

I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.

M. W. Riis.

Legislative Assembly Chamber, The Clerk of the Parliament.
Brisbane, 7 November 2013

In the name and on behalf of the Queen, I assent to this Bill.

Penelope Wensley
Government House,
Brisbane, 7th November, 2013



Queensland

No. 57 of 2013

A BILL for

An Act to amend the Health Legislation Amendment Act 2011, the Hospital and Health Boards Act 2011, the Public Health Act 2005, the Queensland Institute of Medical Research Act 1945, the Queensland Mental Health Commission Act 2013 and the Transplantation and Anatomy Act 1979 for particular purposes



Queensland

Health Legislation Amendment Bill 2013

Contents

		Page
Part 1	Preliminary	
1	Short title	6
2	Commencement	6
Part 2	Amendment of Health Legislation Amendment Act 2011	
3	Act amended	6
4	Amendment of s 2 (Commencement)	6
5	Omission of ss 5 and 14	6
6	Amendment of s 16 (Insertion of new ch 12, pt 3)	7
7	Amendment of s 18 (Amendment of sch 3 (Dictionary))	7
Part 3	Amendment of Hospital and Health Boards Act 2011	
8	Act amended	7
9	Insertion of new pt 12, div 1 and div 2 hdg.	7
	Division 1 Transfer notices	
	273A Transfer notice	8
	273B Registering authority to note transfer or other dealing	9
	273C Decisions not reviewable	10
	273D Effect on legal relationships	11
	273E Things done under transfer notice	13
	Division 2 General provisions	
10	Amendment of sch 2 (Dictionary)	13
Part 4	Amendment of Public Health Act 2005	
11	Act amended	13
12	Insertion of new ss 228A and 228B	13
	228A Disclosure of information for an investigation under the Coroners Act	14
	228B Arrangements about transfer of information	14
13	Insertion of new ch 6, pt 1A	14

Contents

	Part 1A	Maternal death statistics	
	Division 1	Definitions	
	228C	Definitions for pt 1A	15
	Division 2	Establishment and purposes of collection	
	228D	Collection	15
	228E	Purposes of collection	16
	Division 3	Notifications about maternal death statistics	
	228F	Giving information to chief executive	16
	228G	Further information may be required	17
	Division 4	Confidentiality	
	228H	Definitions for div 4	18
	228I	Confidentiality of information	19
	228J	Disclosure under an Act or another law	19
	228K	Disclosure under Act or with written consent etc.	19
	228L	Disclosure of confidential information in the public interest	20
	228M	Disclosure for data collection and public health monitoring	20
	228N	Disclosure for purposes relating to health services	21
	228O	Disclosure to Commonwealth, another State or Commonwealth or State entity	21
	228P	Disclosure to quality assurance committee	22
	228Q	Disclosure to allow chief executive to act	23
	228R	Disclosure of information for an investigation under the Coroners Act	23
	228S	Arrangements about transfer of information	23
14		Insertion of new ch 12, pt 4	23
	Part 4	Transitional provision for Health Legislation Amendment Act 2013	
	495	Maternal Death Statistics Collection.	24
15		Amendment of sch 2 (Dictionary)	24
Part 5		Amendment of Queensland Institute of Medical Research Act 1945	
16		Act amended	26
17		Replacement of s 5B (Council members' term of appointment)	26
	5B	Council members' term of appointment	26
18		Amendment of ss 5C, 7, 8, 32 and 33	26
19		Amendment of s 9 (Council may carry out agreements)	27

2013

A Bill

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An Act to amend the Health Legislation Amendment Act 2011, the Hospital and Health Boards Act 2011, the Public Health Act 2005, the Queensland Institute of Medical Research Act 1945, the Queensland Mental Health Commission Act 2013 and the Transplantation and Anatomy Act 1979 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2013*.

2 Commencement

Part 4 of this Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Health Legislation Amendment Act 2011

3 Act amended

This part amends the *Health Legislation Amendment Act 2011*.

4 Amendment of s 2 (Commencement)

Section 2(a) to (ba)—

omit.

5 Omission of ss 5 and 14

Sections 5 and 14—

omit.

