

# Hospital Foundations Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the Hospital Foundations Bill 2018 (the Bill).

### Policy objectives and the reasons for them

The Bill repeals and replaces the *Hospitals Foundations Act 1982* (the Hospitals Foundations Act) and amends the *Drugs Misuse Act 1986* (the Drugs Misuse Act) to enable appropriate further development of the industrial cannabis industry, following a national decision to allow low-tetrahydrocannabinol (THC) hemp seed and seed products to be sold as food.

### Repeal and replace of the *Hospitals Foundations Act 1982*

The Hospitals Foundations Act provides for the establishment and regulation of hospital foundations (foundations). Foundations help their Hospital and Health Service (HHS) and support the Queensland public health system generally. They do this by raising funds to improve facilities, support educational and training opportunities for staff, fund research, and support and promote the health and wellbeing of communities.

There are currently 13 foundations in Queensland:

- Bundaberg Health Services Foundation
- Children's Hospital Foundation Queensland
- Far North Queensland Hospital Foundation
- Gold Coast Hospital Foundation
- HIV Foundation Queensland
- Ipswich Hospital Foundation
- Mackay Hospital Foundation
- The PA Research Foundation
- The Prince Charles Hospital Foundation
- Royal Brisbane and Women's Hospital Foundation
- Sunshine Coast Health Foundation
- Toowoomba Hospital Foundation, and
- Townsville Hospital Foundation.

Over the past 35 years, foundations have undertaken initiatives to support their local health services and improve health outcomes of Queenslanders. This support includes grants and in-kind support for medical equipment, lifesaving research, staff travel and professional development initiatives, and the provision of facilities to support patients, staff and the community. In the 2016-2017 financial year alone, foundations collectively reported income raised of over \$74 million.

The foundations work closely with their local communities to deliver better public health outcomes. The dedicated work they undertake to raise funds is driven largely by volunteer local community members. In 2016-2017, foundations reported a total full-time equivalent staff of over 180 and a volunteer workforce estimated at over 4,000 people.

The foundations' work has the associated benefit of positively promoting the high standard of care and health services delivered within the public health system. The important role of foundations in delivering outcomes for the health of Queenslanders requires a legislative framework that reflects their work and current operational needs.

Foundations are established as statutory bodies under the Hospitals Foundations Act. The Hospitals Foundations Act provides that foundations are bodies corporate, governed by at least seven members appointed by the Governor in Council and one HHS member (a person who is either the Hospital and Health Board (HHB) chairperson for the associated HHS for the foundation or who is a HHB member nominated by the chairperson). The Hospitals Foundations Act governs many aspects of foundations' operations including functions, objectives, powers, constitution, meetings, financial matters, dissolution, winding up and amalgamation.

The Hospitals Foundations Act is considered unnecessarily prescriptive and inconsistent with contemporary drafting standards, and does not accurately reflect the needs of foundations. The Bill will repeal and replace the Hospitals Foundations Act with legislation that reflects contemporary drafting standards, and streamline the legislation by removing unnecessarily prescriptive provisions.

### **Amendments to the *Drugs Misuse Act 1986***

Commercial industrial cannabis production for fibre and seed production in Queensland is licensed under the Drugs Misuse Act. The Drugs Misuse Act currently does not allow the production of industrial cannabis seeds for the purpose of human consumption.

An amendment to the Australia New Zealand Food Standards Code, which took effect on 12 November 2017, allows the sale of low-THC hemp seed foods in Queensland. However, without amendments to the Drugs Misuse Act, all industrial cannabis seeds used in hemp seed foods in Queensland must be imported from interstate or overseas.

Industrial cannabis which can be grown by the industry has low concentrations of the psychoactive component THC and therefore has low value as a recreational drug. However, low-THC and high-THC varieties may be visually indistinguishable so there is a risk that lawful industrial cannabis production could be used as a front for illegal activities. Licensed research to support the development of the industry can involve high-THC varieties. There is a risk that the plant material or the seed, which does not contain THC but could be used to grow an unlicensed crop, could be diverted to illegal activities. Even unlawful diversion of low-THC plant material or seed would be a policing concern.

The amendments to the Drugs Misuse Act will enable commercially-led industrial cannabis industry development, minimise associated risks and address pre-existing issues with the Drugs Misuse Act.

## Achievement of policy objectives

### Repeal and replace the *Hospitals Foundations Act 1982*

The main purpose of the Bill is to establish a legislative framework under which entities may support and improve the public health system in Queensland. This purpose is primarily achieved by providing for:

- the objects for which foundations may hold and manage property
- the establishment of foundations and boards for foundations, and
- matters relating to the administration and oversight of foundations and boards for foundations.

### Objects of foundations

The Hospitals Foundations Act contains a prescriptive list of detailed objects for which foundations may apply property. The Bill streamlines and modernises the objects, providing that a foundation may hold and deal with property to:

- support, improve or promote an existing public sector hospital, public sector health service facility or public sector health service—for example, buying medical equipment or funding the improvement of public sector hospital buildings
- support or promote a proposed public sector hospital, public sector health service facility or public sector health service
- give financial support for the education, training or development of the employees of a HHS, or persons working as volunteers for a HHS
- give financial support for persons studying or teaching medical or health science, allied health or health administration
- give financial support for research in medical or health science or to promote the results of research, and
- do anything else that is likely to support, improve or promote public health—for example, funding a preventative health program.

These objects are broad and designed to capture all current work of foundations. The Bill recognises that foundations may operate for the benefit of a particular HHS (or a particular part of a HHS, such as a specific hospital) or for the benefit of the Queensland public health system generally.

A foundation's registered objects must be consistent with the broad objects prescribed in the Bill. The register of foundations, which the Bill will require to be made publicly available on the Department's website, must include the foundation's current objects. A change to the foundation's registered objects must be approved by the Minister.

To ensure that foundations' registered objects align with the objects prescribed in the Bill, the Bill will require foundations to update their objects within three months following commencement of the Bill.

## Establishment of foundations

The Hospitals Foundations Act prescribes matters relating to the establishment of foundations, including the class of applicant who may apply to the Minister to establish a foundation. The Bill modernises the process of establishing a new foundation by enabling any person to apply to establish a foundation. The Bill makes clear that a foundation must nominate a single HHS with which the foundation will be associated and outline the proposed object/s of the foundation.

The Minister has discretion whether or not to approve an application to establish a new foundation. In making this decision, the Minister may have regard to the financial standing of the applicant, whether the applicant has a sufficient understanding of the governance arrangements that apply to foundations and any other matter the Minister considers relevant.

The Bill ensures all existing foundations will continue when the Bill commences.

## Structure of foundations

The Bill continues to provide for foundations to be established as bodies corporate. To improve readability of the legislation, the Bill refers throughout to *foundations* rather than *bodies corporate*.

The Hospitals Foundations Act provides for the body corporate to comprise members but does not expressly establish a board for the foundation. The Bill makes clear that the governing body of a foundation is the foundation's board. The functions of the board are to:

- manage the foundation generally
- ensure the foundation achieves its registered objects effectively and efficiently
- set strategies and policies for property managed by the foundation, and
- any other function given to it under the Bill or other legislation.

These changes are not expected to alter the functions or duties of existing foundations or their members but will ensure that the legislation better reflects the structure of foundations in practice.

The Bill also ensures that existing foundation members will become foundation board members when the Bill commences.

## Board membership

The Bill provides that the board must comprise at least seven members consisting of:

- at least six persons recommended by the Minister, and
- one person who is either the chairperson of the HHB for the foundation's associated HHS, or the HHB member nominated by the chairperson (known as the HHS member).

Consistent with the Hospitals Foundations Act, all board members, except the HHS member, must be appointed by the Governor in Council on the Minister's recommendation. Members will continue to be appointed for terms of up to five years.

The Hospitals Foundations Act prescribes specific membership requirements for foundations, including a requirement for the body corporate to include an employee of a university or other educational institution, and employees of a hospital within the associated HHS. To improve flexibility, the Bill removes these requirements and instead enables the Minister to recommend persons having regard to whether the person has:

- a sufficient understanding, or ability to acquire an understanding of, the legislation that applies to the foundation, and
- the skills, experience or expertise in business, financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the board in performing its functions.

The Hospitals Foundations Act requires the Minister to consult with entities the Minister considers have an interest in the foundation's purposes or objects when nominating persons for appointment as members of a foundation. The Bill better reflects current practice by requiring the Minister to consult with the relevant HHB chairperson before recommending an appointment to the board of a foundation.

To ensure business continuity for foundations where delays arise in appointment or reappointment processes, the Bill provides that a board member continues to be a board member (and continues to hold office as chairperson or deputy chairperson, as the case may be) after their term expires until a successor is appointed to the position. To remove any doubt, the Bill makes clear that the current member can be reappointed.

The Hospitals Foundations Act sets out the circumstances in which a person is disqualified from office. These include where the person is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy or insolvent debtors. The Bill modernises this provision, providing that a person is disqualified from becoming a member if they:

- have a conviction, other than a spent conviction, for an indictable offence
- do not consent to the chief executive of the department requesting a report about the person's criminal history
- are an insolvent under administration
- have been disqualified from managing corporations because of part 2D.6 of the *Corporations Act 2001* (Cwlth) (the Corporations Act) (for example, where convicted of certain offences or disqualified by a court), or
- are employed by the foundation.

The Bill also clarifies the circumstances and process in which a member may be removed from office, providing that Governor in Council may remove a member if:

- the member would have been disqualified from becoming a member for the reasons outlined above
- the member undertakes borrowing other than under the *Statutory Bodies Financial Arrangements Act 1982* (the SBFA Act), or
- the Minister recommends the member's removal because the Minister is satisfied the member:
  - is not acting in the foundation's interest
  - is incapable of performing their functions
  - has neglected their functions or performed their functions incompetently

- has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or foundation, or
- has been absent from three consecutive meetings without the board's permission and without reasonable excuse.

The chief executive of the department may ask the Police Commissioner for a written criminal history report about a person in order to determine if the person should be disqualified from becoming a member or removed from office. The request may only be made with the person's written consent.

The Bill requires a board member to immediately disclose any convictions during their term of appointment, unless they have a reasonable excuse. To ensure that a person's criminal history information is kept confidential, the Bill also includes a requirement for departmental officers not to unlawfully disclose the criminal history information. These offences carry a maximum penalty of 100 penalty units. The chief executive of the department is also required to destroy the criminal history information as soon as practicable after it is no longer needed.

### **Managing executive officer**

The Hospitals Foundations Act requires foundations to have a secretary, who must be a senior officer of a hospital associated with the foundation. However, most of the foundations have established themselves as modern corporate entities with a managing executive officer or equivalent in place. All foundations employ a person independent of an associated hospital or HHS who performs the equivalent functions to a managing executive officer (MEO).

The Bill better reflects foundations' current practices and provides for a conduit between the foundation and the board by requiring each foundation to have a MEO. The MEO will be responsible for carrying out the directions of the board and executing documents on behalf of the foundation. The MEO will be employed by the foundation and will be entitled to remuneration and allowances decided by the board.

### **Relationship between a foundation and its associated HHS**

The Hospitals Foundations Act provides that an application to establish a foundation must state the name of each hospital proposed to be an associated hospital for the foundation. The Bill reflects the current relationship between foundations and HHSs, providing that each foundation must nominate a single HHS with which the foundation is associated. This HHS will have a representative on the board (either the HHB chairperson or their nominee, who must also be a HHB member).

The HHS may choose to inform the foundation of its priorities, for example, particular equipment needs. If the HHS does so, the foundation must have regard to these priorities in performing its functions. However, the foundation may also consider other matters in performing its functions. This will ensure that a foundation has due regard to the priorities of its associated HHS while maintaining independence and control over how it achieves its objects.

## Powers of foundations

The Hospitals Foundations Act prescribes foundation powers in detail, with a number of powers requiring the Minister's approval before they can be exercised. The Bill takes a less prescriptive approach, giving foundations all the powers of an individual including, for example, the power to enter into contracts or agreements and establish and administer trust funds. This approach is consistent with other Acts establishing statutory bodies.

