

TASMANIA

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**TASMANIAN HEALTH ORGANISATIONS BILL  
2011**

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# **TASMANIAN HEALTH ORGANISATIONS BILL 2011**

*(Brought in by the Minister for Health, the Honourable  
Michelle Anne O'Byrne)*

## **A BILL FOR**

**An Act to establish Tasmanian Health Organisations, to provide for the funding, guidance and supervision of such organisations, to amend the *State Service Act 2000*, and for related matters**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Tasmanian Health Organisations Act 2011*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

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### 3. Interpretation

In this Act, unless the contrary intention appears –

**“administrator”**, in relation to a Tasmanian Health Organisation, means a person who is an administrator of the organisation under section 67;

**“chairperson”**, in relation to a Tasmanian Health Organisation, means the person appointed under section 14 to be the chairperson of the Tasmanian Health Organisation;

**“client”**, in relation to a Tasmanian Health Organisation, means a person to whom services are required to be provided under the Organisation’s service agreement;

**“committee member”** means a person who is, under Schedule 5, a member of a sub-committee;

**“corporate plan”**, in relation to a Tasmanian Health Organisation, means the corporate plan that is in effect in relation to the organisation under section 44, as amended, if at all, by an amendment to the plan under section 45 that has taken effect;

**“deputy administrator”**, in relation to a Tasmanian Health Organisation, means a

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person who is a deputy administrator of the organisation under section 68;

**“employee”**, in relation to a Tasmanian Health Organisation, means a person (other than the chief executive officer) who is appointed under the *State Service Act 2000* and who is, in accordance with section 28 of this Act, assigned duties in the Tasmanian Health Organisation;

**“governing council”**, in relation to a Tasmanian Health Organisation, means the governing council established under section 11 in respect of the organisation;

**“health institution”** means an institution (other than a hospital) by or at which health services or health support services are provided;

**“health service”** means any of the following:

- (a) a hospital service;
- (b) a medical service;
- (c) a paramedical service;
- (d) a community health service;
- (e) the supply or fitting of any prosthesis or therapeutic device;
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or

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improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons –

but does not include a prescribed service;

**“health support service”** means a service that is provided in aid or support of a health service and includes the following:

- (a) the professional, technical or other education or training of persons to be employed by a Tasmanian Health Organisation or the Crown to provide health services;
- (b) the procurement or supply, or both, of goods, substances or services to providers of health services;
- (c) the planning or construction of any building or facility for use in the provision of health services;
- (d) the provision of corporate services to providers of health services;
- (e) a prescribed service;

**“hospital services”** means services provided by or for the purposes of a public hospital;

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**“material personal interest”** – see section 4;

**“medical service”** means a service, related to ensuring the health of a person, that is provided by a health practitioner within the meaning of the Health Practitioner Regulation National Law (Tasmania) or a member of a prescribed class of persons;

**“member”**, in relation to a governing council, means –

- (a) the chairperson of the governing council who is appointed under section 14(1); or
- (b) the members of the governing council who are appointed under section 13(1); or
- (c) a person, acting in the office of a member of the governing council, who is appointed under section 15(1);

**“ministerial charter”**, in relation to a Tasmanian Health Organisation, means the charter for the organisation that is in force from time to time under section 37;

**“ministerial representative”**, in relation to a Tasmanian Health Organisation, means a person who is a ministerial representative appointed to the governing council of the Tasmanian Health Organisation under Division 5 of Part 7;

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**“operational area”**, in relation to a Tasmanian Health Organisation, means the operational area, in relation to that organisation, that is specified in Schedule 2;

**“public hospital”** means a hospital controlled by a Tasmanian Health Organisation;

**“responsible Ministers”** means –

- (a) the Minister; and
- (b) the Treasurer;

**“Secretary”** means Secretary of the Department;

**“service agreement”**, in relation to a Tasmanian Health Organisation, means a service agreement with the organisation entered into by the Minister under section 42;

**“sub-committee”** means a committee established under section 23 or 24 by the governing council of a Tasmanian Health Organisation;

**“Tasmanian Health Organisation”** means a Tasmanian Health Organisation established by section 5 and includes any subsidiary of the organisation;

**“Treasurer’s Instructions”** means –

- (a) the Treasurer’s Instructions referred to in section 33(1); and

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- (b) the Treasurer's Instructions issued under section 33(3).

