

HEALTH SERVICES AMENDMENT BILL 2018

SERIAL NO. 71

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR HEALTH

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Bill amends the *Health Services Act*.

The Bill removes all references to the Health Service Boards and the Service administrators from the *Health Services Act*, and provides that the Chief Operating Officers (COOs) of the Health Services report directly to the Chief Executive Officer (CEO) of the Department of Health. The Bill otherwise largely retains the existing health system and governance arrangements between the CEO, the System Manager and the Health Services.

NOTES ON CLAUSES

Clause 1 Short title

This is a formal clause which provides for the citation of the Bill. The Bill, when assented to, will be cited as the *Health Services Amendment Act 2018* (the Act).

Clause 2 Commencement

This is a formal clause which states that the Act will commence on the date fixed by the Administrator. The commencement date will be published by Gazette notice.

Clause 3 Act amended

This clause provides for amendments to the *Health Services Act*.

Clause 4 Section 7 amended (Definitions)

This clause amends section 7 of the *Health Services Act*, which sets out various definitions.

Subclause (1) omits the definitions of 'Board', 'chairperson', 'deputy chairperson', 'Health Service Board', 'Medicare Local', and 'member'.

Subclause (2) inserts the definition of 'Primary Health Network'.

Clause 5 Section 12 amended (Health Services)

This clause amends section 12 of the *Health Services Act*, which establishes the Health Services.

Subclause (1) removes the reference to a Health Service being governed by a Health Service Board. The Health Services remain statutory bodies that are the principal providers of public health services. Each Health Service remains accountable to the System Manager for the Service's performance. The System Manager is still the CEO (see s35 of the *Health Services Act*).

Subclause (2) omits the responsibilities of the Health Service Boards. These responsibilities will now sit with the COO and are inserted at Clause 8(2) of the Bill.

Clause 6 Part 4, Division 3 repealed

This clause repeals Part 4, Division 3 of the *Health Services Act*. This Part deals with the establishment, functions, powers and composition of the Health Service Boards, and is no longer required.

Clause 7 Section 30 amended (Appointment of Chief Operating Officer)

This clause amends section 30 of the *Health Services Act*, which establishes the position of the COO.

Subclause (1) amends section 30(2) of the *Health Services Act* to remove the reference to the Board. The COO of a Service will continue to be appointed by the CEO.

Subclause (2) removes a reference to the Board. The performance of the COO of a Service will continue to be reviewed annually by the CEO.

Clause 8 Section 32 amended (Functions of COO)

This clause amends section 32 of the Act which sets out the functions of the COO.

Subclause (1) removes a reference to the Board approving the financial and management plans for the Service. The COO remains responsible for developing financial and management plans for the Service and implementing those plans.

Subclause (2) omits subsections 32(3), (4) and (5) of the *Health Services Act*. Subsection 32(3) states that the COO of a Service is accountable to both the CEO and the Board in the performance of his or her functions. Subsection 32(4) outlines the matters that the Board cannot direct the COO about. Subsection 32(5) outlines what happens if there is conflict between a direction given by the Board and a direction given by the CEO. These subsections are no longer required.

Subclause (2) also inserts a new subsection which makes clear that the COO is now accountable to the CEO for the performance and financial management of the Service.

Formerly the Health Service Boards were responsible for the performance and financial management of the Service. These responsibilities are now functions of the COO.

Clause 9 Section 33 amended (Powers of COO)

This clause omits subsection 33(b) of the *Health Services Act*. This subsection states that the COO of a Service has the powers delegated by the Board for the Service, and is therefore no longer required. The COO continues to have the powers given by the *Health Services Act* and delegated by the CEO.

Clause 10 Section 33A inserted

This clause inserts a new section, which enables the COO to delegate his or her powers or functions to an appropriately qualified employee in a Health Service. The section also defines 'appropriately qualified'.

Clause 11 Sections 39, 42 and 43 repealed

This clause repeals section 39 of the *Health Services Act*, which deals with negotiations for a Service Delivery Agreement. Consultation in relation to the Service Delivery Agreement will still occur between the System Manager and the COOs, but this will now be an operational matter. The content of a Service Delivery Agreement, set out in section 40 of the *Health Services Act*, remains unchanged.

This clause also repeals section 42 of the *Health Services Act*, which states that a Service must negotiate its Service Delivery Agreement in good faith. Due to the repeal of section 39 of the *Health Services Act*, this section is no longer required.

This clause also repeals section 43 of the *Health Services Act*, which outlines what happens if agreement cannot be reached between the System Manager and a Service. Due to the repeal of section 39 of the *Health Services Act*, this section is also no longer required.

Clause 12 Section 44 amended (Variation of SDA)

This clause amends section 44 of the *Health Services Act*, which deals with the procedure for varying a Service Delivery Agreement. Subsection 44(3) is omitted as it deals with the procedure that is followed if agreement cannot be reached on the terms of a variation of a Service Delivery Agreement. Formerly, this subsection pointed to the procedure outlined in section 43 of the *Health Services Act*, being that the Minister may decide on the terms of the Service Delivery Agreement if agreement cannot be reached between the System Manager and a Service. Due to the repeal of section 43 of the *Health Services Act*, this section is no longer required. A Service Delivery Agreement can still be varied by agreement in writing between the System Manager and the Service.

Clause 13 Section 47 amended (Annual report by Service to Minister)

This clause amends section 47 of the *Health Services Act*, which states that a Service must give the Minister an annual report.