The provisions relating to financial transactions have been refined to modernise the requirements and better reflect the nature of foundations and their day-to-day operations. Under the Bill, the Minister's approval is required before a foundation acquires the whole or part of a business, enters into a joint venture or partnership, acquires or issues bonds, debentures, inscribed stock, shares stock or other securities, acquires foreign currency, funds prizes over a particular value and disposes of land, an interest in land or a building. The Bill also provides that a foundation may only enter into a derivative transaction with the Minister's approval, and requires foundations to comply with reporting requirements when undertaking derivative transactions.

Ministerial approval is no longer required for transactions that are not associated with a high level of risk and that foundations are considered to have the financial expertise to manage without oversight. These transactions include holding or disposing of shares or other similar financial assets, and improving, developing or leasing a foundation's land or buildings.

The Bill also provides that ministerial approval is not required where a foundation deals with property received by way of a gift, devise or bequest. This exception recognises the practical impossibility of seeking ministerial approval before acquiring property by bequest and the low level of risk associated with disposing of donated property as compared to the operational benefits of allowing foundations to freely deal with such property.

The Bill removes the need for ministerial approval for foundations to sell, exchange or dispose of property vested in a foundation subject to a condition or trust that is either unfit for purpose or is property of insufficient value. *Property of insufficient value* is defined to mean the property is of no value or the cost of sale would likely exceed any proceeds. The Bill also disapplies section 64 of the *Financial Accountability Act 2009*, which requires foundations to obtain the Treasurer's approval to divest themselves of an investment gifted or bequeathed to them. The Bill removes the administrative burden for foundations of applying to the Treasurer or Minister for approval, as it is considered foundations have the necessary expertise to dispose of property if it is in their best interests to do so.

The SBFA Act requires a statutory body to seek the Treasurer's approval to appoint a funds manager. As appointing a funds manager to manage investments is part of a foundation's day-to-day operations, it is not considered necessary to require the Treasurer or Minister's approval. The Bill provides that appointment of a funds manager falls within a foundation's general powers, meaning a foundation can appoint a funds manager without the need to obtain the Treasurer or Minister's approval. However, ministerial approval will be required before a funds manager may enter into a financial transaction on a foundation's behalf that the foundation would otherwise have to seek approval for, as a funds manager is only empowered to exercise financial powers that the foundation is empowered to exercise. A funds manager cannot perform transactions outside the scope of services that the foundation has engaged the funds manager to perform.

The Hospitals Foundations Act provides for borrowing to be dealt with under the SBFA Act and stipulates that borrowing by a foundation other than under the SBFA Act is illegal borrowing. The Bill provides that borrowing, and the related banking power to operate an account with an overdraft facility, must continue to receive the Treasurer's approval under the SBFA Act. The Bill also specifies the parts of the SBFA Act that do not apply to foundations, in order to put beyond doubt that the Treasurer's approval is only required in relation to borrowing. Board members who consent to borrowing money other than in accordance with the SBFA Act are liable to repay the amount with interest.

The Bill sets out how ministerial approval to undertake financial transactions may be obtained. Similar to the requirements for other statutory bodies under the SBFA Act, the Bill provides that the Minister may grant a general or specific approval. The inclusion in the Bill of general approvals enables foundations to exercise their powers to undertake financial transactions without the need to seek specific approval in every instance. The Minister may provide a general approval applying to all foundations, powers and matters, or limit an approval to particular foundations, powers or matters. The general approval may also be limited in its application by reference to specified exceptions or factors. Funds managers are taken to have been given the Minister's approval for any financial transaction the foundation has been given the Minister's approval for.

### **Members' obligations and protections**

The Hospitals Foundations Act requires members to act honestly in the exercise of their powers and in the discharge of their functions and provides that a member is not personally liable where they have acted in good faith.

The Bill modernises these provisions, providing that board members are required to act impartially and in the best interests of the foundation in performing their functions. Failing to do so may result in the Minister recommending to the Governor in Council that the board member be removed. Board members are protected from civil liability where they have acted honestly and without negligence under the Bill.

The Bill includes a requirement for a board member to immediately disclose any convictions during their term of appointment, unless they have a reasonable excuse. Non-compliance with this requirement carries a penalty of 100 penalty units.

The Bill provides that it is an offence for a person to give the Minister false or misleading documents when applying for an approval for a special financial arrangement or a derivative transaction under part 5, division 4. This offence carries a maximum penalty of 100 penalty units. However, the offence does not apply if the applicant, when providing the document, explains how the document is false or misleading to the best of their ability and provides the correct information if they are reasonably able to obtain it.

### **Increased powers to address concerns about governance and financial viability**

Under the Hospitals Foundations Act, the Minister has limited powers to inquire into foundations' operations or remedy serious governance issues. To ensure greater transparency

and accountability, the Bill includes new powers to ensure the Minister has appropriate oversight where there are concerns about a foundation's governance or financial viability.

- ***Notice of matters raising significant concerns***

The board of a foundation will be required to give the Minister written notice of a matter that raises a significant concern about:

- the foundation's financial viability—for example, if the foundation is the subject of legal proceedings that may result in a significant amount of damages or legal costs, or
- the foundation's administration or management—for example, if the foundation has allocated funds held by the foundation to a matter that is outside the foundation's objects.

- ***Request for information or documents***

Regardless of whether the board has given the Minister a notice about a matter of significant concern, the Minister may ask the board to give information or documents relating to the board's functions under the Bill. The board must be given a reasonable time to provide the information or documents. Unless there are exceptional circumstances, the Minister must consult the board about the request prior to making the written request. The board must comply with the request.

The Minister may provide the documents to another entity, such as the department or an independent auditor, to help the Minister assess the foundation's financial viability or governance.

- ***Dismissal of the board and appointment of an administrator***

The Bill enables the Governor in Council, on the recommendation of the Minister, to remove all board members of a foundation. This includes removal of the HHS member from the board of a foundation. In this circumstance, the HHS member's substantive appointment as member to the HHB would continue under the *Hospital and Health Boards Act 2011*. The power to remove all board members may only be used where the Minister is satisfied it is in the public interest to do so, having regard to the Minister's consideration of the foundation's financial viability and/or administration.

Where all board members are dismissed, or in any other circumstance in which a foundation has no board members, the Governor in Council may also, on the recommendation of the Minister, appoint a qualified person to act as the board of the foundation (the administrator). The administrator has the same functions and powers to administer the foundation as the board would have, and must administer the foundation's affairs for the term of the administrator's appointment.

- ***Dissolution and winding-up of foundations***

The Hospitals Foundations Act sets out prescriptive requirements for winding up and dissolving foundations. The Bill removes these requirements. Instead a foundation may apply to the Minister for its entry in the register to be removed. The Governor in Council may, by gazette notice, order that a foundation's entry be removed from the register either because the foundation has applied to have its entry removed from the register or because the Governor in

Council is satisfied the foundation should be dissolved. A regulation may dissolve the foundation where the foundation's entry has been removed from the register.

The Bill includes powers to appoint an administrator in exceptional circumstances, including where significant concerns exist regarding a foundation's financial viability or governance. This ensures that, where necessary, an administrator can manage the affairs of the foundation prior to dissolution.

### **Financial provisions**

The Hospitals Foundations Act contains prescriptive provisions relating to the financial management and reporting requirements of foundations, for example, requiring foundations to present statements of account at each board meeting. The financial provisions in the Bill have been modernised and streamlined to reflect foundations' current financial practices.

### **Amendments to the *Drugs Misuse Act 1986***

The Bill omits the restriction on the purpose of part 5B of the Drugs Misuse Act which currently prevents industrial cannabis seeds being grown for the purpose of human consumption. It also clarifies the restriction on growing seed for the purpose of administration to a person.

Currently, the Drugs Misuse Act generally requires industrial cannabis seed to be cracked, de-hulled, heated or treated in another way that prevents growth. This is referred to as 'denaturing' in the Drugs Misuse Act.

To facilitate the food supply chain and manage associated risks, the Bill will replace the current authorisation of seed 'denaturers' and 'seed suppliers' with a 'seed handler' licence. Seed handlers will also be able to act as wholesale intermediaries for whole viable seed. This may assist the development of a food supply chain because seed for food will ideally be kept cool, and away from light, with the outer shell intact as long as possible to maintain taste and nutritional quality. Licensing will ensure appropriate regulatory oversight of viable seed, and reduce the risk of legal dealings with industrial cannabis seed being used as a front for marketing of higher THC varieties.

The Bill simplifies the requirements for seed used for planting. Seed planted by growers must be derived from cannabis plants with a THC concentration in their leaves and flowering heads of not more than 0.5 per cent.

The Bill provides a clearer head of power for charging for monitoring of the activities of licence holders. This includes auditing of records, inspection of facilities, and taking samples of plant parts of a crop for testing THC concentrations.

The level of scrutiny of applications for all licence types is currently similar despite there being more significant risks associated with the activities undertaken under a research licence that allows growing of high-THC cannabis varieties. The Bill will tighten the regulatory control of researchers, and reduce the licensing threshold for growers.

The Bill will provide for only one type of researcher licence. Currently, there are two types of researcher licence, with most applications for the type of license that allows cannabis of any

THC level to be grown. Researchers often contract out the growing of cannabis, including high-THC varieties, to licensed industrial cannabis growers. The Bill will require all future applicants for a researcher licence to submit a plan outlining proposed risk management strategies, including supervision of contracted growers.

The Bill will provide more flexible options for responding to breaches of the Drugs Misuse Act. Currently, a person who does not comply with requirements may be guilty of a drug offence. However, criminal prosecution may not be timely or justified for minor breaches of industry regulation. The current grounds for cancelling or suspending a licence are limited, principally where the holder has been convicted of an offence.

The Bill will provide specific regulatory offences for a breach of a record-keeping requirement, a notification requirement or a licence condition, as well as broadening the grounds for cancelling and suspending a licence to include a breach of a licence condition. It will also enable inspectors to issue a compliance notice and provide an offence for failing to comply with such a notice.

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

- **Hospital foundations**

There are no alternative ways of achieving the policy objective of establishing foundations as statutory bodies.

- **Amendment of the *Drugs Misuse Act 1986***

Alternative options to the proposed amendments are to:

1. maintain the status quo by not amending the Drugs Misuse Act, and
2. amend the object of part 5B of the Drugs Misuse Act to allow the processing and marketing of, and trade in, industrial cannabis seed and seed products for food, but not make any other amendments.

Maintaining the status quo would not achieve the policy objective of enabling commercially-led industry development as it would prevent Queensland's industrial cannabis industry expanding into supplying seed for domestic and export hemp seed food production. Amending only the object of part 5B of the Drugs Misuse Act would not meet the policy objectives of minimising the associated risks and addressing pre-existing issues with the Drugs Misuse Act.

## **Estimated cost for government implementation**

- **Hospital foundations**

The costs to government associated with regulating foundations as statutory bodies through the Bill will be minimal and met from existing budget allocation.

- **Amendment of the *Drugs Misuse Act 1986***

Current licensing fees and monitoring charges do not cover the full cost of services to the industry provided by the Government. Industry growth, facilitated by the Bill, will magnify this shortfall but the cost will depend on the extent of the growth of the industry, which is difficult to estimate.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

- **Hospital foundations**

### ***Right to privacy***

Clause 36 of the Bill enables the chief executive of the department to obtain criminal history information about prospective and current board members. Clause 37 requires a board member to disclose a conviction for an indictable offence that arises during their term of appointment. These provisions may be seen to breach the principle that legislation must have sufficient regard to the rights and liberties of individuals (section 4(3) of the *Legislative Standards Act 1992* (the *Legislative Standards Act*)) on the basis that they breach the person's right to privacy in relation to their personal information.

The power for the chief executive of the department to obtain a member or prospective member's criminal history, and the requirement for board members to disclose changes in their criminal history, are considered necessary to ensure that persons appointed to foundation boards are suitable and reflect the high standards expected of board members. These provisions are found in other legislation that establishes statutory bodies, for example, the *Grammar Schools Act 2016*.