**4. Meaning of “material personal interest”**

(1) In this section –

**“relative”**, in relation to a person, means –

- (a) the spouse or partner of the person; and
- (b) the parent or remoter linear ancestor of the person; and
- (c) the child or remoter issue of the person; and
- (d) the brother or sister of the person;

**“relevant office”** means the office of a member, a committee member, an administrator or a deputy administrator.

(2) In this Act –

**“material personal interest”**, in relation to a person who holds a relevant office, means –

- (a) a direct or indirect interest; or
- (b) a pecuniary or non-pecuniary interest; or
- (c) an interest of a relative of the person; or

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- (d) an interest of an associated entity;  
or
  - (e) an interest in a corporation,  
within the meaning of the  
Corporations Act; or
  - (f) the person's employment by a  
person with a direct or indirect  
interest in the Tasmanian Health  
Organisation to which the  
relevant office relates; or
  - (g) the holding by the person of an  
office where there arises, or may  
arise, a conflict between his or  
her duties in that office and his or  
her duties as a person who holds  
the relevant office; or
  - (h) the holding by the person of the  
office of director in another  
statutory authority or in the  
governing authority of another  
statutory authority; or
  - (i) any other interest that gives rise,  
or may give rise, to a conflict of  
interest.
- (3) A person who holds a relevant office does not have a material personal interest by reason only of also being a State Service officer or State Service employee.
- (4) A person who holds a relevant office in relation to a Tasmanian Health Organisation does not

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have a material personal interest by reason only of an interest in a contract with the Tasmanian Health Organisation for goods or services ordinarily supplied by the organisation and supplied on the same terms as the goods or services are ordinarily supplied to other persons in the same situation.

(5) In relation to a person who holds a relevant office, each of the following persons (in this section referred to as “the other person”) is an associated entity if the person who holds a relevant office or his or her relative has control over the other person:

- (a) a body corporate;
- (b) a partnership or other unincorporated association of persons;
- (c) a majority of trustees of a trust.

(6) For the purposes of determining whether the person who holds a relevant office has control over the other person, the following matters may be taken into account:

- (a) whether the person who holds a relevant office or his or her relative is a shareholder in, a director or other officer of, or a trustee of, the other person;
- (b) whether the person who holds a relevant office or his or her relative is a beneficiary in the trust of which the other person is a trustee;

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- (c) any other matter or relationship that is relevant.
- (7) For the purposes of determining whether the relative of a person who holds a relevant office has control over the other person, the following matters may be taken into account:
- (a) whether the relative or his or her relative is a shareholder in, a director or other officer of or a trustee of the other person;
  - (b) whether the relative or his or her relative is a beneficiary in the trust of which the person is a trustee;
  - (c) any other matter or relationship that is relevant.

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**PART 2 – TASMANIAN HEALTH ORGANISATIONS**

***Division 1 – Establishment of Tasmanian Health Organisations***

**5. Tasmanian Health Organisations established**

- (1) There are established by this subsection the Tasmanian Health Organisations specified from time to time in Schedule 1.
- (2) The Governor, by notice, may amend Schedule 1 by inserting, altering or omitting the name of a Tasmanian Health Organisation.
- (3) The Governor, by notice, may –
  - (a) dissolve a Tasmanian Health Organisation; or
  - (b) amalgamate 2 or more Tasmanian Health Organisations; or
  - (c) divide a Tasmanian Health Organisation into 2 or more Tasmanian Health Organisations; or
  - (d) change the name of a Tasmanian Health Organisation established by or under this section –

and may in the notice amend Schedule 1 accordingly.

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- (4) The operational area for a Tasmanian Health Organisation is the operational area specified in Schedule 2 in respect of the organisation.
- (5) The Governor, by notice, may amend Schedule 2 by omitting, altering or inserting an operational area in respect of a Tasmanian Health Organisation.
- (6) If the Governor issues a notice under subsection (3)(b) or (c) that amalgamates or divides one or more Tasmanian Health Organisations, the Governor may, by notice, transfer the assets and liabilities of one or both of the organisations to another Tasmanian Health Organisation or to the Crown.
- (7) An operational area may be specified in Schedule 2 by reference to a map, a document, or another instrument, that is not included in the Schedule.

**6. Legal entity of Tasmanian Health Organisations**

- (1) A Tasmanian Health Organisation –
  - (a) is a body corporate with perpetual succession; and
  - (b) has a seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) is an instrumentality of the Crown.

