

# Hospital and Health Boards Amendment Bill 2014

## Explanatory Notes

### Short title

The short title of the Bill is the Hospital and Health Boards Amendment Bill 2014.

### Policy objectives and the reasons for them

In February 2013, the Minister for Health released the *Blueprint for better healthcare in Queensland* to outline an action plan for a range of structural and cultural improvements to establish Queensland as the leader in Australian healthcare.

As detailed in the Blueprint, an important part of achieving this object is workforce reform. The introduction of performance based arrangements for senior executive and clinical staff such as doctors is one of the steps being taken to rationalise and simplify industrial relations arrangements within the public health sector.

In December 2013 amendments were made to the *Industrial Relations Act 1999* and *Hospital and Health Boards Act 2011* to facilitate the introduction of individual employment contracts for senior employees. Under section 51A of the Hospital and Health Boards Act, the Director-General is empowered to issue health employment directives about the conditions of employment for health service employees, including the terms of contracts for health executives and contracted senior health service employees. In addition, the Act goes on to clarify, in section 51C, that should it be found that a contract was inconsistent with a health employee directive, the directive would prevail over the contract.

Two health employment directives have been made to support the introduction of high-income guarantee contracts for medical officers. Health Employment Directive No. 5/14 sets out the framework contract of employment for Senior Medical Officers and Health Employment Directive No. 6/14 sets out the framework contract of employment for Visiting Medical Officers. These directives ensure that the introduction of contracts for medical officers is implemented in a consistent manner across the State.

During discussions about the introduction of these contracts it became apparent that some senior doctors were concerned that the terms and conditions of a contract could be overridden, without the agreement of the employee. In order to address this concern, the Bill provides for the Act to be amended to specify that a high-income guarantee contract will prevail over a health employment directive to the extent of any inconsistency, other than when a health employment directive provides for an increase to remuneration or other benefit. Under these circumstances, the directive would not be taken to be inconsistent with the contract to ensure that the benefits could flow onto to employees on a high-income guarantee contract. In addition, the Act will be amended to clarify that a high-income

guarantee contract prevails over an employment regulation made under either section 282 of the Act or section 193 of the *Industrial Relations Act 1999*.

## **Achievement of policy objectives**

To achieve the policy objective, the Bill will amend the *Hospital and Health Boards Act 2011* to clarify the relationship between a high income guarantee contract and health employment directive and employment regulations.

## **Alternative ways of achieving policy objectives**

Alternative ways of achieving the policy objective were considered, however, it became apparent that the amendment of section 51C of the Hospital and Health Boards Act was the only way to achieve the stated policy objective. The proposed legislative change will be accompanied by a Ministerial direction to the Director-General that if the Director-General proposes to amend or repeal existing Health Employment Directives Numbers 5/14 and 6/14, there must be consultation with the Queensland Health Contract Advisory Committee.

## **Estimated cost for government implementation**

No additional costs will be incurred by the State Government or Hospital and Health Services as a result of the Bill.

## **Consistency with fundamental legislative principles**

The Bill is consistent with fundamental legislative principles. There will be no disadvantage to employees as result of the amendment to section 51C. No additional employment categories of high income employees will be placed on contracts other than high-income guarantee contracts underpinned by health employment directives.

## **Consultation**

The Bill has been progressed in light of consultations undertaken with key industrial and professional representatives about the introduction of high-income guarantee contracts for doctors within the public health sector.

The Department of the Premier and Cabinet and the Department of Justice and Attorney-General were also consulted about the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation in the Commonwealth or another State. No other state currently uses high-income guarantee contracts underpinned by health employment directives.

## Notes on provisions

*Clause 1* states that, when enacted, the Bill will be cited as the Hospital and Health Boards Amendment Act 2014.

*Clause 2* states that the Bill amends the *Hospital and Health Boards Act 2011*.

*Clause 3* amends section 51C, which sets out the relationship between health employment directives, contracts as well as other laws, instruments and directives.

Subsection 51C (3) currently states that if a health employment directive is inconsistent with a health service employee's contract of employment, the directive prevails over the contract. However, as detailed above, concern has been expressed that this provision could be used to override the terms and conditions of an individual's contract without agreement if a directive were issued or amended. In order to address this concern, the Bill provides for subsections 51C (3) and (4) to be omitted and replaced with new subsections (3) to (6).

New subsection (3) states that if there is an inconsistency between a health employment directive and a high-income guarantee contract, the contract will prevail over the directive to the extent of the inconsistency. However, new subsection (4) goes on to clarify that should a health employment directive increase remuneration or other benefits, these may be passed onto an employee on a high-income guarantee contract provided it does not cause an inconsistency with the contract. This will, for example, allow wage increases to be flowed on via health employment directives to high-income guarantee contracts.

New subsection (5) has been included to clarify the relationship between section 51C as amended by the Bill and section 51E of the Act. That is, new subsections (3) and (4) apply despite section 51E, which specifies that health employee directives are binding on employees, the Department of Health and Hospital and Health Services.

The new subsection (6) replaces the existing subsection (4), which currently provides for the term 'health employment directive' to be defined for the purposes of section 51C. This definition is retained but, as a consequence of new subsection (4), the term 'remuneration' is also defined by reference to section 192 of the *Industrial Relations Act 1999*.

*Clause 4* inserts a new section 69B to specify that a high-income guarantee contract for a health service employee prevails over a regulation made under section 282 of the Hospital and Health Boards Act or section 193 of the *Industrial Relations Act 1999* (an employment regulation). However, the provision goes on to state that this does not prevent an increase in remuneration or other benefits specified provided for by an employment regulation from applying to a high-income guarantee contract.

Section 282 of the Hospital and Health Boards Act sets out the general regulation making head of power for the Act. As such, it enables a regulation to be made about matters such as the transfer of staff, staff entitlements and contracts entered into by a Hospital and Health Service or the Department of Health.

Section 193 of the Industrial Relations Act sets out the meaning for the term ‘high-income guarantee contract’ and, in doing so, specifies that a regulation may prescribe the form of a high-income guarantee contract.

*Clause 5* inserts a definition of the term high-income guarantee contract into the Dictionary. This term is defined by reference to section 193 of the *Industrial Relations Act 1999*.