The Bill includes safeguards to protect the interests of individuals whose criminal history is obtained under clause 36, or disclosed under clause 37. Clause 36(3) requires the person's written consent for the chief executive of the department to make the request. To ensure that a person's criminal history information is kept confidential, clause 38 prohibits departmental officers from unlawfully disclosing criminal history information. Non-compliance with this requirement carries a penalty of 100 penalty units. Clause 38 also requires the destruction of the criminal history information as soon as practicable once it is no longer needed. This is consistent with section 23A of the *Grammar Schools Act 2016*, which was included on the recommendation of the Education, Tourism, Innovation and Small Business Committee (Report No. 19, 55<sup>th</sup> Parliament, September 2016) to safeguard criminal history information.

### ***New offences***

The Bill contains new offences, which gives rise to consideration of whether the penalty is proportionate to the offence.

Clause 37 provides that it is an offence for a board member to fail to disclose changes in criminal history information during their term of appointment unless they have a reasonable excuse. This offence carries a maximum penalty of 100 penalty units. Similar offences, also carrying a penalty of 100 penalty units, are included in, for example, the *Jobs Queensland Act 2015* and the *Grammar Schools Act 2016*. This penalty is considered necessary to encourage disclosure of changes in criminal history information. The operation and standing of a foundation's board may be jeopardised because of a member's conviction. Failing to disclose the conviction would impact on the board's ability to manage its membership appropriately.

Clause 38 provides that it is an offence to disclose criminal history information to another person unless the disclosure is permitted, also carrying a maximum penalty of 100 penalty units. Similar offences with penalties of 100 penalty units are included in the *Jobs Queensland Act 2015* and the *Grammar Schools Act 2016*. Given the potential sensitivity of criminal history information, the penalty is considered justified.

Clause 63 provides that it is an offence to give false or misleading documents to the Minister in relation to an application for approval to enter into a special financial arrangement or derivative transaction under clauses 57 or 58. The maximum penalty for this offence is 100 penalty units. Providing false or misleading information to the Minister in relation to an application for approval to enter into a financial transaction could result in the Minister being misinformed or misled about the financial standing of a foundation and the appropriateness of the foundation entering into the financial transaction. The offence does not apply if the person tells the Minister in writing, to the best of their ability, how the document is false or misleading, and gives the correct information if the person has, or can reasonably obtain, the correct information.

### ***Reverse onus of proof***

Clause 70 of the Bill provides that a signature purporting to be the signature of the Minister, a member or the MEO of a foundation is evidence of the signature it purports to be. Clause 71 provides that a certificate purporting to be signed by the Minister, chief executive of the department or chairperson of the board of a foundation is evidence of the matter. This may be seen as breaching the principle that legislation should not reverse the onus of proof (section 4(3)(d) of the Legislative Standards Act in relation to criminal proceedings). However, these provisions are considered appropriate to remove unnecessary administrative burden and ensure efficient record management. Similar evidentiary provisions appear in other Acts, such as sections 267 and 268 of the *Hospital and Health Boards Act 2011* and sections 67 and 68 of the *Cross River Rail Delivery Authority Act 2016*. The Office of the Queensland Parliamentary Counsel, through its publication, *Principles of good legislation: OQPC guide to FLPs*, advises that it is not uncommon for Queensland legislation to provide that a certificate signed by a person administering a law is evidence of a fact stated in the certificate.

### ***Protection from liability***

Section 4(3)(h) of the Legislative Standards Act provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. Clause 81 provides that a board member is not civilly liable for an act done, or omission made, honestly and without negligence.

Protection from liability is only provided to persons performing functions under the Bill. The immunity is appropriately limited in scope, as it does not attach to acts done or omissions made that are reckless, unreasonable or excessive.

Liability for the consequences of acts done or omissions made is not extinguished by the Bill but instead attaches to the State. Therefore where persons consider they have been injured by the actions or omissions of a board member, legal redress remains open to them. Accordingly, the protection from liability is considered justified.

- **Amendment of the *Drugs Misuse Act 1986***

***Right to privacy and penalty for association***

Clause 102 inserts new section 57, which requires the chief executive to consider the criminal history of close associates of an applicant for a research licence. This provision may be seen to breach the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals (section 4(3) of the Legislative Standards Act) on the basis that it might breach the person's right to privacy in relation to their personal information. It may also be argued that an applicant should not be 'penalised' by having an application refused or a licence cancelled by virtue of the actions of another person.

However, the consideration of this information is proportionate to the risks associated with dealings with high-THC cannabis varieties that are permitted under a research licence. New section 57 will provide assurance to the community that a researcher licence applicant's close associations with persons who have a criminal history involving illicit dealings in high-THC cannabis will be assessed before a licence is granted that might provide the close associates with relatively easy access to high-THC cannabis.

New section 57 reduces the likelihood that the criminal history of close associates of applicants for other licence types will be considered. New section 57 allows the chief executive to have regard to any other matter the chief executive considers relevant, which might include the criminal history of close associates of applicants for a grower licence. However, it will not be mandatory for the chief executive to consider the criminal history of close associates of an applicant for a grower licence. The criminal history of close associates is considered in all licensing decisions in other Australian jurisdictions, including under the *Hemp Industry Act 2008* (NSW), which requires consideration of the criminal history of close associates of applicants even for the equivalent of a grower licence.

***Discretion in use of administrative power***

In determining whether a person is fit and proper to hold a licence, new section 57 also provides for the chief executive to have regard to any other matter the chief executive considers relevant. This may breach the fundamental legislative principle that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the Legislative Standards Act) because the consideration of other relevant matters may be subjectively applied.

Determining whether an applicant is a fit and proper person to hold a licence is necessary to ensure the integrity of the industry and provide confidence to the community that the industry is being managed appropriately. Some of the chief executive's considerations are still defined

despite new section 57 being less prescriptive than the provisions regarding suitability and eligibility which it replaces. Providing discretion is appropriate because there may be a large number of circumstances that are relevant to a person being inappropriate to hold a licence and it would not be possible to provide for every circumstance in legislation. To balance the exercise of this power, the chief executive's decision in this regard is subject to internal review and external review by the Queensland Civil and Administrative Tribunal.

Clause 128 inserts new section 110G to allow the chief executive to decide whether or not to impose a particular monitoring fee prescribed by regulation for monitoring the licence holder's activities to ensure compliance with the Drugs Misuse Act. This may breach the fundamental legislative principle that rights and liberties of individuals, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the Legislative Standards Act).

The chief executive's discretion to impose a fee is reasonable as it provides flexibility in recovering costs as the industry develops. Some monitoring, such as sampling and testing the THC levels in a crop so the seed from that crop can be used as planting seed, is directly linked to the activities of the particular licence holder monitored. However, some monitoring activities, for example, random checks on a proportion of licence holders each year, might be more appropriate to recover via licence application fees to ensure that the proportion of licence holders who are the subject of the random checks do not bear the full cost of activities that are directed at maintaining the integrity of the controls for the industry as a whole. It is proposed for a policy to provide for when a prescribed monitoring fee should be imposed so this can be varied as the industry develops and the monitoring system matures.

New section 110G replaces an existing licence condition prescribed in regulation (*Drugs Misuse Regulation 1987*, schedule 8, item 7), which provides that a licensee must pay the chief executive's reasonable costs of monitoring activities performed under the licence, including any costs of an analyst conducting a laboratory analysis necessary to determine the concentration of THC in the leaves and flowering heads of cannabis plants in the licensee's possession. The effect is similar, but new section 110G is considered more appropriate because the consequences for non-payment would then be potential suspension or cancellation of the licence (see amendment to section 73 in clause 107) rather than potential prosecution for a drug offence based on a breach of condition of a licence, as could occur with the existing licence condition.

### ***New offences***

Clause 112 inserts new section 110A, which provides for the chief executive or inspector to give a compliance notice to a person to rectify a matter if there is reasonable suspicion the person has contravened a condition of an authority. New section 110C makes it an offence to fail to comply with a compliance notice. Clause 113 inserts new sections 110D to 110F, which establish new offences for non-compliance with a condition of an authority, record requirements and notification requirements. This gives rise to consideration of whether the penalties are proportionate to the offences.

New section 110C provides that a person given a compliance notice must comply with the notice, unless the person has a reasonable excuse. This offence has a maximum penalty of 100 penalty units. This compares to a maximum penalty of 800 penalty units for the equivalent offence under the *Biosecurity Act 2014* (see section 377 (Compliance with a

biosecurity order)) and 200 penalty units under the *Exhibited Animals Act 2015* (see section 188 (Compliance with direction)).

New section 110D provides that it is an offence for the holder of an authority not to comply with a condition of the authority without a reasonable excuse. This offence has a maximum penalty of 100 penalty units. This compares with 100 penalty units for the equivalent offence under the *Fisheries Act 1994* (see section 79 (Contravening a condition of an authority)) and 200 penalty units under the *Exhibited Animals Act 2015* (see section 85 (Contravention of authority conditions)).

New section 110E provides that it is an offence for the holder of an authority, without a reasonable excuse, to not comply with requirements to record information about activities under the authority, keep information at a stated place or for a stated period, and give the chief executive or another person required information in a stated way or at stated times. This offence has a maximum penalty of 50 penalty units.

New section 110F provides that the holder of an authority must comply with a notification requirement unless the holder has a reasonable excuse. It also provides that they must not give information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular, unless the holder has a reasonable excuse. Both offences have a maximum penalty of 50 penalty units.

Currently, breaches of licence conditions, which may also involve breaches related to record-keeping and notification, are dealt with by way of criminal drug offences under the *Drugs Misuse Act*, with most maximum penalties providing for terms of imprisonment. The new offences will expand available enforcement options and create more enforcement options for these breaches. Where appropriate, offences of this type that are of a lesser degree may be dealt with without proceeding as a drug offence. If the nature of the breach is more serious, then the option would be available in many cases to prosecute the matter as a drug offence. The maximum penalty of 50 penalty units for non-compliance with record or notification requirements in new sections 110E and 110F aligns with the maximum penalty for failure to comply with an inspector's information requirement under section 105 of the *Drugs Misuse Act*.

### ***Interference with ordinary business activities of seed handlers***

Clauses 139 and 140 omit the authorisation of seed suppliers and denaturers. Clause 118 provides that a person may apply for a seed handler licence. These provisions together may breach the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act*) because they could be seen to interfere with ordinary business activities.

Licensing is justified to ensure appropriate regulatory oversight of viable seed and reduce the risk of legal dealings with industrial cannabis seed being used as a front for marketing of higher-THC varieties. The increased regulatory oversight will also permit an expansion of the activities that are allowed under a licence compared to the current authorisations of a denaturer and seed supplier. For example, a seed handler licence holder will be able to act as a wholesaling intermediary for whole seed and also to clean, dry, store and grade seed.

### ***Self-incrimination in complying with information requirements***

Clause 113 inserts new section 110E concerning requirements on licence holders to record, keep and give information. The information requirements may involve the provision of information without the privilege of protection against self-incrimination. This may breach the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals on the basis that it does not provide appropriate protection against self-incrimination (section 4(3)(f) of the Legislative Standards Act).

However, the general rule against self-incrimination will only be displaced by information requirements that oblige the licence holder to create and maintain records or other documents and information under the Drugs Misuse Act. This information would generally be peculiarly within the knowledge of the holder and otherwise be difficult to establish. Providing licence holders with protection from incrimination in producing this information would frustrate the efforts of inspectors in determining lawful and appropriate dealings with industrial cannabis under the Drugs Misuse Act. The potential breach of this fundamental legislative principle is therefore justified by the public interest in protecting against criminal activities and illegal dealings with cannabis.

## **Consultation**

- **Hospital foundations**

Consultation drafts of the Bill were provided to foundations and HHSs for comment at various stages throughout the drafting process.

Foundations were supportive of the Bill, noting that it modernises and simplifies the legislative framework governing foundations. Foundations and HHSs raised a number of minor drafting issues in response to consultation on an early draft of the Bill. These issues have been addressed through changes to the Bill and feedback to foundations and HHSs.

- **Amendments to the *Drugs Misuse Act 1986***

The Department of Agriculture and Fisheries invited all current Queensland cannabis licensed growers, researchers, a denaturer and the Australian Industrial Hemp Alliance to participate in a forum to discuss the proposed amendments on 28 June 2017. Key aspects of the legislative proposal were outlined to meeting participants and they were invited to provide feedback. The industry stakeholders who attended the meeting were supportive of the key aspects of the proposed amendments, especially allowing cannabis to be grown for food. Two additional licence holders participated in a teleconference on 26 July 2017 about the proposed amendments and were supportive.