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- (2) The seal of a Tasmanian Health Organisation is to be kept and used as authorised by its governing council.
- (3) All courts and persons acting judicially must –
- (a) take judicial notice of the imprint of the seal of a Tasmanian Health Organisation on a document; and
  - (b) presume that the document was duly sealed by the Tasmanian Health Organisation.
- (4) All courts and persons acting judicially must take judicial notice of –
- (a) the official signature of a person who is or has been a member, or the chief executive officer, of a Tasmanian Health Organisation; and
  - (b) the fact that the person holds or has held the office concerned.

*Division 2 – Purposes, functions and powers of Tasmanian Health Organisations*

**7. Purposes of Tasmanian Health Organisations**

- (1) The primary purposes of a Tasmanian Health Organisation are –
- (a) to provide relief to sick and injured clients through the provision of care and treatment; and

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(b) to promote, protect and maintain the health of its clients.

(2) A Tasmanian Health Organisation is to carry out its functions, and exercise its powers, other than for the purpose of financial gain.

**8. Functions of Tasmanian Health Organisations**

The functions of a Tasmanian Health Organisation are as follows:

(a) generally to improve, promote, protect and maintain the health of its clients;

(b) to conduct and manage public hospitals, health institutions, health services, and health support services, that are under the organisation's control and to ensure the effective provision of health services, health support services, and hospital services, that are purchased by the organisation;

(c) to achieve and maintain the standards of patient care and delivery of services set out in the organisation's service agreement;

(d) to manage the organisation's budget, as determined by the organisation's service agreement, and its other funds, so as to ensure –

(i) the efficient and economic operation of the public hospitals,

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health institutions, health services, and health support services, that are under the organisation's control; and

- (ii) the efficient and economic delivery of health services, health support services, and hospital services, that are purchased by the organisation; and
  - (iii) the efficient and economic use of its resources;
- (e) to cooperate with other Tasmanian Health Organisations and the Secretary in relation to the provision of services involving more than one Tasmanian Health Organisation or on a State-wide basis;
- (f) to provide training and education relevant to the provision of health services and health support services;
- (g) to undertake research and development relevant to the provision of health services and health support services;
- (h) to collect health data, and provide health data, for the purposes of research and reporting and for any other purposes that may be prescribed;
- (i) any other functions conferred on it by or under this Act or any other Act or that are prescribed.

## **9. Powers of Tasmanian Health Organisations**

Subject to section 10, a Tasmanian Health Organisation has the following powers:

- (a) to acquire, hold, dispose of and otherwise deal with property;
- (b) to enter into contracts;
- (c) to receive gifts, donations or bequests;
- (d) to manage trust funds for any trust it registers in accordance with section 10(1)(1);
- (e) to manage and maintain property;
- (f) to charge fees as prescribed in the *Health (Fees) Regulations 2007*;
- (g) all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers.

## **10. Limitations on powers**

- (1) Despite section 9, a Tasmanian Health Organisation may only exercise the following powers with the approval of the responsible Ministers and in accordance with any terms or conditions of the approval:
  - (a) borrow funds;
  - (b) establish an overdraft;

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- (c) acquire, dispose, lease, mortgage charge, hypothecate, or otherwise transfer or encumber, any interest in real property;
  - (d) invest the funds of the organisation;
  - (e) pledge, charge or encumber any of the organisation's personal property;
  - (f) create a subsidiary;
  - (g) charge fees other than as prescribed in the *Health (Fees) Regulations 2007*;
  - (h) indemnify any person from liability or guarantee the payment of money or the performance of service by another person;
  - (i) make a charitable donation;
  - (j) apply for or obtain endorsement by the Australian Tax Office as –
    - (i) a deductible gift recipient under the category of public benevolent institution; or
    - (ii) a charitable fund, charitable institution, health promotion charity or income tax exempt fund;
  - (k) enter into an agreement with –
    - (i) any government other than the Tasmanian government; or

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- (ii) any government agency that is not a Tasmanian government agency;
  - (l) register a trust;
  - (m) register a company.
- (2) A Tasmanian Health Organisation does not have power to make a political donation.
- (3) A Tasmanian Health Organisation must not use its funds (including any money or other assets that it receives by grant, contribution or otherwise) for any purpose other than the performance of its functions.
- (4) The responsible Ministers may grant an approval under subsection (1) in respect of a particular matter or a class of matters.

