

Discussion Paper No. 4A – Legislation

This is a draft paper and is subject to review

Introduction

1. The purpose of this discussion paper is to explain the relevant legislative framework, including some associated facts. The paper is a draft for the purposes of discussion.
2. On 1 July 2012 significant reforms to health governance and funding took effect. Those reforms were agreed to by the Commonwealth and by all states and territories under the *National Health Reform Agreement* (NHRA) entered into in August 2011.
3. Consequently, the legislative framework can be analysed in these broad areas:
 - a. Legislative Framework before 1 July 2012;
 - b. NHRA Reforms;
 - c. Legislative Framework after 1 July 2012;
 - d. The Role of the HHS after 1 July 2012;
 - e. Structure of the HHS after 1 July 2012;
 - f. Role of the System Manager;
 - g. Other Relevant Legislation.

Legislative Framework Before 1 July 2012

4. The legislation which governed Queensland's health system up until 1 July 2012 was the *Health Services Act 1991* (HSA).
5. Under this legislation:
 - a. Queensland Health comprised 16 Health Service Districts to deliver public sector health services (this became 17 districts on 1 July 2011 when the Darling Downs-West Moreton Health Service District was split into West Moreton Health District and Darling Downs Health Service District);
 - b. Those Health Service Districts were not incorporated or public statutory authorities but were declared areas of the State approved by Governor in Council;
 - c. The Health Community Council for each Health Service Districts was an advisory body whose functions included community engagement activities and monitoring quality, safety and effectiveness of public health services in their district;
 - d. A central head office supported the Director-General (DG) in fulfilling the responsibilities of that position under the legislation.
 - e. Central head office comprised nine Divisions and the Office of the Director-General and other support services as well as the internal governance control

structure, risk and performance management systems, plans, policies and procedures required under the *Financial Accountability Act 2009* and the *Financial and Performance Management Standard 2009*.

6. Each District was managed by an appointed manager referred to as District Chief Executive Officer. One of their main functions was to manage delivery of the public sector health services in the district in accordance with the health services agreement for the district and the provisions of the legislation. They were subject to direction from the DG.
7. When it became a separate district on 1 July 2011, the West Moreton Health Service District was home to The Park Centre for Mental Health (TPCMH), a specialist psychiatric hospital which housed 40 per cent of the state's mental health services—including the Barrett Adolescent Centre and a number of forensic mental health facilities.
8. Overall responsibility for the management, administration and delivery of public sector health services in the State fell to the Chief Executive (the Director-General) subject to the Minister.
9. The Chief Executive's functions were set out in section 7 of the HSA and included providing strategic leadership and direction in relation to the delivery of public sector health services so as to protect, promote and maintain the health of Queensland residents; ensuring the development of a State-wide health services plan; ensuring available resources for the delivery of public sector health services are used effectively and efficiently; entering into performance agreements with health executives; performing other functions given to the chief executive under this Act.
10. The Chief Executive, in performing those functions, was to have regard to the objects of, and guiding principles of the Act (section 4 and 4A).
11. The objects of the HSA included providing for the treatment of the sick. To achieve this object, guiding principles were enunciated. Chief among these guiding principles was that the best interests of users of public sector health services should be the main consideration in all decisions and actions under this Act.
12. A Health Service Executive was established under the HSA to promote effectiveness and efficiency in the delivery of public sector health services.
13. So, in summary, Queensland Health was one large organisation up until 1 July 2012. The DG, subject to the Minister, had overall responsibility for the management, administration and delivery of public sector health services in the State.

NHRA Reforms

14. Under the *National Health Reform Agreement 2011* (NHRA) Queensland and the other states and territories agreed to structural changes that were to take effect from 1 July 2012. These changes included:
 - a. refocusing the role for State Governments as a “*system manager*” for the public health system which included:
 - i. developing system-wide strategy, policy and standards; focusing the direction of activities of the health system in Queensland and setting system-wide objectives and targets in line with government policy direction;