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

- **Hospital foundations**

Other Australian jurisdictions provide for hospital foundations to be established under governance structures such as public ancillary funds. While consideration was given to alternative governance models, the majority of foundations and HHSs supported retaining the

existing governance model where foundations are established as statutory bodies. Accordingly, Queensland's legislative framework for foundations is unique.

- **Amendments to the *Drugs Misuse Act 1986***

All Australian states and the Australian Capital Territory allow low-THC cannabis varieties to be grown, supplied and/or processed for fibre and seed under an authority. However, details of the regulatory framework, including the licence or authorisation types, differ between jurisdictions. New South Wales, Victoria, Tasmania and South Australia all allow growing of low-THC cannabis varieties for food.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* provides that, when enacted, the short title will be the *Hospital Foundations Act 2018*.

### Commencement

*Clause 2* provides that the Act, other than part 10, division 2, subdivisions 1 and 2 and division 3, subdivisions 1 and 2, will commence on a day to be fixed by proclamation.

### Main purpose of Act

*Clause 3* provides that the main purpose of the Act is to establish a legislative framework under which entities may support and improve public health in Queensland.

### How main purpose is primarily achieved

*Clause 4* provides that the main purpose of the Act is primarily achieved by providing for:

- the objects for which a foundation may hold and manage property
- the establishment of foundations and boards for foundations, and
- matters relating to the administration and oversight of foundations and boards.

### Act binds all persons

*Clause 5* provides that the Act binds all persons including the State and makes clear that nothing in the Act makes the State liable to be prosecuted for an offence.

### Definitions

*Clause 6* provides that definitions for terms used in the Act are in the dictionary in schedule 1.

## Part 2 Foundations generally

### Division 1 Objects

#### Objects for which foundations may hold and manage property

*Clause 7* sets out the objects for which a foundation may hold and manage property. The objects are:

- to support, improve or promote an existing public sector hospital, public sector health service facility or public sector health service—for example, by buying medical equipment for a Hospital and Health Service (HHS) or funding the improvement of a building from which public sector health services are provided

- to support or promote a proposed public sector hospital, public sector health service facility or public sector health service
- to give financial support for the education, training or development of employees or volunteers of a HHS—for example, by funding educational or professional development courses
- to give financial support for persons studying or teaching medical or health science, allied health or health administration
- to give financial support for research in medical or health science or to promote the results of that research, and
- to do anything else that is likely to support, improve or promote public health generally—for example, providing a patient transport service. This object is intended to capture other types of support including support that is not financial in nature such as the provision of good or services.

An object may, but need not, relate to a particular public sector hospital, health service facility or health service operated by a HHS, including one proposed to be established.

## **Division 2                    Establishment**

### **Applying for establishment of foundation**

*Clause 8* provides that a person may apply to the Minister for approval to establish a foundation for an object set out in clause 7.

A foundation may be established for the benefit of a particular public sector hospital, public sector health service facility or public sector health service that is operated by a HHS, or for a hospital, facility or service that is proposed to be operated by a HHS. A foundation may also be established for the benefit of public health in Queensland generally, for example, to support medical research that benefits the Queensland community generally.

It is not necessary for a foundation to be established under the Act. However, if a person wishes to establish a foundation that is a statutory body, they must apply to the Minister under clause 8.

### **Requirements for application**

*Clause 9* sets out the requirements for an application to establish a foundation. The application must state:

- the proposed name of the foundation
- the objects for which the foundation will hold and manage property, and
- the name of the HHS proposed to be associated with the foundation.

The application must also state the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service within the HHS that the foundation is intended to benefit, if applicable.

## **Minister may ask for additional information or documents**

*Clause 10* provides that the Minister may ask the applicant to give information or documents to assist the Minister to decide the application. The notice must specify a reasonable period of time within which the information or documents are to be provided.

## **Deciding application**

*Clause 11* provides that the Minister must consider the application and decide to approve or not approve the application. In doing so, the Minister may consider the financial standing of the applicant, whether the stated objects of the proposed foundation are consistent with the objects for which a foundation may hold and manage property, whether the applicant has a sufficient understanding of legislation applying to foundations, such as this Act and the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act), and any other matters the Minister considers appropriate.

The Minister must approve the application if satisfied that the foundation is likely to support or improve public health and it is in the public interest to establish the foundation. If the Minister approves the application, the Minister must recommend to the Governor in Council that a regulation be made under clause 12 to establish the foundation. The Minister must, as soon as practicable, provide an applicant written notice of the decision.

## **Establishment of foundations**

*Clause 12* provides that a regulation may establish a foundation and must state the foundation's name.

## **Legal status of foundations**

*Clause 13* provides that a foundation is a body corporate and may sue and be sued in its corporate name.

## **Division 3                      Functions and powers**

### **Functions**

*Clause 14* provides that the functions of a foundation are:

- to pursue the registered objects of the foundation
- to manage property held by the foundation, including income generated by holding the property, to achieve the foundation's registered objects and to cover costs or expenses associated with administering the foundation, and
- any other function given to the foundation under this Act or another Act.

### **Performance of functions**

*Clause 15* provides that a foundation is to perform its functions in association with a HHS. In performing its functions, the foundation must have regard to any needs or priorities the foundation has been advised about by its associated HHS. Clause 15 makes clear that:

- the foundation may take other matters into account in performing its functions, and

- a foundation is not required to hold or manage property for an associated HHS's particular need or priority.

## **Powers**

*Clause 16* provides that a foundation has all the powers of an individual and may, for example, enter into contracts and agreements; hold and manage property; establish and administer trust funds; appoint a funds manager; and do anything else necessary or convenient to be done in performing its functions or exercising its power.

A foundation also has the powers given to it, subject to any limitations, under this Act or another Act.

## **Particular powers**

*Clause 17* provides that a foundation's borrowing and banking powers are limited to the powers in parts 4 and 5 of the SBFA Act. This makes clear that any borrowing undertaken by foundations, including operating a bank account with an overdraft facility, must receive the Treasurer's approval.

## **Division 4 Administration**

### **Employment of staff**

*Clause 18* provides that a foundation must employ a managing executive officer. A foundation may also employ other staff it considers appropriate to perform its functions or exercise its powers. A member of the foundation's staff, other than a person made available to the foundation under clause 19, is to be paid the remuneration and allowances decided by the foundation, and is employed under this Act, not the *Public Service Act 2008*.

### **Alternative staffing arrangements**

*Clause 19* provides that a foundation may arrange with the health service chief executive of its associated HHS for the services of HHS employees to be made available to the foundation. An employee whose services are made available continues to be a HHS employee, with the same terms and conditions of employment applying to them as were in place before their services were made available. While the employee's services are made available to carry out the foundation's functions, they are taken to be a member of the foundation's staff.

### **Use of Hospital and Health Service premises**

*Clause 20* provides that a foundation may, with the agreement of its associated HHS's health service chief executive, use HHS premises, office furniture and equipment.

### **Authentication of documents**

*Clause 21* provides that a document made by a foundation, other than a document required to be sealed, is sufficiently made if it is made or signed by the chairperson of the foundation's board, or the managing executive officer of the foundation. This section is intended to apply

only in instances where documents require authentication, for example, a contract to which a foundation is a party. It is not intended to apply to every document made by a foundation.

### **Change of registered objects**

*Clause 22* provides that if the board of a foundation wishes to change one of its registered objects, the board must apply in writing to the Minister for approval. The application must include details of the change, the reason for the change and information to show the change is consistent with the objects in clause 7.

The Minister must consider the application and decide to approve or not approve the application. The Minister must give the board notice of the decision as soon as practicable. If the Minister approves the change, the chief executive of the department must amend the register to reflect the change in objects.

## **Division 5                    Application of particular Acts**

### **Foundation is statutory body**

*Clause 23* provides that a foundation is a statutory body under the *Financial Accountability Act 2009* and the SBFA Act. However, section 64 of the *Financial Accountability Act 2009* does not apply to a foundation.

Clause 23(3) provides that sections 10 to 12 and 14, part 3, other than section 21, and parts 6 to 8 of the SBFA Act do not apply to a foundation. In effect, this means that the borrowing and general banking provisions in parts 4 and 5 and ancillary provisions relating to borrowing and general banking powers, including part 9, which prescribes how approvals by the Treasurer are obtained, will apply to foundations. Accordingly, foundations only require the Treasurer's approval for transactions relating to borrowing and operating an account with an overdraft facility.

Clause 23(4) provides that part 2B of the SBFA Act explains how that Act, to the extent it applies to a foundation, affects the foundation's powers.

### **Application of Crime and Corruption Act 2001**

*Clause 24* provides that a foundation is a unit of public administration under the *Crime and Corruption Act 2001*.

### **Application of Collections Act 1966**

*Clause 25* provides that, for the application of part 3 of the *Collections Act 1966*, a registered object of a foundation is taken to be a purpose that is sanctioned under that part. The *Collections Act 1966*, other than section 31, applies to a foundation in the performance of its functions and exercise of its powers.

## **Application of Property Law Act 1974, pt 14**

*Clause 26* provides that a registered object of the foundation is taken to be a charitable purpose for the application of part 14 of the *Property Law Act 1974* to a gift, devise or bequest to a foundation.

## **Part 3                      Boards**

### **Division 1                Establishment, functions, powers and membership of boards**

#### **Establishment**

*Clause 27* provides that, for each foundation, a board is established as the governing body of the foundation.

#### **Functions**

*Clause 28* provides that the functions of the board are to:

- manage the foundation generally
- ensure the foundation pursues its registered objects effectively and efficiently
- set strategies and policies for the management of property held by the foundation, and
- perform any other function given to it under this Act or another Act.

#### **Powers of board**

*Clause 29* provides that the board has the power to do anything necessary or convenient in performing its functions. Anything done by the board in the name of, or for, the foundation by the board, or with the authority of the board, is taken to be done by the foundation.

#### **Membership**

*Clause 30* provides that a foundation board consists of at least six persons recommended by the Minister, and one person, known as the HHS member, who is either:

- the chairperson of the Hospital and Health Board (HHB) for the foundation's associated HHS, or
- a member of the relevant board nominated by the chairperson of the board

Each person, other than the HHS member, must be appointed to the board by the Governor in Council.

In recommending a person for appointment to the board, the Minister may have regard to whether the person has:

- a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of legislation applying to the foundation, and
- skills, experience or expertise in business or financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the board in performing its functions.

Before recommending a person for appointment to the board, the Minister must consult the chairperson of the HHB for the foundation's associated HHS.

### **Chairperson and deputy chairperson**

*Clause 31* provides that the Governor in Council must appoint a member of the board to be the board's chairperson. A person may be appointed as chairperson at the same time they are appointed as a member. The members of the board must appoint another member as the deputy chairperson.

The chairperson and deputy chairperson hold office for the term stated in their appointment. The term cannot be longer than their term of appointment as a board member, unless the member continues to be a member after their term expires under clause 32(2).

Clause 31(7) provides that there is a vacancy in the office of chairperson or deputy chairperson if the person holding office resigns or stops being a member. However, clause 31(8) makes clear that a person can remain a board member even if they resign from the office of chairperson or deputy chairperson. Clause 31(6) provides that if the office of the chairperson is vacant, or if the chairperson is absent from duty or cannot perform the functions of the office, the deputy chairperson must act as chairperson.

### **Term of appointment**

*Clause 32* provides that a member, other than the HHS member, holds office for the term stated in their instrument of appointment. The term cannot be more than five years. However, if a successor has not been appointed before the member's term ends, the member continues to hold office until a successor is appointed. A member may be reappointed, including a member continuing to hold office under clause 32(2).

### **Disqualification from becoming member**

*Clause 33* provides that a person is disqualified from becoming a member if the person:

- has a conviction, other than a spent conviction, for an indictable offence
- does not consent to the chief executive of the department requesting a report about the person's criminal history under clause 36
- is an insolvent under administration, as defined in section 9 of the Corporations Act
- is disqualified from managing corporations because of part 2D.6 of the Corporations Act (for example, as a result of being convicted of certain offences or having been disqualified by a court), or
- is employed by the foundation.