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**PART 3 – GOVERNING COUNCILS OF TASMANIAN  
HEALTH ORGANISATIONS**

***Division 1 – Establishment and membership of governing  
councils***

**11. Governing councils**

- (1) There is established, in relation to each Tasmanian Health Organisation, a governing council.
- (2) A governing council of a Tasmanian Health Organisation consists of –
  - (a) the chairperson; and
  - (b) not less than 4, and not more than 8, members appointed under section 13.
- (3) A governing council of a Tasmanian Health Organisation is accountable to the responsible Ministers for the performance of its functions, and the exercise of its powers, under this Act.

**12. Determination of membership of governing councils**

The responsible Ministers must ensure, so far as practicable, that the members of a governing council of a Tasmanian Health Organisation who are appointed under sections 13 and 14 collectively have –

- (a) skills and experience necessary to oversee and provide guidance to the large

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and complex organisation that is a Tasmanian Health Organisation; and

- (b) skills and experience in health management, business management and financial management; and
- (c) clinical expertise; and
- (d) an understanding of the health needs of the clients of the Tasmanian Health Organisation to whom the services of the organisation will be provided; and
- (e) any other skills or experience that the Ministers consider are required.

**13. Appointment of members of governing councils**

- (1) The responsible Ministers are to appoint the members of a governing council of a Tasmanian Health Organisation.
- (2) A chief executive officer of a Tasmanian Health Organisation is not eligible to be a member of a governing council of a Tasmanian Health Organisation.
- (3) Schedule 3 applies to members of a governing council.

**14. Chairperson**

- (1) The responsible Ministers are to appoint a person to be the chairperson of the governing council of a Tasmanian Health Organisation.
- (2) Schedule 3 applies to the chairperson.

**15. Acting members**

- (1) If a member of a governing council is absent from duty or otherwise unable to perform the functions of a member, the responsible Ministers may appoint a person to act as a member of the governing council in the place of the member.
- (2) Section 13(2) and (3) apply in relation to a person appointed to act as a member under subsection (1).
- (3) Despite subsection (2), clause 1(1) of Schedule 3 and clause 6 of Schedule 3 do not apply in relation to a person appointed to act as a member under subsection (1).
- (4) A person who is appointed to act as a member of a governing council under subsection (1) is taken to be a member of the governing council while his or her appointment continues.
- (5) The appointment of a person under subsection (1) to act as a member terminates when the member in whose place the member is appointed as a member –

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- (a) resumes the performance of the functions of a member; or
  - (b) vacates office as a member.
- (6) Subsection (5) does not limit the application of clause 5 of Schedule 3.

**16. Disclosure of interest of members**

- (1) A member of a governing council who has a material personal interest in a matter that is being considered, or is about to be considered, by the governing council must, as soon as practicable after the relevant facts come to his or her knowledge, disclose to the governing council the nature of the interest.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Unless a governing council otherwise determines, a member of the council who has made a disclosure under subsection (1) in relation to a matter must not –
- (a) be present during any deliberation of the council in relation to the matter; or
  - (b) take part in any decision of the council in relation to the matter.
- (3) For the purposes of making a determination under subsection (1) the member of a governing

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council to whom the determination relates must not –

- (a) be present during any deliberation of the council for the purpose of making the determination; or
  - (b) take part in making the determination.
- (4) Subsection (1) does not apply –
- (a) in respect of a contract for goods or services, supplied by a Tasmanian Health Organisation, if the goods or services are ordinarily supplied by the Tasmanian Health Organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or
  - (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

**17. Members to act honestly, &c.**

- (1) A member must act honestly in the performance and exercise of his or her functions and powers as a member.

Penalty: Fine not exceeding 2000 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (2) In performing and exercising the functions and powers of a member, a member must exercise

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the same degree of care and diligence that a person in a similar position in a corporation, within the meaning of the Corporations Act, is required to exercise.

Penalty: Fine not exceeding 2000 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (3) A member or former member of a Tasmanian Health Organisation must not use improperly, whether within Tasmania or elsewhere, information acquired as a member, so as to –
- (a) gain, directly or indirectly, a personal advantage or an advantage for another person; or
  - (b) cause damage to a Tasmanian Health Organisation; or
  - (c) cause harm to a client of the Tasmanian Health Organisation.

Penalty: Fine not exceeding 2000 penalty units or imprisonment for a term not exceeding 5 years, or both.

**18. Recovery of improper profit**

If a person is found guilty of an offence under section 17 –

- (a) the Tasmanian Health Organisation of which the person is or was a member may recover in a court of competent

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jurisdiction as a debt due to it any profit made by that person or another person as a result of the commission of the offence; and

- (b) a Tasmanian Health Organisation may recover in a court of competent jurisdiction as a debt due to it an amount equal to any loss and damage it suffered as a result of the commission of the offence.