Editor's note—

Legislation ultimately amended—

- *Food Act 2006*

6 Amendment of s 16 (Insertion of new ch 12, pt 3)

Section 16, to the extent it inserts new section 303—

omit.

Editor's note—

Legislation ultimately amended—

- *Food Act 2006*

7 Amendment of s 18 (Amendment of sch 3 (Dictionary))

Section 18(2), to the extent it inserts new definitions *conduct*, *disallow*, *disallowance notice*, *food business rating scheme* and *prescribed requirements*—

omit.

Editor's note—

Legislation ultimately amended—

- *Food Act 2006*

Part 3 Amendment of Hospital and Health Boards Act 2011

8 Act amended

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

9 Insertion of new pt 12, div 1 and div 2 hdg

Part 12, before section 274—

[s 9]

insert—

Division 1 Transfer notices

273A Transfer notice

- (1) This section applies to each of the following interests held by the State or a Service—
 - (a) freehold land;
 - (b) a lease under the *Land Act 1994*;
 - (c) a reserve under the *Land Act 1994*;
 - (d) any other interest in land.
- (2) The Minister may do any of the following by gazette notice (a ***transfer notice***)—
 - (a) transfer an interest held by the State to a Service;
 - (b) transfer an interest held by a Service to the State or another Service;
 - (c) transfer or grant, to the State or another Service, an associated interest;
 - (d) vary an associated interest held by the State or another Service.
- (3) A transfer notice may amend an earlier transfer notice, or a further transfer notice may be made, to correct an error in an earlier transfer notice.
- (4) A transfer notice may include conditions applying to something done or to be done under the notice.
- (5) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—
 - (a) signed by the Minister; and

- (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
- (6) A transfer notice has effect despite any other law or instrument.
- (7) A transfer notice—
 - (a) has effect on the day it is published in the gazette or another day stated in the notice; and
 - (b) may have retrospective operation to a day not earlier than the day this section commences.
- (8) The transfer of a liability of the State under a transfer notice discharges the State from the liability, except to the extent stated in the notice.
- (9) No government duties, fees or charges are payable for anything done under a transfer notice.
- (10) In this section—
 - associated interest* means a lease, easement, occupancy right, contract, agreement, asset, liability, licence, instrument or other right, function or obligation associated with an interest transferred under subsection (2)(a) or (b).
 - earlier transfer notice* includes an earlier transfer notice under section 307.

273B Registering authority to note transfer or other dealing

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
 - (a) may, without formal application, register or record in the appropriate way a transfer or

[s 9]

other dealing affecting an asset or liability under a transfer notice; and

- (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity.
- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.
- (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.
- (4) In this section—
- transferee entity* means the entity to which an asset or liability is transferred under a transfer notice.
- transferor entity* means the entity from which an asset or liability is transferred under a transfer notice.

273C Decisions not reviewable

- (1) Unless the Supreme Court decides that a decision relating to a transfer notice is affected by jurisdictional error, the decision—
- (a) is final and conclusive; and

- (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity); and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) In this section—
- decision**, relating to a transfer notice, includes—
- (a) a decision to give a transfer notice; and
 - (b) a decision or conduct leading up to or forming part of the process of making a decision to give a transfer notice.

273D Effect on legal relationships

- (1) Nothing done under a transfer notice—
- (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
 - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—
 - (i) terminates, or allows a person to terminate, an instrument or obligation; or

[s 9]

- (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
 - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iv) requires any money to be paid before its stated maturity; or
 - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under a transfer notice, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

Example—

A contract entered into by the State provides that the State agrees not to transfer a particular asset without a particular person's consent and that, if the consent is given, it may be subject to particular conditions. If the asset is transferred to another entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under a transfer notice, the notice is taken to have been given.
- (4) A reference in this section to things done under a transfer notice includes the steps taken, before the transfer notice is made, for the purpose of doing the things.
- (5) In this section—

relevant entity means the State or an employee or agent of the State.

273E Things done under transfer notice

To remove any doubt, it is declared that a thing is taken to be done under a transfer notice if it is done by, or in compliance with, a transfer notice, even if the thing includes taking steps under another Act.