### **Removal from office**

*Clause 34* provides that the Governor in Council may, at any time, remove a member from office if:

- the member would be disqualified from becoming a member under clause 33
- the member consented to borrowing that the foundation was not lawfully authorised to borrow under the SBFA Act

- the Minister recommends the removal because the Minister is satisfied the member:
  - has not acted in the foundation's interests
  - is incapable of performing their functions
  - has neglected the member's functions or performed the functions incompetently
  - has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or the foundation, or
  - has been absent without the board's permission and without reasonable excuse from three consecutive meetings.

### **Vacancy in office**

*Clause 35* provides that the office of a member becomes vacant if the member resigns from office by giving notice of resignation to the Minister or is removed from office under clause 34.

## **Division 2            Criminal history**

### **Criminal history report**

*Clause 36* provides that to decide if a person is disqualified from becoming a member, or may be removed as a member, the chief executive of the department may ask the Police Commissioner for a written report about the person's criminal history and a brief description of the circumstances of a conviction mentioned in the report. The chief executive may only make this request if the person has given their written consent. The Police Commissioner is required to comply with the request, but only for information the Commissioner has access to, or is in their possession.

### **Changes in criminal history must be disclosed**

*Clause 37* applies if a person is convicted of an indictable offence while they are a board member. Unless they have a reasonable excuse, the person must immediately give notice of the conviction to the chief executive of the department. The notice must state the existence of the conviction, when the offence was committed, the sentence imposed, and details adequate to identify the offence. Non-compliance with this requirement carries a penalty of 100 penalty units.

### **Confidentiality of criminal history information**

*Clause 38* provides that a person who is or was an officer, employee or agent of the department who possesses criminal history information given to the chief executive of the department under clauses 36 and 37 must not, directly or indirectly, disclose the information to any other person unless the disclosure is permitted. This offence carries a penalty of 100 penalty units.

Clause 38 provides that disclosure of the criminal history information to another person is permitted:

- to the extent necessary to perform the person's functions under the Act
- if the disclosure is authorised under an Act
- if the disclosure is otherwise required or permitted by law
- if the person to whom the information relates consents to the disclosure

- if the disclosure is in a form that does not identify the person to whom the information relates, or
- if the information is, or has been, lawfully accessible to the public.

Clause 38(4) provides that the chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

## **Division 3            Business and meetings**

### **Conduct of business**

*Clause 39* provides that, subject to division 3, a board may conduct its business, including its meetings, in the way it considers appropriate.

### **Presiding at meetings**

*Clause 40* provides the chairperson of the board is to preside at all board meetings at which they are present. In the absence of the chairperson, the deputy chairperson will preside. In the event that both are not present at a board meeting, the other members of the board must choose a member to preside over the meeting.

### **Quorum at meetings**

*Clause 41* provides that a quorum for a meeting of a board is a majority of its members for the time being. However, if a member is required not to be present at a meeting under clause 45, the remaining members present will constitute a quorum.

### **Conduct of meetings**

*Clause 42* provides that a question at a board meeting is decided by a majority of votes of the members present and able to vote. The board may allow members to participate in board meetings using technology such as teleconferencing. This person is taken to be present at the meeting and their vote counted. A member who abstains from voting is taken to have voted in the negative. If the votes are equal, the member presiding at the meeting has the casting vote.

A resolution is validly made by the board, even if it is not passed at a meeting if the notice of resolution is given under procedures approved by the board and a majority of members agree in writing to the resolution.

### **Minutes**

*Clause 43* provides that a board must keep minutes of all board meetings.

### **Validity of decisions**

*Clause 44* provides that a decision of the board is not invalidated only because there is a vacancy in the membership of the board.

## **Division 4                    Other provisions about boards and members**

### **Disclosure of interests at board meeting**

*Clause 45* sets out the process for a member to disclose a direct or indirect interest in a matter being, or about to be, considered by the board, where the interest could conflict with the proper performance of the board member's duties to consider the matter. *Clause 45* also sets out the process for the board to decide the issue.

*Clause 45(6)* clarifies that a person does not have a conflict of interest merely because they are the HHS member.

### **Member to act in foundation's interest**

*Clause 46* provides that a member must at all times act impartially and in the interest of the foundation in performing the member's functions.

## **Part 4                            Oversight of foundations and boards**

### **Division 1                    Interaction between Minister and foundations**

#### **Board must notify Minister about particular matters**

*Clause 47* provides that a foundation board must give the Minister notice of a matter that raises a significant concern about:

- the financial viability of the foundation—for example, a proceeding started against the foundation that may result in the payment of significant damages or legal costs, or a significant decrease in the value of funds held on investment by the foundation, or
- the administration or management of the foundation—for example, distributing foundation funds towards something that is outside the scope of the foundation's registered objects.

The notice must be given immediately after the board becomes aware of the matter.

#### **Minister may require information or documents**

*Clause 48* applies if the Minister has a concern about the financial viability of a foundation or the administration or management of a foundation, whether or not the concern is based on notice received from the board under *clause 47*. The Minister may, by notice given to the board of a foundation, ask the board within a stated reasonable time and in a stated reasonable way to:

- give the Minister relevant information in the board's knowledge about a stated matter
- give the Minister, or make available for inspection by the Minister, a relevant document or copy of a relevant document about a stated matter in the foundation's possession or control.

The board must comply with a request. Unless there are exceptional circumstances, the Minister must consult the board about the proposed request before giving the written notice.

Clause 48(5) provides that if an original document is given to the Minister, the Minister must return the document as soon as practicable after copying the document.

The Minister may disclose the information or the document to an appropriate entity to help the Minister to assess the foundation's financial viability or the administration or management of the foundation.

## **Division 2                    Administrators**

### **Removal of all board members**

*Clause 49* provides the Governor in Council may at any time, on the Minister's recommendation, remove all the members of a board. This includes removal of the HHS member from the foundation board. The HHS member's substantive appointment as member to the HHB continues under the *Hospital and Health Boards Act 2011*.

The Minister may only make a recommendation under clause 49(1) if satisfied it is in the public interest to do so, having regard to the Minister's consideration of the foundation's financial viability or the foundation's management or administration. If the Governor in Council removes all members of the board, the members go out of office and no compensation is payable to the removed members.

### **Appointment of administrator**

*Clause 50* provides that the Governor in Council may, on the Minister's recommendation, appoint a qualified person as an administrator to administer matters that would otherwise be administered by the board if:

- the members of a board are removed under clause 49, or
- there are no members of a board.

### **Term and role of administrator**

*Clause 51* applies if an administrator is appointed under clause 50. The administrator must, for the term of their appointment, administer the foundation's affairs. The Governor in Council may revoke the appointment for any reason before the term of appointment expires, either to appoint a new administrator or appoint new members of the board. While the administrator's appointment continues, the administrator is taken to constitute the board instead of the members.

## **Part 5                            Financial provisions**

### **Division 1                    Preliminary**

#### **Definition for part**

*Clause 52* sets out the definitions for part 5.

The definition of *derivative transactions* is consistent with the definition under the SBFA Act, and sets out the transactions requiring the Minister for Health's approval under division 4.

The definition of *special financial arrangement* sets out the financial transactions requiring the Minister's approval under division 4.

## **Division 2           Special financial arrangements**

### **Foundation may enter into special financial arrangement**

*Clause 53* provides that a foundation may enter into a special financial arrangement under a ministerial approval in division 4.

However, the Minister's approval is not required where the foundation acquires, by way of gift, devise or bequest:

- the whole or part of a business, or
- bonds, debentures, inscribed stock, shares, stock or other securities, or
- foreign currency.

A foundation also does not need to obtain ministerial approval to dispose of land, or an interest in land or a building if it was acquired by way of a gift, devise or bequest. The practical effect is that the Minister's approval is not required in any instance where the foundation acquires property by way of gift, devise or bequest, or disposes of property acquired by way of gift, devise or bequest.

These exceptions recognise the practical impossibility of seeking ministerial approval prior to acquiring property by gift, devise or bequest and the low level of risk associated with disposing of donated property as compared to the operational benefits of allowing foundations to freely deal with such property.

## **Division 3           Derivative transactions**

### **Derivative transactions permitted only for certain foundations**

*Clause 54* provides that a foundation may enter into a derivative transaction if it has ministerial approval under division 4 and only if the foundation does so to hedge against a risk to which the foundation is or will be exposed. A foundation may enter into a derivative transaction:

- in its own name, or
- in the name of a person who has been appointed in writing by the foundation as the foundation's agent, such as a stockbroker.

If the transaction is entered into in the agent's name, rather than the foundation's, the appointment of the agent must be approved by the Minister.

## **Requirement to report to Minister about derivative transactions**

*Clause 55* sets out the reporting requirements foundations are required to meet in relation to derivative transactions. For each derivative transaction entered into, the foundation must give the Minister a report. These requirements are comparable to section 55 of the SBFA Act, which provides that other statutory bodies must give the Treasurer a report about derivative transactions entered into.

## **Division 4            Minister's approval for special financial arrangements or derivative transactions**

### **Subdivision 1            General approvals**

#### **Approval may be general in nature**

*Clause 56* provides for the Minister to make general approvals for foundations to enter into a special financial arrangement or derivative transaction. A general approval may apply generally to all foundations, special financial arrangements or derivative transactions. It may also be limited in application to:

- particular foundations, special financial arrangements or derivative transactions, or
- particular classes of special financial arrangements or derivative transactions.

The approval may make different provision for different foundations, special financial arrangements or derivative transactions, or different classes or arrangements or transactions, or apply differently to stated exceptions or factors. The approval must be published on the department's website.

The Minister may make the approval on conditions considered necessary or desirable.

A general approval may apply to a foundation even though it was not established when the approval was given. For example, a general approval applying to all foundations would apply to a new foundation once established.

These requirements are comparable to those in part 9, division 2 of the SBFA Act relating to general approvals by the Treasurer of the exercise of powers under that Act by statutory bodies.

### **Subdivision 2            Specific approvals**

#### **Application for approval**

*Clause 57* provides that a foundation may apply in writing for the Minister's approval to enter into a special financial arrangement or derivative transaction. The requirements in subdivision 2 relating to specific approvals are comparable to those in part 9, division 3 of the SBFA Act relating to specific approvals by the Treasurer of the exercise of powers under that Act by statutory bodies.

## **Minister may ask for information or documents**

*Clause 58* provides that the Minister may ask the foundation for information or documents considered necessary to decide an application. The Minister must ask for the information or documents by notice and provide a reasonable period for them to be given by the foundation.

## **Deciding application**

*Clause 59* provides that the Minister must consider the application and decide to approve or not approve the application. The Minister may approve the whole or part of an application, and grant a specific approval on conditions the Minister considers necessary or desirable. The Minister must give the applicant written notice of the decision and, if the application is approved, the conditions of the approval.

## **Minister may give approval for other foundations**

*Clause 60* provides that if an application for a specific approval is made under this subdivision and the Minister considers that a general approval should be given for all foundations or particular foundations, the Minister may deal with the application by giving a general approval under subdivision 1.

## **Minister may amend or repeal approval**

*Clause 61* provides that the Minister may amend or repeal a specific approval even if the foundation does not apply for the amendment or repeal. The amendment or repeal of an approval does not affect its previous operation. While section 24AA of the *Acts Interpretation Act 1954* would enable the Minister to amend or repeal an approval where a foundation has applied in writing for the amendment, this section ensures the Minister can amend or repeal an approval without the foundation making an application.

## **Register about approvals**

*Clause 62* provides that a foundation must keep a register of the Minister's specific approvals for the foundation.

## **Division 5      Offence**

### **False or misleading documents**

*Clause 63* provides that a person, when applying for a specific approval, must not give the Minister a document containing information the person knows is false or misleading in a material particular. This offence carries a maximum penalty of 100 penalty units.

The offence does not apply if the person, when giving the document:

- tells the Minister, in writing, to the best of the person's ability how it is false or misleading, and
- gives the correct information, if the person has, or can reasonably obtain, the correct information.