***Division 2 – Functions and powers of governing councils***

**19. Functions of governing councils**

(1) A governing council of a Tasmanian Health Organisation has the following functions:

- (a) to ensure that the organisation performs its functions, and exercises its powers, in a satisfactory manner;
- (b) to negotiate the organisation's service agreement in accordance with Division 3 of Part 5;
- (c) to ensure that –
  - (i) the organisation delivers the services that it has agreed, under the service agreement, to provide; and
  - (ii) the organisation delivers those services in accordance with the

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performance standards set out in the service agreement; and

(iii) the organisation delivers those services in accordance with the budget set out in the organisation's annual business plan; and

(iv) the organisation delivers those services in accordance with the organisation's corporate plan;

(d) to ensure systems are in place to enable the services that the organisation is required to deliver under the service agreement are provided efficiently and economically;

(e) to monitor the performance of the Tasmanian Health Organisation against the performance measures set out in the service agreement;

(f) to confer with the chief executive officer of the Tasmanian Health Organisation as to the performance measures to be included in the service agreement;

(g) to improve the health outcomes for clients;

(h) to consult with the State government and persons or bodies with an interest in health within the organisation's operational area;

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- 
- (i) to ensure that the objectives specified in the ministerial charter and corporate plan are achieved;
  - (j) to formulate, and ensure the implementation of, policy in respect of the operation of the organisation;
  - (k) to ensure that policies issued by the Minister under section 40 are implemented, in so far as they are not inconsistent with the organisation's service agreement;
  - (l) to provide advice to the Minister in respect of anticipated future capital investment requirements of the Tasmanian Health Organisation and the planning of service delivery by the organisation;
  - (m) any other functions specified in this or any other Act or that are prescribed.
- (2) A governing council of a Tasmanian Health Organisation must ensure that adequate corporate and clinical governance procedures are in place in relation to the organisation.

**20. Powers**

Subject to this Act, the governing council of a Tasmanian Health Organisation has the powers necessary to perform its functions.

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**21. Delegation by governing councils**

The governing council of a Tasmanian Health Organisation may delegate to a person any of its functions or powers, other than this power of delegation.

**22. Meetings of governing councils**

Schedule 4 has effect with respect to the meetings of a governing council.

***Division 3 – Governing council sub-committees***

**23. Audit and risk sub-committees**

(1) The governing council of a Tasmanian Health Organisation must establish an audit and risk sub-committee, consisting of members of the council, to provide advice to the governing council in respect of the matters referred to in subsection (2).

(2) An audit and risk sub-committee in respect of a Tasmanian Health Organisation is to provide the governing council with advice on the following:

(a) the monitoring of the systems of financial reporting and internal control in respect of the Tasmanian Health Organisation;

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- (b) the resources necessary to carry out internal audits of the Tasmanian Health Organisation;
  - (c) the degree of compliance, by the Tasmanian Health Organisation, with legislation and proper clinical practice;
  - (d) the establishment and operation of appropriate and effective identification and management by the Tasmanian Health Organisation of risk, including fraud;
  - (e) the formulation and implementation of plans to manage risk in relation to major projects or undertakings of the Tasmanian Health Organisation;
  - (f) any other matters referred to the committee by the governing council of the Tasmanian Health Organisation;
  - (g) any other matters relating to financial matters and internal control in respect of the Tasmanian Health Organisation that the sub-committee thinks fit.
- (3) An audit and risk sub-committee must comply with any Treasurer's Instructions that apply to the sub-committee.
- (4) Schedule 5 has effect with respect to the membership and meetings of an audit and risk sub-committee.

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**24. Other sub-committees**

- (1) The governing council of a Tasmanian Health Organisation may establish any sub-committee, consisting of members of the governing council, that it considers appropriate to provide advice to the governing council in relation to –
  - (a) the functions and powers of the Tasmanian Health Organisation; and
  - (b) the functions and powers of the governing council or the chief executive officer of the Tasmanian Health Organisation.
- (2) A sub-committee established under subsection (1) by a governing council is to provide advice to the governing council in respect of –
  - (a) any matter for the purposes of which the sub-committee was established; or
  - (b) any matter, referred to it by the governing council, that relates to a function or power referred to in subsection (1).
- (3) Schedule 5 has effect with respect to the membership and meetings of a sub-committee established under subsection (1).