Division 2 General provisions

10 Amendment of sch 2 (Dictionary)

Schedule 2, definition *transfer notice*—

omit, insert—

transfer notice—

- (a) for part 12, division 1—see section 273A(2); or
- (b) for part 13—see section 307(2).

Part 4 Amendment of Public Health Act 2005

11 Act amended

This part amends the *Public Health Act 2005*.

12 Insertion of new ss 228A and 228B

Chapter 6, part 1, division 4—

insert—

[s 13]

228A Disclosure of information for an investigation under the Coroners Act

- (1) This section applies if a coroner is investigating the death of a person.
- (2) The chief executive may give to the coroner, or to a police officer helping the coroner to investigate the death, information from the collection that is relevant to the person's death.
- (3) The coroner or police officer to whom the information is given and anyone else to whom the information is subsequently given under this subsection must not use or disclose the information other than—
 - (a) for a purpose of the investigation; or
 - (b) as otherwise required or permitted under this or another Act.

228B Arrangements about transfer of information

- (1) The chief executive may arrange for the transfer of information in the collection for inclusion in the Maternal Death Statistics Collection.
- (2) A person does not commit an offence against section 220(1) merely because the person does something under the arrangement.

13 Insertion of new ch 6, pt 1A

Chapter 6—

insert—

Part 1A

Maternal death statistics

Division 1

Definitions

228C Definitions for pt 1A

In this part—

collection means the Maternal Death Statistics Collection.

health professional means—

- (a) a registered health practitioner; or
- (b) another person who provides a health service.

health service see the *Hospital and Health Boards Act 2011*, section 15.

maternal death, of a woman, means the death of the woman, from any cause, while she is pregnant or within 365 days after the end of her pregnancy.

Maternal Death Statistics Collection see section 228D(3).

notification means a notification under section 228F(2).

registered health practitioner means—

- (a) a person registered under the Health Practitioner Regulation National Law to practice a health profession, other than a student; or
- (b) a person who holds non-practising registration under the Health Practitioner Regulation National Law in a health profession.

Division 2 Establishment and purposes of collection

228D Collection

- (1) The chief executive must keep a collection of maternal death statistics.

[s 13]

- (2) The chief executive may keep the collection in a form the chief executive considers appropriate, including an electronic form.
- (3) The collection is to be known as the Maternal Death Statistics Collection.

228E Purposes of collection

The purposes for establishing the collection are as follows—

- (a) to collect data to help in—
 - (i) monitoring maternal mortality rates; and
 - (ii) increasing awareness of the incidence and causes of maternal death; and
 - (iii) monitoring and analysing maternity patterns and outcomes; and
 - (iv) researching obstetric care;
- (b) to help in the planning of maternal health services and strategies to minimise maternal mortality.

Division 3 Notifications about maternal death statistics

228F Giving information to chief executive

- (1) This section applies if a health professional—
 - (a) had primary responsibility for the care or treatment of a woman while she was pregnant or within 365 days after the end of her pregnancy; and
 - (b) is aware of the maternal death of the woman.

- (2) The health professional must, within the time prescribed under a regulation, give the chief executive a notification about the death.

Maximum penalty—20 penalty units.

- (3) The notification must—
- (a) be in the approved form; and
 - (b) contain the information prescribed under a regulation.

228G Further information may be required

- (1) This section applies if the chief executive considers further information is required in relation to the notification to ensure the accuracy, completeness or integrity of the collection.
- (2) The chief executive may give any of the following persons a notice requiring the person to give the further information stated in the notice to the chief executive within the reasonable time stated in the notice—
- (a) the person who gave the notification;
 - (b) a health professional involved in the care or treatment of the deceased woman;
 - (c) another health professional who has information that may ensure the accuracy, completeness or integrity of the register.
- (3) The notice must warn the person that failure to comply with the notice is an offence under this Act.
- (4) A person given a notice under subsection (2) must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

[s 13]

- (5) A person who gives information requested under this section who would otherwise be required to maintain confidentiality about the information given under an Act, oath, rule of law or practice—
- (a) does not contravene the Act, oath, rule of law or practice by giving the information; and
 - (b) is not liable to disciplinary action for giving the information.