## Division 6            Miscellaneous

### Management of foundation's funds by funds manager

*Clause 64* provides that a funds manager may enter into a special financial arrangement or derivative transaction for a foundation only if the foundation has received a general approval to enter into the transaction or arrangement, or the transaction or arrangement is the subject of a specific approval. A *funds manager*, for a foundation, means a person engaged by the foundation to manage all or part of the foundation's funds.

The appointment of a funds manager does not remove the requirement for a foundation to report on a derivative transaction under clause 55. It merely provides that a funds manager may provide the reports to the Minister instead of a foundation where there is a condition in the approval to this effect.

Clause 64(4) provides that the requirement for a funds manager to have an approval to enter into a special financial arrangement or derivative transaction does not limit the funds manager's ability to undertake other functions that they are authorised to do by the foundation. For example, a funds manager would not require an approval under division 4 to manage the sale of bonds if it is within the scope of the funds manager's contract of engagement with the foundation. The requirement for a funds manager to receive an approval under subsection (1) does not prevent a board or foundation from giving a direction to a funds manager about the management of the foundation's funds. For example, a board may direct its funds manager not to enter into a derivative transaction, even though the foundation has a special approval in place under division 4.

### Money borrowed other than under Statutory Bodies Financial Arrangements Act 1982

*Clause 65* applies if a foundation borrows money it is not lawfully authorised to borrow under the SBFA Act. All board members who consented to the borrowing are jointly and severally liable to repay the money and any interest. Clause 65 also sets out how the money and interest may be recovered by the Minister and how the amount recovered should be distributed.

However, a member is not liable to repay the money if, at the time the member consented to the borrowing, the member believed on reasonable grounds that the foundation was authorised under the SBFA Act to borrow the money.

### Disposal of particular property

*Clause 66* applies if the foundation considers any property vested in it that is subject to a condition or trust is:

- unfit or not required for its purposes, or
- property of insufficient value, that is, property that is of no value or property that if sold by the foundation would not be likely to return sufficient proceeds of sale to cover the expenses reasonably incurred in selling the property.

The foundation may sell or exchange the property or dispose of it in another way.

A person who acquires any property from a foundation under this section acquires ownership free of any condition or trust relating to the sale, disposal or use of the property to which the property was subject when it was vested in the foundation.

## **Part 6                      Legal proceedings**

### **Application of part**

*Clause 67* provides that part 6 applies to a proceeding for an offence against this Act.

### **Proceedings for offences**

*Clause 68* provides that a proceeding is to be heard and decided summarily and must be started within one year after the commission of the offence, or within six months of the complainant becoming aware of the offence but within two years after the commission of the offence.

Clause 68(3) provides that a statement in a complaint for an offence, made by the complainant, is evidence in the matter that the complainant became aware of the offence on the stated day.

### **Appointments and authority**

*Clause 69* provides that unless proof is otherwise required by a party to the proceeding, the following are presumed:

- the appointment under this Act of a member of a board, or
- the authority of a member of a board or the managing executive officer of a foundation to do anything under this Act.

Appointment includes the holding of office by the HHS member.

### **Signatures**

*Clause 70* provides that a signature purporting to be the signature of the Minister, a member of the board of a foundation or the managing executive officer of a foundation is evidence of the signature it purports to be.

### **Other evidentiary aids**

*Clause 71* provides that a certificate purporting to be signed by the Minister, chief executive of the department or chairperson of the board of a foundation stating a particular matter is evidence of the matter.

## **Part 7                      Ending foundations**

### **Removal from register**

*Clause 72* provides that, at any time, a foundation may apply to the Minister for its entry in the register to be removed.

The Governor in Council may, by gazette notice, order that the entry for a foundation be removed from the register if an application has been made to the Minister, or if the Governor in Council is satisfied the foundation should be dissolved.

### **Dissolution**

*Clause 73* provides that once an entry for a foundation has been removed from the register, a regulation may dissolve the foundation.

### **Status of particular property on dissolution of foundation**

*Clause 74* provides that any land granted by the Crown in trust to the foundation or reserved for the foundation does not form part of the assets of the foundation when the foundation is dissolved.

### **Property held on trust on dissolution of foundation**

*Clause 75* provides if a foundation is dissolved and, on dissolution, the foundation is a trustee of a trust under which property, including land, is held, the Governor in Council may by gazette notice:

- constitute or nominate another person as trustee
- nominate another use to which the property should be held or applied
- terminate the trust, or
- make an order that is considered appropriate by the Governor in Council.

However, the Governor in Council may not override the provisions of an instrument creating the trust under which a foundation holds property if the instrument provides for the variation of the trust or substitution of a new trust on the dissolution of the foundation.

### **Distribution of surplus property**

*Clause 76* applies if a foundation is dissolved or the endorsement of a foundation as a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth) is revoked, and surplus property remains after the foundation's debts and liabilities are satisfied. The property must be given or transferred to an entity that has objects similar to the foundation and is a deductible gift recipient under the *Income Tax Assessment Act*.

### **Effect of dissolution on offices**

*Clause 77* provides that if a foundation has been dissolved under clause 73, the members of the board of the foundation go out of office.

## **Part 8                      Miscellaneous**

### **Amalgamation of foundations**

*Clause 78* provides that two or more foundations may apply to the Minister, in the approved form, to be amalgamated as a single foundation. If the Minister is satisfied the amalgamation is appropriate, then the Minister may recommend that the Governor in Council make a regulation that dissolves each foundation and establishes a new foundation, or identifies the foundation that is to continue and dissolves the foundations that will become part of the continuing foundation. The regulation may also provide for additional issues in relation to the amalgamation, such as dealing with assets, liabilities and obligations.

The members of a foundation dissolved go out of office on the dissolution of the foundation.

The new foundation is taken to be established under clause 12 of the Bill.

### **Register of foundations**

*Clause 79* provides that the chief executive of the department must keep a register of foundations and publish the register on the department's website. The register must contain for each foundation:

- the name of foundation
- the day on which the foundation was established
- the name of the associated HHS for the foundation
- the name of the existing or proposed public sector hospital, public sector health service facility or public sector health service for which the foundation was established, if any, and
- the current registered objects of the foundation.

### **Delegations**

*Clause 80* provides that a foundation may delegate its functions and powers under the Act to a member of the board. A board may delegate the board's functions under the Act to a member of the board, a member of staff of the foundation or a person working for the foundation as a volunteer.

### **Protection of members from civil liability**

*Clause 81* provides that a member of a board is not civilly liable for an act done, or an omission made, honestly and without negligence under this Act. However, if a civil liability cannot be attached to a member, then the liability attaches to the State instead.

### **Approval of forms**

*Clause 82* provides that the chief executive may approve forms for use under this Act.

### **Regulation-making power**

*Clause 83* provides that the Governor in Council may make regulations under the Act.

## **Part 9                      Repeal and transitional provisions**

### **Division 1                Repeal provision**

#### **Repeal**

*Clause 84* provides that the *Hospitals Foundations Act 1982* is repealed.

### **Division 2                Transitional provisions**

#### **Definition for division**

*Clause 85* defines the terms *continued foundation* and *repealed Act*.

#### **Continuation of body corporate established under repealed Act as foundation**

*Clause 86* provides that a body corporate established under the repealed *Hospitals Foundations Act 1982* continues in existence as a foundation under this Act and that each of these foundations are taken to be established under clause 12. Clause 86 also provides that a regulation may list the names of those foundations that are continued in existence, for information purposes.

#### **Continuation of register**

*Clause 87* provides that the register kept under the repealed *Hospitals Foundations Act 1982* continues to exist. However, if an entry on the register for a foundation that is continued under clause 86 does not contain all the information required under clause 79(2), the foundation must give the chief executive of the department the required information within three months of the commencement of this Act.

#### **Replacement of objects registered under repealed Act**

*Clause 88* provides that a continued foundation must, within three months of commencement, give the chief executive of the department written notice of the objects for the foundation that are consistent with the objects in clause 7 to replace the existing objects for the foundation. A continued foundation may change the objects for the foundation within the three month period, with the Minister's permission under clause 22.

#### **Continuation of boards and members**

*Clause 89* provides that a board of members of a continued foundation established under the repealed *Hospitals Foundations Act 1982* continue as a board of members under this Act, provided the board of members was in existence immediately before the commencement of this Act. The board is taken to be established under clause 27.

An appointment of a member to an existing board continues to be an appointment under the continued foundation. Persons currently serving as a chairperson or deputy chairperson for a foundation will continue to hold those appointments in the continued foundation.

## **Assets and liabilities**

*Clause 90* provides that assets and liabilities of a continued foundation established under the repealed *Hospitals Foundations Act 1982* continue as an asset or liability under this Act.

Similarly, any property that was held in trust by a continued foundation continues to be held on the same trust on commencement of this Act.

## **Property previously given**

*Clause 91* provides that property given under the repealed *Hospitals Foundations Act 1982* to a continued foundation will be taken to be property given to the foundation under this Act. The property can be dealt with under this Act.

## **Status of particular land**

*Clause 92* applies if a continued foundation under the repealed *Hospitals Foundations Act 1982* is granted land by the Crown in trust or if land is reserved for the purposes of a continued foundation. The land will continue to be granted in trust to the foundation or reserved for the purposes of the foundation.

## **Part 10                      Amendment of legislation**

### **Division 1                      Amendment of this Act**

#### **Act amended**

*Clause 93* provides that this division amends the *Hospital Foundations Act 2018*.

#### **Amendment of long title**

*Clause 94* amends the long title of the Act. This will ensure the Act as in force from time to time only deals with the establishment and management of hospital foundations and does not include the consequential amendments made to other Acts.

### **Division 2                      Amendment of Drugs Misuse Act 1986**

#### **Subdivision 1                  Preliminary**

#### **Act amended**

*Clause 95* states that division 2 amends the *Drugs Misuse Act 1986* (the Drugs Misuse Act).

#### **Subdivision 2                  Amendments commencing on assent**

Due to the operation of clause 2, the amendments to the Drugs Misuse Act in subdivision 2, including allowing growing of industrial cannabis for food, will commence on assent.

**Amendment of s 4 (Definitions)**

*Clause 96* amends section 4 by omitting the definitions of *affected by bankruptcy action*, *convicted* and *serious offence*, which are redundant due to the changes to the eligibility criteria for licences under part 5B of the Drugs Misuse Act. *Clause 96* also inserts new definitions for *compliance notice* and *relevant authority*.

**Amendment of s 4D (Non-application of ss 5, 6, 8 and 9 to particular manufactured products)**

*Clause 97* amends section 4D(2) by omitting the words ‘or consumed’ in the definition of *manufactured product* to permit the consumption of manufactured products from industrial cannabis seed and seed products consistent with changes to part 5B of the Drugs Misuse Act.

A new definition of *administered* in relation to a manufactured product is inserted to clarify that the term means administered by any means, for any purpose that includes the alteration of a person’s behaviour, mood or perception. Administration of a product manufactured from industrial cannabis to alter a person’s behaviour, mood or perception will be unlawful while applying the product, for example, to the skin for cosmetic reasons will not be unlawful.

**Amendment of s 44 (Object of pt 5B)**

*Clause 98* amends section 44(b)(ii) to omit the words ‘or consumption’. The intent is to allow industrial cannabis to be grown for seed that will be used to make low-THC hemp seed foods.

The clause also inserts, for the purposes of section 44, a definition for *administration* of industrial cannabis seeds or seed product to clarify that the term means administration by any means, for any purpose that includes altering a person’s behaviour, mood or perception. A note states that injection by syringe or inhalation of a vapour are examples by which industrial seed or seed products may be administered.

**Amendment of s 46 (Definitions for pt 5B)**

*Clause 99* amends section 46 by omitting the definitions of *affected by bankruptcy action*, *convicted* and *serious offence*, which are redundant due to the changes to the eligibility criteria for licences and inserting new definitions for *compliance notice* as provided for in section 110A and *relevant authority*, which means a licence or an authority under section 48.

**Amendment of s 53 (Applying for a licence)**

*Clause 100* amends section 53(1) by replacing ‘suitable’ with ‘fit and proper’. Section 53(3) is amended by replacing having regard to a person’s suitability and eligibility to hold a licence with having regard ‘to whether the person is a fit and proper person to hold the licence’.

**Amendment of s 54 (Application for licence)**

*Clause 101* amends section 54(1)(e) by replacing ‘suitable’ with ‘fit and proper’.