Subclause (1) amends the heading of section 47 to read 'Annual report on Service to Minister'.

Subclause (2) omits subsection 47(1) and a new subsection is inserted that states that the responsibility of providing the annual report to the Minister now rests with the Department. This subsection makes clear that the annual report must contain information about the performance of each Service.

Clause 14 Sections 65 and 66 repealed

This clause repeals sections 65 and 66 of the *Health Services Act*, which deal with the dissolution of a Board and the appointment of a Service Administrator. These sections are no longer required.

Clause 15 Section 67 amended (Obstruction of authorised officer)

This clause amends section 67 of the *Health Services Act*. The purpose of the offence set out in section 67 of the *Health Services Act* is to discourage a person from obstructing or attempting to obstruct an authorised officer from performing their functions under the *Health Services Act*.

Subclause (1) inserts the word 'intentionally' into subsection 67(1)(a). This makes it clear that the fault element for the conduct of obstructing another person is 'intention'. 'Intention' is a standard fault element which is defined in Part IIAA of the Criminal Code.

Subclause (2) omits subsection 67(1)(c) and inserts in its place 'that the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.' 'Knowledge' is a standard fault element which is defined in Part IIAA of the Criminal Code. The circumstance of the authorised officer acting in an official capacity is a physical element of the offence.

The maximum penalty for this offence remains 100 penalty units or imprisonment for 12 months.

Clause 16 Section 68 amended (Misleading information)

This clause amends section 68 of the *Health Services Act*. The purpose of the offences set out in section 68 of the *Health Services Act* is to discourage a person from giving misleading information to an authorised officer who is performing their functions under the *Health Services Act*.

Subclause (1) inserts the word 'intentionally' into subsection 68(1)(a). This makes it clear that the fault element for the conduct of giving information to another person is 'intention'. 'Intention' is a standard fault element which is defined in Part IIAA of the Criminal Code.

Subclause (2) omits subsection 68(1)(c) and inserts in its place ‘the information is misleading and the person has knowledge of that circumstance’. ‘Knowledge’ is a standard fault element which is defined in Part IIAA of the Criminal Code. The circumstance of the information being misleading is a physical element of the offence.

Subclause (2) also omits subsection 68(1)(d) and inserts in its place ‘that the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.’ ‘Knowledge’ is a standard fault element which is defined in Part IIAA of the Criminal Code. The circumstance of the authorised officer acting in an official capacity is a physical element of the offence.

The maximum penalty for this offence remains 100 penalty units or imprisonment for 12 months.

Subclause (3) inserts the word ‘intentionally’ into subsection 68(2)(a). This makes it clear that the fault element for the conduct of giving a document to another person is ‘intention’. ‘Intention’ is a standard fault element which is defined in Part IIAA of the Criminal Code.

Subclause (4) omits subsection 68(2)(c) and inserts in its place ‘the document contains misleading information and the person has knowledge of that circumstance’. ‘Knowledge’ is a standard fault element which is defined in Part IIAA of the Criminal Code. The circumstance of the document containing misleading information is a physical element of the offence.

Subclause (4) also omits subsection 68(2)(d) and inserts in its place ‘that the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.’ ‘Knowledge’ is a standard fault element which is defined in Part IIAA of the Criminal Code. The circumstance of the authorised officer acting in an official capacity is a physical element of the offence.

The maximum penalty for this offence remains 100 penalty units or imprisonment for 12 months.

Clause 17 Section 69 amended (Falsely representing to be authorised officer)

This clause amends section 69 of the *Health Services Act*. The purpose of the offence set out in section 69 of the *Health Services Act* is to discourage a person from falsely representing themselves as an authorised officer.

Subclause (1) inserts the word ‘intentionally’ into subsection 69(a). This makes it clear that the fault element for the conduct of falsely representing to be an authorised officer is ‘intention’. ‘Intention’ is a standard fault element which is defined in Part IIAA of the Criminal Code.

Subclause (2) omits subsection 69(b) and inserts in its place ‘the representation is false and the person has knowledge of that circumstance.’ ‘Knowledge’ is a standard fault

element which is defined in Part IIAA of the Criminal Code. The circumstance of the representation being false is a physical element of the offence.

The maximum penalty for this offence remains 100 penalty units or imprisonment for 12 months.

Clause 18 Section 70 and Part 8 replaced

This clause repeals section 70 of the *Health Services Act* and replaces it with a new offence. The purpose of this offence is to discourage the disclosure of confidential information.

It is an offence for a person who obtains confidential information in the course of performing functions under the *Health Services Act*, and the person is reckless as to whether or not that information is confidential, to intentionally engage in conduct that results in the disclosure of that information, other than where the disclosure is authorised under the *Health Services Act* or the disclosure is to a person who is otherwise entitled to the information.

Some of the circumstances where disclosure is authorised under the *Health Services Act* are set out in subsection (4).

The maximum penalty for this offence is 100 penalty units or imprisonment for 12 months.

This clause also repeals Part 8 of the *Health Services Act*. This Part deals with the administrative matters relating to Boards and is therefore no longer required.

Clause 19 Act further amended

This clause states that the Schedule has effect.

Clause 20 Repeal of Act

This is a formal clause which provides for the repeal of the Act on the day after it commences.

Schedule

The Schedule makes multiple further amendments to the *Health Services Act*. The term 'Medicare Local' is replaced with 'Primary Health Network'. All other amendments contained in the Schedule remove references to the Health Service Boards and, if necessary, replaces these with references to the COO or a Service.