Justice and Other Information Disclosure Act 2008, the Mental Health Act 2016 and the Penalties and Sentences Act 1992

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