**25. Disclosure of interest by sub-committee members**

- (1) If –

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- (a) a member of a sub-committee of a Tasmanian Health Organisation has a material personal interest in a matter that is being considered, or is about to be considered, by the sub-committee; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose to the sub-committee the nature of the interest.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Unless a governing council of the Tasmanian Health Organisation otherwise determines, a member of a sub-committee of a Tasmanian Health Organisation who has made a disclosure under subsection (1) in relation to a matter must not –

- (a) be present during any deliberation of the sub-committee in relation to the matter; or
- (b) take part in any decision in relation to the matter by the sub-committee.

- (3) For the purposes of making a determination under subsection (2), the member of a sub-committee of a Tasmanian Health Organisation to whom the determination relates must not –

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- (a) be present during any deliberation of the sub-committee for the purpose of making the determination; or
  - (b) take part in making the determination.
- (4) Subsection (1) does not apply –
- (a) in respect of a contract for goods or services, supplied by the Tasmanian Health Organisation, if the goods or services are ordinarily supplied by the Tasmanian Health Organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or
  - (b) in respect of an interest that arises only because the committee member is also a State Service officer or State Service employee.

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**PART 4 – OPERATION OF TASMANIAN HEALTH ORGANISATIONS**

***Division 1 – Staffing***

**26. Chief executive officer**

- (1) Subject to and in accordance with the *State Service Act 2000*, a person may be appointed as chief executive officer of a Tasmanian Health Organisation.
- (2) The chief executive officer of a Tasmanian Health Organisation is to be appointed in accordance with subsection (1) on the recommendation of the governing council of the Tasmanian Health Organisation.
- (3) The office of chief executive officer of a Tasmanian Health Organisation is taken to be an office created under section 29 of the *State Service Act 2000*.
- (4) A person is not to be appointed for a period of more than 5 years as chief executive officer of a Tasmanian Health Organisation, but may be re-appointed.
- (5) The appointment of the chief executive officer of a Tasmanian Health Organisation may be terminated in accordance with the *State Service Act 2000* only in accordance with the recommendation of the governing council of the Tasmanian Health Organisation.

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- (6) The remuneration payable to the chief executive officer of a Tasmanian Health Organisation in accordance with the *State Service Act 2000* is to be determined under that Act after consultation with the governing council of the organisation.

**27. Powers and functions of chief executive officer**

- (1) The chief executive officer of a Tasmanian Health Organisation is responsible for the administration and management of the operation of the Tasmanian Health Organisation.
- (2) The chief executive officer of a Tasmanian Health Organisation is accountable to the governing council of the Tasmanian Health Organisation for the performance of his or her responsibilities or functions, and the exercise of his or her powers, under this Act.
- (3) The chief executive officer of a Tasmanian Health Organisation –
- (a) must perform any responsibilities or functions, and exercise any powers, imposed on him or her by or under this or any other Act; and
  - (b) may perform any functions, and exercise any powers, delegated to him or her by the governing council of the Tasmanian Health Organisation; and

- (c) may exercise any other powers granted to him or her by or under this or any other Act.

## **28. Employees**

Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purposes of, and may be assigned duties in, Tasmanian Health Organisations.

### ***Division 2 – Financial matters***

## **29. Funds of Tasmanian Health Organisations**

- (1) The funds of a Tasmanian Health Organisation consist of –
  - (a) any money received from the Commonwealth or the State, whether directly or through an authority established under an enactment of the Commonwealth or the State; and
  - (b) any money received by the organisation as fees or charges; and
  - (c) any money otherwise received by the organisation in the course of performing its functions or exercising its powers; and
  - (d) any money received by the organisation as a gift, donation or bequest; and

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- (e) any money received by the organisation from any other source.
- (2) The funds of a Tasmanian Health Organisation are to be applied –
- (a) in remunerating the relevant officers in respect of the organisation; and
  - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the organisation, or the governing council of the organisation, in the performance and exercise of the functions and powers of the organisation or governing council.
- (3) For the purposes of subsection (2)(a), the relevant officers in respect of a Tasmanian Health Organisation are –
- (a) the members of the governing council of the organisation; and
  - (b) the chief executive officer of the organisation; and
  - (c) any employees of the organisation; and
  - (d) any committee member in respect of a sub-committee of the organisation; and
  - (e) an administrator or deputy administrator in respect of the organisation.

**30. Authorised deposit-taking institution accounts**

A Tasmanian Health Organisation, with the approval in writing of the Treasurer, may open and maintain the authorised deposit-taking institution accounts that it considers necessary.