- ii. planning and forecasting the delivery of health services required by the Queensland population;
 - b. integrating workforce, infrastructure, health technology and finance needs to ensure aligned planning across the Hospital and Health Services (HHS), which will deliver services under a contractual, service agreement arrangement;
 - c. using a purchaser provider model, where the system manager purchases specified health services from Hospital and Health Services (HHS) using a national funding model and a national efficient price for services;
 - d. use of other levers by the System Manger to drive access and clinical service improvements within and across the HHSs;
 - e. responsibility to intervene to remediate poor performance of HHS, either at the state's initiative or in response to prompting by the National Health Performance Authority (a National body), which will publicly report on performance of the HHSs
15. A number of national bodies were also established as part of the NHRA reform including the Administrator of the National Health Funding Pool (appointed 1 January 2013 administering payment of funds to public hospitals in accordance with the NHRA); National Health Funding Body (assists the Administrator to perform its functions); Independent Hospital Pricing Authority (determines efficient costs of services provided by public hospitals and develop systems to support activity based funding); National Health Performance Authority (monitors and reports on all local hospital networks at the local level using appropriate performance indicators agreed by COAG); Australian Commission on Safety and Quality in Health Care (recommends nationally agreed standards for safety and quality improvement and leads improvements in safety and quality in health care in Australia).
 16. Preparation to introduce the agreed reforms commenced with Queensland's announcement of the boundaries for 17 Local Health and Hospital Networks (LHHNs) to be established in Queensland. The boundaries for those new LHHNs generally aligned with existing boundaries for Health Service Districts.
 17. The LHHNs were to deliver the same range of services as the existing Health Service Districts but would be managed differently in accordance with requirements of NHRA.
 18. In terms of organisational form, instead of declared areas of the State approved by Governor in Council, the HHS were to be established as separate legal entities, to be governed by a governing council and chief executive officer.

Legislative Framework After 1 July 2012

19. In October 2011, the *Health and Hospitals Network Act 2011* (HHNA) was enacted.
20. Some sections of the HHNA relating to establishment of Local Hospital and Health Networks (LHHN), as they were initially referred to, came into effect in February 2012 and June 2012 to enable transitional activities to occur which included appointing Governing Councils and LHHN Chief Executives and entering into service agreements.
21. The West Moreton 2012-2013 Service Agreement was entered into on 28/6/2012 for a period of one year.

22. Although each LHHN had been established as separate legal entities, the operation of health services continued to be managed by the existing Health Service Districts until 30 June 2012.
23. Under the Health and Hospitals Network and Other Legislation Amendment Act 2012, changes were made to the *Health and Hospitals Network Act 2011*. These changes included renaming the legislation to the *Hospital and Health Boards Act 2011* and renaming governing councils to hospital and health boards and local health and hospital networks to hospital and health services.
24. The *Health Services Act 1991* was repealed by the *Hospital and Health Boards Act 2011* (HHB Act) on 1 July 2012.
25. On 1 July 2012, the restructure of Queensland Health, as required by the NHRA, commenced under the HHB Act.
26. The objects of the HHB Act were to establish a public sector health system that delivered high quality hospital and other health services to persons in Queensland having regard to the principles and objectives of the national health system. Again, the guiding principles to achieve the HHB Act's object included, among other things:
 - a. the best interests of users of public sector health services should be the main consideration in all decisions and actions under this Act; and
 - b. there should be engagement with clinicians, consumers, community members and local primary healthcare organisations in planning, developing and delivering public sector health services.
27. The HHB Act provided that a person must have regard to the guiding principles when performing a function or exercising a power under the Act.
28. Under the new legislation, the Queensland public health system, known as Queensland Health, now comprised a network of 17 local Hospital and Health Services (also known as Services) to be the principal providers of public sector health services in the local geographic area over which they had been assigned under the *Health Boards Regulation 2012*.
29. However instead of declared areas, the organisational form for each of the HHS/Services was as a public sector statutory body subject to the provisions of the HHB Act, the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*. The Department of Health, through the Chief Executive (Director-General), now held the role of System Manager.
30. The System Manager assumed overall responsibility for management of the public health system, through the Director-General, subject to direction from the Minister.

The Role of the HHS After 1 July 2012

31. The main function of each HHS is to deliver the hospital services, other health services, teaching, research and other services stated in the service agreement for the Service.
32. The *Service Agreement* was defined in section 16 to be the agreement between the DG and the Service that identified the health and other services to be delivered, the funding to be provided for the provision of the services, including the way the funding was to be

provided (e.g. Activity Based Funding); the performance data to be provided by the Service to the DG and any other matter the DG considers relevant to the provision of services by the Service.