**Replacement of ss 57–60**

*Clause 102* replaces sections 57 to 60 with new section 57, which provides the matters the chief executive must have regard to when deciding whether a person is a fit and proper person to hold a licence. In particular, new section 57(1)(d)(iv) provides that, in deciding whether an applicant is a fit and proper person for a researcher licence only, the chief executive must have regard to other matters including those concerning an individual applicant's close associates. Also, new section 57(2) provides that the chief executive may have regard to any other matter the chief executive considers relevant to determine whether a person is fit and proper.

**Amendment of s 61 (Investigation about the suitability of applicant or licensee)**

*Clause 103* amends section 61(1) by replacing the word 'suitable' with 'fit and proper' and replaces section 61(4) with a new provision. This amendment is required to allow the chief executive to undertake, through the Police Commissioner, criminal checks of associates to determine whether an applicant or licensee is a fit and proper person to hold a licence.

**Amendment of s 63 (Chief executive may issue or refuse to issue licence)**

*Clause 104* amends section 63(2) by replacing the word 'suitable' with 'fit and proper' in subsections 2(a), (b) and (c); and replacing subsections (2)(d) and (e) with new subsection (2)(d), which omits reference to eligibility and aligns the provision with the terminology of being a fit and proper person.

**Amendment of s 66 (Chief executive may renew or refuse to renew licence)**

*Clause 105* amends section 66(2) by replacing the word 'suitable' with 'fit and proper' in subsections 2(a), (b) and (c); and omitting subsection (2)(e), which refers to a person's eligibility.

**Amendment of s 70 (Amendment of licence conditions)**

*Clause 106* amends the heading of section 70 to include licence as well as licence conditions. The clause also amends subsection (1) to allow the chief executive to amend a licence as well as licence conditions. Subsection (3) is amended to omit the words 'of the condition' as the chief executive will be able to amend a licence not just a licence condition under section 70. Similarly subsection (6) is amended to replace the words 'amend the conditions of a licence' with 'make an amendment'.

**Amendment of s 73 (Grounds for suspension action or cancellation)**

*Clause 107* amends section 73 by replacing subsections (1)(a) and (b), which refer to suitability and eligibility to hold a licence respectively, with new subsection (1)(a), which provides a ground of no longer being a fit and proper person to hold a licence, and new subsection (1)(b), which continues to provide a ground of contravening a provision of the Act or a condition of the licence but without reference to eligibility to hold a licence. Clause 107 also inserts new subsection 73(1)(c), which provides for non-payment of a fee as further grounds for suspension or cancellation of a licence.

**Omission of s 79 (Immediate cancellation)**

*Clause 108* omits section 79 because the elements of this provision are being omitted as criteria for suitability and eligibility to hold a licence. There is no requirement to retain an immediate cancellation provision as a licence may be immediately suspended under section 78 and then subsequently cancelled if the chief executive considers the licensee is not a fit and proper person to hold the licence.

**Amendment of s 82 (What happens to cannabis plants if licence cancelled)**

*Clause 109* amends section 82(1)(a) by omitting the reference to section 79 as section 79 is being omitted.

**Amendment of s 83 (What happens to cannabis seed if licence cancelled or renewal refused)**

*Clause 110* amends section 83(1)(b) by omitting the reference to section 79 as section 79 is being omitted.

**Insertion of new s 92A**

*Clause 111* inserts new section 92A in division 11 of part 5B to provide for the functions of inspectors, which include investigating, monitoring and enforcing compliance with the provisions of part 5B.

**Insertion of new pt 5B, div 12A**

*Clause 112* creates new division 12A, 'Compliance notices'.

New section 110A outlines the matters that the chief executive or an inspector must reasonably believe before giving a contravener a compliance notice. The chief executive or inspector must reasonably believe that the person has contravened a condition of a relevant authority and that the contravention will continue or be repeated. Also the contravention must be reasonably capable of being rectified and it must be appropriate to give the person an opportunity to rectify the matter. A note is included to alert the reader that it is an offence to fail to comply with a compliance notice under new section 110C.

New section 110B prescribes the matters that must be included in a compliance notice for the information of the contravener. The notice must state that the chief executive or inspector reasonably believes that a condition of their authority has been contravened and it is likely the contravention will continue or be repeated. It must state how the condition has been contravened and how it can be rectified including the reasonable steps to be taken to rectify the matter. The notice must provide a reasonable period for the contravener to take the reasonable steps to rectify the matter. The notice must state that it is an offence to fail to comply with the compliance notice unless the contravener has a reasonable excuse. It must also include an information notice.

New section 110C provides for a maximum penalty of 100 penalty units for a failure to comply with a compliance notice without reasonable excuse.

## **Insertion of new ss 110D–110F**

*Clause 113* inserts new sections 110D to 110F in division 13 in part 5B.

New section 110D provides that it is an offence not to comply with the conditions of an authority without reasonable excuse. A maximum penalty of 100 penalty units is provided.

New section 110E provides that a regulation, a condition of an authority, or a notice by the chief executive may require the authority holder to record information relating to the activities conducted under the authority and keep that information in a certain way or at stated intervals or times. Section 110E(2) provides it is an offence with a maximum penalty of 50 penalty units for a holder of a relevant authority to not comply with a record requirement unless they have a reasonable excuse. Section 110E(3) provides that an authority holder must ensure that information required by a record requirement does not contain information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular without reasonable excuse. A maximum penalty of 50 penalty units is provided.

New section 110F provides that a regulation, a condition of an authority, or a notice by the chief executive may require the authority holder to notify either the chief executive or another person, of information relating to the activities conducted under the authority in a certain way or at stated intervals or times. Section 110F(2) provides it is an offence with a maximum penalty of 50 penalty units for a holder of a relevant authority to not comply with a notification requirement unless they have a reasonable excuse. Sections 110F(3) and (4) provide that it is a reasonable excuse not to comply with a notification requirement if the information to be notified might tend to incriminate the person, unless it is a record that is required to be held or kept under the Drugs Misuse Act. Section 110F(5) provides that an authority holder must ensure that information required under a notification requirement does not contain information the holder knows or ought reasonably to know is false, misleading or incomplete in a material particular without reasonable excuse. A maximum penalty of 50 penalty units is provided.

## **Insertion of new pt 7, div 11**

*Clause 114* inserts new division 11 in part 7. New section 147 provides that if an application made under part 5B has not been decided before the commencement, the provisions in the Drugs Misuse Act in force before commencement of the amendments will apply.

## **Omission of schedule (Serious offence provisions under the Criminal Code)**

*Clause 115* omits the schedule of serious offence provisions under the Criminal Code. However, the chief executive may still have regard to these matters in deciding whether a person is fit and proper to hold a licence.

## **Subdivision 3 Amendments commencing by proclamation**

Due to the operation of clause 2, the amendments in subdivision 3, generally relating to licence types, will commence on proclamation so that notice can be given to denaturers and seed suppliers to apply for a seed handler licence.

### **Amendment of s 4 (Definitions)**

*Clause 116* amends section 4, which defines terms used in part 5B by omitting definitions relating to the category of researcher and category of researcher licence. These definitions are redundant because category 1 and 2 researcher licences will be combined into a single licence. New definitions for *researcher* and *researcher licence* are inserted. Clause 116 also inserts new definitions for *seed handler* and *seed handler licence* in section 4 to reflect the establishment of these licence types. It replaces the definition of *certified cannabis seed* with a definition of *planting seed*. The new definitions in section 4 refer to the meaning of these terms provided by new definitions inserted in section 46 by clause 117.

### **Amendment of s 46 (Definitions for pt 5B)**

*Clause 117* amends section 46, which defines terms used in part 5B, by omitting definitions relating to the category of researcher and category of researcher licence. These definitions are redundant because category 1 and 2 researcher licences will be combined into a single licence.

New definitions for *researcher* and *research licence* are inserted. The definition of *certified cannabis* is replaced by a definition of *planting seed*, and the definition of *industrial cannabis seed* is amended by replacing ‘certified cannabis’ with ‘planting’ seed. The definition of *processed cannabis* is amended by replacing ‘person authorised under a regulation under section 48 to denature the seed at another place’ with ‘seed handler’, to reflect that seed handlers will be licensed to undertake the activity of denaturing and the authorisation of denaturers is being omitted from the Drugs Misuse Regulation by clause 140.

### **Amendment of s 49 (Categories of licences)**

*Clause 118* replaces section 49(a) to (c) to provide for grower, researcher and seed handler categories of licences.

### **Replacement of ss 50 and 51**

*Clause 119* replaces sections 50 and 51, which state the activities authorised under category 1 and 2 researcher licences, with new section 50, which states the activities authorised under a researcher licence.

### **Amendment and renumbering of s 52 (What grower licences authorise)**

*Clause 120* amends section 52(b) to reflect the change from ‘certified seed’ to ‘planting seed’. Clause 120 also removes the references in section 52(c)(i) and (d) to (f) to category 1 and category 2 in relation to researchers. Section 52 is renumbered as section 51 as a result of section 51 being omitted by clause 119.

### **Insertion of new s 52**

*Clause 121* inserts new section 52, which states the activities authorised under a seed handler licence. The section provides that a seed handler may possess industrial cannabis seed for: denaturing and supplying of the denatured seed to a person authorised to possess processed cannabis; supplying industrial cannabis seed to a licensed grower, researcher or seed handler

or another person who is authorised by regulation to possess the seed; and for the purpose of cleaning, drying, grading and/or storing the seed for on-supply.

### **Amendment of s 54 (Application for licence)**

*Clause 122* amends section 54 by inserting new section 54(2)(d) to provide that an application for a researcher licence must include a research plan containing information prescribed by regulation. The clause also provides that a research plan forms part of the application for a researcher licence. The prescribed information for a research plan is provided in new section 27B of the *Drugs Misuse Regulation 1987* (the Drugs Misuse Regulation) inserted by clause 150.

### **Insertion of new s 56A**

*Clause 123* inserts new section 56A in division 3 of part 5B. Section 56A allows the chief executive, by written notice to the applicant for a licence, to allow an applicant to amend their application under consideration within a stated reasonable time. For example, where the chief executive considers an amendment to an applicant's research plan is required before the chief executive could approve the application for a researcher licence, written notice of the required amendment to the plan could be provided under new section 56A. The chief executive may issue or refuse to issue a licence application based on the existing application if the applicant does not give the chief executive the amended application within the stated reasonable time.

### **Amendment of s 57 (Fit and proper person to hold licence)**

*Clause 124* amends section 57(1)(d) to omit the reference to category 1 and category 2 in relation to researcher licences because the two types of researcher licence are being replaced by a single 'researcher licence'.

### **Amendment of s 63 (Chief executive may issue or refuse to issue licence)**

*Clause 125* amends section 63 by inserting new section 63(2)(ca) to provide that the chief executive must be satisfied a research plan for a researcher licence application would manage all risks of non-compliance with the Drugs Misuse Act that are associated with the research and associated activities proposed to be carried out under the licence. The clause renumbers new sections 63(2)(ca) and (d) as 63(2)(d) and (e). The reference to subsection (2)(d), as it relates to a properly made application, is replaced with (2)(e) in section 63(3) as a result of the renumbering.

Clause 125 also inserts new subsections (3A) and (5). Subsection 3A provides that if the chief executive decides to issue the researcher licence, the research plan for the researcher application forms part of the licence. Subsection (5) defines *research plan* for an application for a researcher licence to mean the research plan forming part of the application under section 54 (Application for licence). Sections 63(3A) to (5) are renumbered as sections 63(4) to (6) as a result of the insertion of the new provisions.

### **Amendment of s 82 (What happens to cannabis plants if licence cancelled)**

*Clause 126* amends section 82 by omitting, in section 82(3)(b)(ii), the words ‘person authorised under a regulation under section 48 to denature the seed at another place’ and replacing them with ‘seed handler to denature the seed’, to reflect that seed handlers will be licensed to undertake the activity of denaturing and the authorisation of denaturers is being omitted from the Drugs Misuse Regulation by clause 140. The clause inserts a new section 82(5)(c) to replace the existing provisions which refer to categories of researcher licence which are being replaced with a single researcher licence. Section 82(6) is amended to remove the references to 51(1)(b), which is being omitted by clause 119, and replace references to 52(b) and (e) with 51(b) and (e) to reflect the renumbering of those provisions by clause 120.