**31. Accounting records**

(1) A governing council of a Tasmanian Health Organisation is to ensure that –

(a) accounting records that correctly record and explain the transactions (including any transactions as trustee) and financial position of the organisation *are kept*; and

(b) those records are kept in a manner that –

(i) allows true and fair accounts of the Tasmanian Health Organisation to be prepared from time to time; and

(ii) allows the accounts of the Tasmanian Health Organisation to be conveniently and properly audited or reviewed; and

(iii) complies with the Treasurer's Instructions; and

(iv) subject to any contrary direction of the Treasurer or the Treasurer's Instructions, complies

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with the Australian Accounting Standards; and

- (v) complies with any directions of the Treasurer given under subsection (2); and
  - (c) those records are retained for a period of not less than 7 years after the completion of the transaction to which they relate or another period that the Treasurer determines.
- (2) The Treasurer may give directions in writing to the governing council of a Tasmanian Health Organisation in relation to the manner or form in which accounting records are to be kept.

**32. Financial statements**

- (1) The financial statements of a Tasmanian Health Organisation in respect of a financial year are to consist of the following:
- (a) an operating statement for that financial year;
  - (b) a statement of financial position as at the end of that financial year;
  - (c) a statement of the cash flows for that financial year;
  - (d) any other financial information required to be included by a direction given under subsection (3);

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- (e) any statements, reports and notes, other than a member's report or an auditor's report, attached to, or intended to be read with, the operating statement and the statement of financial position.
- (2) The financial statements are to –
- (a) comply with the Treasurer's Instructions; and
  - (b) comply with any direction given under subsection (3); and
  - (c) subject to the Treasurer's Instructions and any direction given under subsection (3), comply with the Australian Accounting Standards.
- (3) The Treasurer, in writing, may give directions to the governing council of a Tasmanian Health Organisation in respect of the form of the financial statements.

**33. Treasurer's Instructions**

- (1) The Treasurer, by notice in writing to a Tasmanian Health Organisation, may modify the application to the organisation of the Treasurer's Instructions, issued under the *Financial Management and Audit Act 1990*, that, under that Act, apply to and in relation to a Tasmanian Health Organisation as an Agency within the meaning of that Act.

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- (2) If the Treasurer issues a notice under subsection (1) to a Tasmanian Health Organisation modifying the application to the organisation of the Treasurer's Instructions issued under the *Financial Management and Audit Act 1990*, the Treasurer's Instructions that apply to and in relation to the organisation under that Act are to be taken to be, for the purposes of this Act and the *Financial Management and Audit Act 1990*, modified in accordance with the notice.
- (3) The Treasurer may issue instructions, in writing, in respect of guidelines, principles, practices and procedures to be observed by Tasmanian Health Organisations, governing councils or audit and risk sub-committees, in relation to –
- (a) corporate plans; and
  - (b) annual reports; and
  - (c) financial management; and
  - (d) any other prescribed matter.
- (4) Without limiting the generality of subsection (3), Treasurer's Instructions in respect of corporate plans may specify that the corporate plan of a Tasmanian Health Organisation must specify the organisation's objectives, policies and programs.
- (5) Treasurer's Instructions may be issued in accordance with subsection (3) –
- (a) so as to apply –

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- (i) at all times or at a time specified in the Treasurer's Instructions; or
- (ii) to all Tasmanian Health Organisations, governing councils or audit and risk sub-committees or to the Tasmanian Health Organisations, governing councils or audit and risk sub-committees specified in the Treasurer's Instructions; and
- (b) so as to confer a discretionary authority on a person or body or a class of persons or bodies specified in the Treasurer's Instructions.
- (6) It is the duty of a member of the governing council of a Tasmanian Health Organisation, the chief executive officer of a Tasmanian Health Organisation and any employee of the Tasmanian Health Organisation to comply with –
- (a) any requirement of the Treasurer's Instructions referred to in subsection (1) that is applicable to that organisation; and
- (b) any requirement of the Treasurer's Instructions issued in accordance with subsection (3) that is applicable to that organisation.
- (7) If there is an inconsistency between the Treasurer's Instructions issued in accordance with subsection (3) and the Treasurer's

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Instructions referred to in subsection (1) (including such Instructions the application of which is modified in accordance with subsection (1)) –

- (a) the Treasurer's Instructions issued in accordance with subsection (3) prevail, in relation to a Tasmanian Health Organisation, to the extent of the inconsistency; and
- (b) the Treasurer's Instructions that apply to and in relation to the organisation under the *Financial Management and Audit Act 1990* (including such Instructions the application of which is modified in accordance with subsection (1)) are to be taken to be, for the purposes of that Act, not applicable to and in relation to the organisation, to the extent of the inconsistency.