Note—

See, for example, the *Hospital and Health Boards Act 2011*, section 142.

- (6) Also, merely because the person gives the information, the person can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.

Division 4 Confidentiality

228H Definitions for div 4

In this division—

confidential information means information that has become known to a relevant person in the course of performing the relevant person's functions under this part.

entity of the State includes a department and an entity established under an Act for a public purpose.

information includes a document.

relevant person means the following—

- (a) a person who is, or was, the chief executive;
- (b) a person who is, or was, involved in the administration or enforcement of this part, including, for example, a health service employee or a public service employee.

228I Confidentiality of information

- (1) A relevant person must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—50 penalty units.

- (2) The *Hospital and Health Boards Act 2011*, section 142 does not apply to a relevant person in relation to confidential information.

228J Disclosure under an Act or another law

Section 228I(1) does not apply if the disclosure of the confidential information by a relevant person is authorised under an Act or another law.

228K Disclosure under Act or with written consent etc.

Section 228I(1) does not apply if the confidential information is disclosed by a relevant person—

- (a) in the performance of functions under this Act; or
- (b) with the written consent of the person to whom the information relates; or
- (c) to the person to whom the information relates; or
- (d) in a form that could not identify any person.

[s 13]

228L Disclosure of confidential information in the public interest

- (1) Section 228I(1) does not apply to the disclosure of confidential information by a relevant person if—
 - (a) the chief executive believes, on reasonable grounds, the disclosure is in the public interest; and
 - (b) the chief executive has, in writing, authorised the disclosure.
- (2) The department's annual report for a financial year under the *Financial Accountability Act 2009* must include details of—
 - (a) the nature of any confidential information disclosed under subsection (1) during the financial year; and
 - (b) the purpose for which the confidential information was disclosed.
- (3) However, the details mentioned in subsection (2)(a) must not identify, directly or indirectly, the person to whom the confidential information relates.
- (4) Despite the *Public Service Act 2008*, section 103 the chief executive may not delegate the chief executive's power under subsection (1).

228M Disclosure for data collection and public health monitoring

Section 228I(1) does not apply to the disclosure of confidential information by a relevant person if—

- (a) the disclosure is to an employee of the department or a person approved by the chief executive who is contracted by the department to analyse, monitor or evaluate public health; and

- (b) the disclosure and receipt of the confidential information is for analysing, monitoring or evaluating public health; and
- (c) the employee of the department or other person is authorised in writing by the chief executive to receive the confidential information.

228N Disclosure for purposes relating to health services

Section 228I(1) does not apply to the disclosure of confidential information by a relevant person if—

- (a) the disclosure is to an employee of the department or a person approved by the chief executive who is contracted by the department to evaluate, manage, monitor or plan health services; or
- (b) the disclosure is to an entity prescribed under a regulation for this paragraph for evaluating, managing, monitoring or planning health services as stated in the regulation.

228O Disclosure to Commonwealth, another State or Commonwealth or State entity

- (1) Section 228I(1) does not apply to the disclosure of confidential information by the chief executive if—
 - (a) the disclosure is to the Commonwealth or another State, or an entity of the Commonwealth or another State and the disclosure—
 - (i) is required or allowed under an agreement—

[s 13]

- (A) between Queensland and the Commonwealth, State or entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the chief executive to be in the public interest; or
 - (b) the disclosure is to an entity of the State and the disclosure—
 - (i) is required or allowed under an agreement—
 - (A) between the chief executive and the entity; and
 - (B) prescribed under a regulation for this paragraph; and
 - (ii) is considered by the chief executive to be in the public interest.
- (2) The Commonwealth, a State or entity that receives confidential information under an agreement under subsection (1)—
- (a) must not give it to anyone else unless allowed to do so by the agreement or in writing by the chief executive; and
 - (b) must ensure the confidential information is used only for the purpose for which it was given under the agreement.

228P Disclosure to quality assurance committee

Section 228I(1) does not apply to the disclosure of confidential information by a relevant person if the disclosure is to a quality assurance committee, or to a person authorised by the committee to receive the confidential information, to allow the committee to perform its functions.