33. The HHB Act states that the service agreement could include matters relating to funding by the Commonwealth and may state circumstances in which a service may agree with another Service to deliver services for the first Service.
34. Further, service agreement was defined in the West Moreton 2012-2013 Service Agreement executed on 28/6/2012, as this service agreement and the HHS performance framework 2012-2013 including schedules in annexures, as amended from time to time.
35. The HHS performance framework sets out how the performance of the HHS is to be managed. The role of the System Manager was to develop key performance indicators and associated targets and trigger points to be achieved by the HHS and to report of any risk or challenges to the achievement of strategic objectives.
36. Other functions of the HHS are listed in section 19 of the HHB Act and include: compliance with the health service directives and health employment directives that apply to the Service; develop local clinical governance arrangements for the Service; manage the performance of the Service against the performance measures stated in the service agreement; maintain land, buildings and other assets owned by the Service ; other functions approved by the Minister; and other functions necessary or incidental to the above functions.
37. At the date of the decision to close the BAC, West Moreton HHS did not own health-related land and buildings within its service area or have staff employment responsibilities until the Minister was satisfied that the HHS could take on additional responsibility. A schedule of transfer was not developed until June 2014.
38. Accordingly, ownership of health-related land and buildings within the West Moreton HHS remained with the Department of Health until 22/12/2014 and staff employment responsibilities until 1 July 2014.
39. The ownership of the BAC building remained with the Department of Health until 22 December 2014 and staff responsibility at the BAC remained with the Department until 1 July 2014.
40. Apart from the delivery of local health services to the geographic area to which it had been assigned, West Moreton HHS was also assigned an oversight role for a number of state-wide services provided by the TPCMH, which included the BAC.
41. The management considerations for the delivery of a local service different from the management and resource considerations to deliver a state-wide service. State-wide services involved cross-boundary considerations and required substantial input and direction from the System Manager in terms of policy and service planning, funding and infrastructure requirements.

Structure of HHS After 1 July 2012

42. Each HHS is controlled by a Hospital and Health Board (which consists of 5 or more members) and accountable through the Hospital and Health Board Chair to the Director General¹ and the Minister.²
43. Boards must establish executive committees³ to support the Board in its role. Boards also have a range of other functions which include developing and publishing various strategies⁴ and developing a strategic plan.⁵
44. The Minister may also give directions to HHS and appoint a person to be an adviser to a board if the Minister considers that the adviser may assist the board to improve the performance of the board or the Service.
45. West Moreton HHS could not control management of the building or land it did not own at the time of the decision. Nor did the HHS employ staff at BAC which were still the responsibility of the System Manager.
46. Further, any control of over service delivery or financial management was within the funding envelope provided by the System Manger and the volume and type of services purchased by the System Manger as specified in the service agreement.

Role of System Manager

47. As discussed above the Department of Health (System Manager), acting through the Director General, was responsible for the overall management of the public health system but was subject to direction from the Minister and all cabinet decisions applicable to Queensland Health.⁶
48. The relationship between the HHS and the Chief Executive is governed by the service agreement (which includes the performance HHS performance framework) and the way in which the chief executive's responsibilities are exercised.⁷
49. The relationship between the HHS and the Department of Health is supported through a Relationship Management Group, whose members comprise representatives from both the HHS and system manager and which provides the routine forum within which a range of aspects of HHS (and system wide) performance are discussed and jointly managed.⁸

Other Relevant Legislation.

50. The Mental Health Commission (MHC) was established by the *Queensland Mental Health Commission Act 2013* on 1 July 2013. The Mental Health Commissioner was appointed on 1 July 2013. The Commissioner is subject to direction from the Minister in performing the Commissioner's functions under the Act (see section 13).

¹ Section 9 HHB Act

² Division 2

³ Section 32A

⁴ Section 40 -43

⁵ Under section 9 *Financial and Performance Management Standard 2009*

⁶ See Service Agreement 2012-2013 p12

⁷ Section 8(4) and (5)

⁸ See West Moreton Service Agreement 2012-2013

51. The MHC is essentially a strategic policy unit. It has a remit to prepare a whole-of-government strategic plan for improvement of mental health and the limiting of harm that comes from substance abuse to provides strategic guidance to relevant agencies who are involved in the delivery of mental health and substance misuse system.
52. It also has a monitoring, review and reporting role on issues affecting mental health and substance misuse and a role to develop promote, prevent and develop strategies on mental health and substance abuse issues.
53. In exercising its functions, the Commission must focus on systemic mental health and substance misuse issues and is required to engage and consult with Queensland Health, other Government departments, the non-government and private sector, members of the community and HHS.
54. The MHC does not plan or delivery services, not does it have any funding/budget or service purchasing responsibilities.
55. *The Financial Accountability Act 2009 and the Financial and Performance Management Standard 2009* impose obligations on the DG of a department to ensure the operations of the department are carried out efficiently, effectively and economically. And the DG is also required to establish and maintain an appropriate governance framework to manage the performance of an agency's functions and operations. This framework consists of an internal control structure; risk and performance management systems, plans, policies and procedures.
56. The purpose of the *Mental Health Act 2000* is to provide for the involuntary assessment, treatment and protection of persons who have a mental illness, including safeguarding their rights and freedoms balanced against the rights and freedom of other persons.
57. The Park Centre for Mental Health (which included the BAC) was gazetted as an authorised mental health service in accordance with section 495 of the *Mental Health Act 2000*. A facility is required to be authorised in order to provide treatment and care for involuntary patients in accordance with the *Mental Health Act 2000*.