### **Amendment of s 83 (What happens to cannabis seed if licence cancelled or renewal refused)**

*Clause 127* amends section 83 by omitting in section 83(2)(a)(ii) the words ‘person authorised under a regulation under section 48 to denature the seed at another place’ and replacing them with ‘seed handlers to denature the seed’ to reflect that seed handlers will be licensed to undertake the activity of denaturing and the authorisation of denaturers is being omitted from the Drugs Misuse Regulation by clause 140. Section 83(2)(a)(iii) is amended to omit the words ‘category 1 or category 2’ as the categories of researcher licence are being replaced by a single researcher licence type. The provisions in sections 83(2)(b) to (d) are omitted and replaced with new sections 83(2)(b) to (c) to reflect the single researcher licence type. Section 83(3)(c) is also replaced by new section 83(3)(c) to reflect the omission of categories of a researcher licence.

### **Insertion of new s 110G**

*Clause 128* inserts new section 110G, which provides that the chief executive may decide whether or not to impose a reasonable fee prescribed by regulation for the particular costs of monitoring activities performed under the authority.

### **Amendment of pt 7, div 11, hdg (Provision for Hospital Foundations Act 2018)**

*Clause 129* omits a reference to ‘Provision’ and inserts ‘Provisions’ into the heading for new part 7, division 11 of the Drugs Misuse Act, which sets out transitional provisions for the Hospital Foundations Act 2018. This reflects the insertion of new sections 148 and 149 into part 7, division 11 by proclamation. As part 7, division 11 commences on assent and the remaining transitional provisions commence on proclamation, the heading reference will be updated on proclamation to reflect the additional provisions.

### **Insertion of new ss 148 and 149**

*Clause 130* inserts new sections 148 and 149.

New section 148 is a transitional provision that provides that an application for a category 1 or 2 researcher licence that has not been decided by the commencement of the amendments is to be decided under the provisions of the Drugs Misuse Act that were in force before commencement. If the application was for a category 2 researcher licence, the licence the

chief executive decides to grant after commencement will be subject to a condition prohibiting the licensee from dealing with class A research cannabis plants and seed.

New section 149 is a transitional provision that provides that a category 1 or 2 researcher licence continues in force as a researcher licence after the commencement of the amendments until the licence expires, is renewed, cancelled or surrendered. The licence will still be subject to any conditions that apply before the commencement. An existing category 2 researcher licence will be subject to a condition that prohibits the holder from dealing with class A research cannabis plants and seed.

### **Division 3           Amendment of the Drugs Misuse Regulation 1987**

#### **Subdivision 1       Preliminary**

##### **Regulation amended**

*Clause 131* states that division 3 amends the Drugs Misuse Regulation. These amendments have been included in the Bill as they complement the amendments to the Drugs Misuse Act in division 2.

#### **Subdivision 2       Amendments commencing on assent**

Due to the operation of clause 2, the amendments to the Drugs Misuse Regulation in subdivision 2 commence on assent.

#### **Insertion of new pt 4, divs 7A and 7B**

*Clause 132* inserts new divisions 7A and 7B in part 4.

Division 7A (Record requirements) comprises new sections 26A to 26E while new division 7B (Notification requirements) comprises new section 26F.

New section 26A states that the division prescribes record requirements for a holder of a relevant authority as provided for in section 110E of the Drugs Misuse Act.

New section 26B prescribes the records of information that a researcher or a grower must make. It also imposes on the licensee a requirement that the record of information must be made as soon as practicable but no later than seven days after the information becomes available to the licensee.

New section 26C prescribes the records of information that a seed supplier must make. It also imposes on the seed supplier a requirement that the record of information must be made as soon as practicable but no later than seven days after the information becomes available to the seed supplier. New section 26C commences on assent but is further amended by clause 144, which commences on a date to be proclaimed to coincide with the replacement of the authorisation of a seed supplier with a seed handler licence.

New section 26D prescribes the information of which a denaturer must make a written record. It also imposes on the denaturer a requirement that the record of information must be made as soon as practicable but no later than seven days after the information becomes available to the denaturer. New section 26D, which commences on assent, is omitted by

clause 145, which commences on a date to be proclaimed to coincide with the replacement of the authorisation of a denaturer with a seed handler licence.

New section 26E provides that the holder of a relevant authority must keep the record of the information for three years after the authority ends or two years after the holder stops being the holder of an authority, whichever is the first period to end. The information record must be in a form that is readily accessible, usable and able to be interpreted.

New section 26F prescribes the notification requirements for category 1 and 2 researchers and growers. Note that new section 26F, which commences on assent, is further amended by clause 146, which will commence on proclamation.

#### **Amendment of sch 7 (Conditions for particular persons authorised under part 4)**

*Clause 133* amends schedule 7 by omitting sections 1(b) and 4(b) to remove the duplication of the record-keeping requirement.

#### **Amendment of sch 8 (Licence conditions)**

*Clause 134* amends schedule 8 by omitting item 5 to remove the duplication of the record-keeping requirement.

### **Subdivision 3 Amendments commencing by proclamation**

Due to the operation of clause 2, the amendments to the Drugs Misuse Regulation in subdivision 3 will commence on proclamation. The amendments in subdivision 3 are complementary to amendments to the Drugs Misuse Act in division 2, subdivision 3 of the Bill that also commence on proclamation. Commencing the amendments on proclamation will allow time for denaturers and seed suppliers to apply for a seed handler licence.

#### **Amendment of s 10 (Operation of pt 4 and schs 7 and 8)**

*Clause 135* amends section 10 by replacing the reference '7' to '6' in subsection (1) and replacing the reference to '6 and 7' to '6' in subsection (2). This amendment arises from the omission of provisions concerning the authorised activities for seed suppliers by clause 139.

#### **Replacement of s 11 (Certifying cannabis seed)**

*Clause 136* replaces section 11 with new provisions providing for when cannabis seed is taken to be *planting seed* as defined in section 46 of the Act (as amended by clause 116). New section 11 prescribes the circumstances in which cannabis seed originating in Queensland, interstate and another country is taken to be seed harvested from a cannabis plant with a THC concentration in the plant's leaves and flowering heads of not more than 0.5 per cent. The requirements include the analysis of the THC content of a representative sample of leaves and flowering heads taken from the cannabis crop which produced the seed. The requirements also include labelling of the seed with the *required particulars*.

**Amendment of s 12 (Application of div 3)**

*Clause 137* amends section 12(a) by removing the reference to category 1 and category 2 researchers.

**Amendment of s 15 (Supply)**

*Clause 138* amends section 15 by omitting subsections (a) and (b) and replacing them with a new subsection (a) to reflect the omission of categories of researcher. Section 15(d)(ii) is amended by removing the reference to category 1 and category 2 researchers. Section 15(d)(iv) is amended to insert reference to a seed handler. Subsections 15(c) to (g) are renumbered as a result of the omission of provisions.

**Omission of pt 4, div 6 (Seed suppliers)**

*Clause 139* omits division 6 of part 4, which provide an authorisation for seed suppliers, because the authorisation is being replaced by the new seed handler licence.

**Omission of s 22 (Denaturer)**

*Clause 140* omits section 22 (Denaturer), which provides an authorisation for denaturers, because the authorisation is being replaced by the new seed handler licence.

**Amendment of s 24 (Analyst)**

*Clause 141* amends the definition of *authorised person* in section 24(2)(a) to remove the reference to category 1 and category 2 researchers.

**Amendment of s 26 (Employees of authorised persons)**

*Clause 142* omits paragraphs 26(2)(e) and (f) of the definition of *authorised person* as the authorisation of seed suppliers and denaturers is being replaced by a seed handler licence. As a result of the omission, paragraphs (g) and (h) are renumbered as (e) and (f).

**Amendment of s 26B (Recording information—researchers and growers)**

*Clause 143* amends new section 26B (Recording information—researchers and growers), which commences on assent, by removing the reference to category 1 and category 2 researcher. Clause 143 also inserts new subsection 26B(1)(ca), which requires a researcher or grower, if they are the first licensee to take possession of planting seed that is imported from interstate or another country, to record the details of the report on the analysis that was undertaken of a representative sample of leaves and flowering heads taken from the cannabis crop which produced the seed. Sections 26B(1)(ca) to (i) are renumbered as 26B(1)(d) to (j).

**Amendment of s 26C (Recording information—seed suppliers)**

*Clause 144* amends section 26C by amending the heading to replace the word ‘suppliers’ with ‘handlers’ to align with the new category of licence for seed handlers. The word ‘supplier’ is also replaced with ‘handler’ within section 26C. Clause 144 also inserts new subsection 26C(1)(ca), which requires a seed supplier, if they are the first licensee to take

possession of planting seed that is imported from interstate or another country, to record the details of the report on the analysis that was undertaken of a representative sample of leaves and flowering heads taken from the cannabis crop which produced the seed. New subsection (cb) is inserted to provide that the information to be recorded by a seed supplier must include how, when and by whom the industrial cannabis is denatured. Sections 26C(1)(ca) to (e) are renumbered as 26C(1)(d) to (g).

### **Omission of s 26D (Recording information—denaturers)**

*Clause 145* omits new section 26D (Recording information—denaturers) because the authorisation of a denaturer is being replaced by a seed handler licence. The information that was to be recorded by denaturers is included in the information to be provided by seed handlers under amended section 26C.

### **Amendment of s 26F (Notification requirements—researchers and growers)**

*Clause 146* amends section 26F(1) by removing the reference to category 1 and category 2 researchers.

### **Renumbering of pt 4, divs 7 and 7B**

*Clause 147* renumbers divisions 7 to 7B in part 4 as divisions 6 to 7A because of the omission of division 6 by clause 139 of the Bill.

### **Omission of s 27 (Recognition as seed supplier)**

*Clause 148* omits section 27 because seed suppliers will no longer require recognition from the chief executive as this category of person will be replaced by a seed handler to which licences will be issued.

### **Renumbering of ss 23–26F**

*Clause 149* renumbers sections 23 to 26F as sections 20 to 27A. Many of the sections being renumbered were inserted in part 4 by clause 132 of the Bill.

### **Insertion of new ss 27B and 27C**

*Clause 150* inserts new sections 27B and 27C.

New section 27B prescribes the information that must be included in a research plan relating to an application for a researcher licence. It also provides that the chief executive may publish on the department's website a guideline stating additional matters that are relevant for the management of risks associated with the activities carried out under a researcher licence.

New section 27C prescribes how labelling requirements, under part 4 of the Drugs Misuse Regulation or that are a condition of a licence, are to be met.

## **Amendment of sch 7 (Conditions for particular persons authorised under part 4)**

*Clause 151* amends schedule 7 by omitting sections 1 and 4 as these conditions are replaced by licence conditions for a seed handler under schedule 8; replacing the reference to ‘laboratory’ with ‘NATA accredited laboratory’ to clarify that only a NATA accredited laboratory can undertake drug analysis; omitting the definition of *NATA*; and renumbering sections 2 to 5 as sections 1 to 3 due to the omission of conditions for denaturers and seed suppliers from this schedule.

## **Replacement of sch 8 (Licence conditions)**

*Clause 152* omits schedule 8 and replaces it with new schedule 8, which prescribes the general licence conditions for all licences in part 1, particular licence conditions for researcher licences in part 2, particular conditions for grower licences in part 3 and particular conditions for seed handler licences in part 4.

## **Amendment of sch 9 (Dictionary)**

*Clause 153* amends schedule 9 (Dictionary) by omitting the definition of *seed supplier* and inserting new definitions for *approved research plan*, *NATA*, *NATA accredited laboratory*, *recipient licensee* and *required particulars*.

## **Division 4                      Amendment of Fair Work (Commonwealth Powers) and Other Provisions Act 2009**

### **Act amended**

*Clause 154* provides that division 4 amends the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

### **Amendment of sch 1 (Other entities that are not public sector employers)**

*Clause 155* amends schedule 1, item 2 of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* to reflect the commencement of the Act.

## **Schedule 1                      Dictionary**

Schedule 1 defines particular words used in the Act.