228Q Disclosure to allow chief executive to act

Section 228I(1) does not apply if the disclosure of the confidential information by a relevant person is to the chief executive to allow the chief executive to act under this division.

228R Disclosure of information for an investigation under the Coroners Act

- (1) This section applies if a coroner is investigating the death of a person.
- (2) The chief executive may give to the coroner, or to a police officer helping the coroner to investigate the death, information from the collection that is relevant to the person's death.
- (3) The coroner or police officer to whom the information is given and anyone else to whom the information is subsequently given under this subsection must not use or disclose the information other than—
 - (a) for a purpose of the investigation; or
 - (b) as otherwise required or permitted under this or another Act.

228S Arrangements about transfer of information

- (1) The chief executive may arrange for the transfer of information in the collection for inclusion in the Perinatal Statistics Collection.
- (2) A person does not commit an offence against section 228I(1) merely because the person does something under the arrangement.

14 Insertion of new ch 12, pt 4

Chapter 12—

[s 15]

insert—

Part 4 Transitional provision for Health Legislation Amendment Act 2013

495 Maternal Death Statistics Collection

The chief executive may include, in the Maternal Death Statistics Collection, information relating to maternal mortality that was received by the chief executive before the commencement of this section.

15 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *collection—*

omit.

(2) Schedule 2—

insert—

collection—

(a) for chapter 6, part 1, see section 214; or

(b) for chapter 6, part 1A, see section 228C.

health professional, for chapter 6, part 1A, see section 228C.

health service, for chapter 6, part 1A, see section 228C.

maternal death, for chapter 6, part 1A, see section 228C.

Maternal Death Statistics Collection see section 228C.

notification, for chapter 6, part 1A, see section 228C.

registered health practitioner, for chapter 6, part 1A, see section 228C.

- (3) Schedule 2, definition *confidential information*—
insert—
(ea) for chapter 6, part 1A, division 4, see section 228H; or
- (4) Schedule 2, definition *confidential information*, paragraphs (ea) to (g)—
renumber as paragraphs (f) to (h).
- (5) Schedule 2, definition *entity of the State*—
insert—
(ba) for chapter 6, part 1A, division 4, see section 228H; or
- (6) Schedule 2, definition *entity of the State*, paragraphs (ba) to (d)—
renumber as paragraphs (c) to (e).
- (7) Schedule 2, definition *information*—
insert—
(ea) for chapter 6, part 1A, division 4, see section 228H; or
- (8) Schedule 2, definition *information*, paragraphs (ea) to (g)—
renumber as paragraphs (f) to (h).
- (9) Schedule 2, definition *relevant person*—
insert—
(ea) for chapter 6, part 1A, division 4, see section 228H; or
- (10) Schedule 2, definition *relevant person*, paragraphs (ea) to (g)—
renumber as paragraphs (f) to (h).

19 Amendment of s 9 (Council may carry out agreements)

(1) Section 9(1), from ‘with’ to ‘determine’—

omit.

(2) Section 9(1A)—

omit.

20 Amendment of s 15 (Requirements in respect of property given, devised or bequeathed)

(1) Section 15(4A)(b) and (d)—

renumber as section 15(4A)(a) and (b).

(2) Section 15(2) to (6)—

renumber as section 15(1) to (5).

21 Insertion of new pt 4, div 3

Part 4—

insert—

**Division 3 Transitional provision
for Health Legislation
Amendment Act 2013**

34 Members of Council

(1) This section applies to a person who, immediately before the commencement, was a member of the Council appointed under previous section 5B.

(2) The person is taken to be appointed as a member of the Council under amended section 5B for the remainder of the term for which the person was originally appointed.

(3) In this section—

25 Amendment of s 4 (Interpretation)

- (1) Section 4(1), definition *senior available next of kin*, paragraphs (a)(iii) and (b)(iv), ‘brother or sister’—

omit, insert—

sibling

- (2) Section 4(1), definition *senior available next of kin*, paragraph (b)(ii), ‘son or daughter’—

omit, insert—

child

- (3) Section 4(1)—

insert—

child, if descendance rather than age is relevant, includes—

- (a) a biological child; and
- (b) an adopted child; and
- (c) a stepchild; and
- (d) a foster child; and
- (e) a child through surrogacy; and
- (f) a person who, under Aboriginal tradition or Island custom, is regarded as a child; and
- (g) a person who, under the cultural traditions of their community, is regarded as a child.

parent, of a child, includes—

- (a) a step-parent of the child; and
- (b) a person who, under Aboriginal tradition or Island custom, is regarded as a parent of the child; and
- (c) a person who, under the cultural traditions of their community, is regarded as a parent of the child; and

[s 26]

- (d) another person having or exercising parental responsibility for the child, whether or not the person is the legal guardian of the child.

sibling includes—

- (a) a biological sibling; and
- (b) an adopted sibling; and
- (c) a sibling by surrogacy; and
- (d) a stepbrother or stepsister; and
- (e) a person who, under Aboriginal tradition or Island custom, is regarded as a sibling; and
- (f) a person who, under the cultural traditions of their community, is regarded as a sibling.

26 Amendment of s 22 (Authority to remove tissue where body of deceased in a hospital)

Section 22—

insert—

- (3A) For subsections (1)(b) and (3), a deceased person is not to be taken as having expressed an objection to the removal after death of tissue if—
 - (a) the deceased person expressed an objection but subsequently withdrew it; and
 - (b) the designated officer, or the senior available next of kin of the deceased person, believes the withdrawal is the most recent and reliable indication of the deceased person's wishes.

27 Replacement of s 30 (Conditions of performance of post-mortem)

Section 30—

omit, insert—

30 Conditions of performance of post-mortem

- (1) A post-mortem examination of the body of a deceased person must not be made if the chief health officer has forbidden the examination.
- (2) A post-mortem examination of the body of a deceased person in a hospital must be—
 - (a) made in—
 - (i) the mortuary of the hospital; or
 - (ii) if the mortuary of the hospital is not suitable for the making of the examination—the mortuary of another hospital that is suitable for the making of the examination; and
 - (b) made by—
 - (i) a medical practitioner; or
 - (ii) a person who—
 - (A) is registered under the Health Practitioner Regulation National Law to practise in the medical profession as a provisional registrant, other than as a student; and
 - (B) has the approval of the medical superintendent of the hospital to make the examination.
- (3) A post-mortem examination of the body of a deceased person in a place other than a hospital must be—
 - (a) made in a place approved by the chief health officer; and
 - (b) made by a medical practitioner.

[s 28]

- (4) A person who makes a post-mortem examination of the body of a deceased person must do so in a quiet, orderly and decent manner.
- (5) In this section—
hospital means a hospital in the charge of a medical superintendent.

28 Amendment of ss 37 and 38

Sections 37 and 38, ‘Governor in Council’—

omit, insert—

chief executive

29 Amendment of s 42A (Person who owns a prescribed tissue bank may charge amount to recover certain costs)

- (1) Section 42A(6), definition *donated tissue*, after ‘Act’—

insert—

or a corresponding law

- (2) Section 42A(6)—

insert—

corresponding law means a law of another State or country corresponding, or substantially corresponding, to this Act.

30 Replacement of pt 10 hdg (Transitional provision for Health Legislation Amendment Act 2001)

Part 10, heading—

omit, insert—

Part 10 Transitional provisions

Division 1 Transitional provision for Health Legislation Amendment Act 2001

31 Insertion of new pt 10, div 2

Part 10—

insert—

Division 2 Transitional provisions for Health Legislation Amendment Act 2013

54 Schools of anatomy

- (1) This section applies to a school of anatomy established under previous section 37 and in existence immediately before the commencement.
- (2) The school of anatomy is taken to be established under amended section 37.
- (3) In this section—

amended section 37 means section 37 as in force immediately after the commencement.

commencement means the commencement of this section.

previous section 37 means section 37 as in force immediately before the commencement.

55 Inspectors of schools of anatomy

- (1) This section applies to an inspector of a school of anatomy appointed under previous section 38.

[s 31]

(2) The inspector is taken to be appointed under amended section 38.

(3) In this section—

amended section 38 means section 38 as in force immediately after the commencement.

commencement means the commencement of this section.

previous section 38 means section 38 as in force immediately before the commencement.

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