**34. Matters relating to *Audit Act 2008***

For the purposes of section 19 of the *Audit Act 2008*, a reference in that section to the relevant Minister is to be taken to be a reference to the responsible Ministers.

**35. Effect of *Financial Agreement Act 1994***

If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires a Tasmanian Health Organisation to do or refrain

from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Tasmanian Health Organisation must comply with that requirement.

*Division 3 – Operational matters*

**36. Certain services, &c., to be used by Tasmanian Health Organisation**

- (1) The Minister, by direction in writing to a Tasmanian Health Organisation, may require the organisation to ensure that –
  - (a) certain administrative functions that are required to be performed, or that the organisation requires to have performed, be performed by the State Service Agency, unit of administration, person or body specified in the direction; and
  - (b) certain medical services that the organisation is required to provide in the performance of its functions are provided by the State Service Agency, unit of administration, person or body specified in the direction; and
  - (c) the organisation enters into particular contracts or arrangements, including financial arrangements specified in the direction in relation to –
    - (i) insurance or indemnifying the organisation; and

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(ii) any other matter that may be prescribed.

(2) A Tasmanian Health Organisation to which a direction is given under subsection (1) must comply with the direction.

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**PART 5 – MINISTERIAL GUIDANCE AND  
DIRECTION**

*Division 1 – Ministerial charters*

**37. Ministerial charters**

- (1) The responsible Ministers must issue a ministerial charter for a Tasmanian Health Organisation.
- (2) A ministerial charter issued under subsection (1) is to be in writing and signed by the responsible Ministers.
- (3) The responsible Ministers, at any time at their discretion, or after receiving an application from the governing council of a Tasmanian Health Organisation, may –
  - (a) amend a ministerial charter for the Tasmanian Health Organisation; or
  - (b) revoke a ministerial charter for the Tasmanian Health Organisation.
- (4) An amendment, or the revocation, of a ministerial charter for a Tasmanian Health Organisation is to be in writing and signed by the responsible Ministers.
- (5) The responsible Ministers must provide to a governing council of Tasmanian Health Organisation –

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- (a) a copy of the ministerial charter for the organisation; and
  - (b) a copy of an amendment or revocation of the ministerial charter for the organisation.
- (6) The responsible Ministers must consult with the governing council of a Tasmanian Health Organisation before or while preparing –
  - (a) a ministerial charter for the Tasmanian Health Organisation; or
  - (b) an amendment or revocation of a ministerial charter for the Tasmanian Health Organisation.
- (7) A ministerial charter for a Tasmanian Health Organisation, or any amendment or revocation of a ministerial charter for a Tasmanian Health Organisation, takes effect on a day specified in the charter, amendment or revocation, as the case may be, being a day not earlier than the day on which a copy of the charter, amendment or revocation is provided to the governing council of the Tasmanian Health Organisation.
- (8) The responsible Ministers must cause a copy of a ministerial charter and any amendment or revocation of a ministerial charter to be laid before each House of Parliament within 10 sitting-days of that House after the charter, amendment or revocation, as the case may be, has been signed by the responsible Ministers.

**38. Contents of ministerial charters**

- (1) A ministerial charter for a Tasmanian Health Organisation is to specify the responsible Ministers' broad policy expectations for the Tasmanian Health Organisation.
- (2) A ministerial charter for a Tasmanian Health Organisation may limit the functions and powers of the Tasmanian Health Organisation and the performance and exercise of those functions and powers but –
  - (a) may not prevent the Tasmanian Health Organisation from performing a function, or exercise a power, it is required to perform or exercise or otherwise complying with any Act; and
  - (b) may not extend the functions and powers of the Tasmanian Health Organisation.

**39. Compliance with ministerial charters**

- (1) The governing council of a Tasmanian Health Organisation must ensure that the business and affairs of the Tasmanian Health Organisation are conducted in a manner that is consistent with the ministerial charter.
- (2) If a Tasmanian Health Organisation's charter and its service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

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***Division 2 – Ministerial policy and directions***

**40. Ministerial policy**

- (1) The Minister may, by notice in writing to all Tasmanian Health Organisations, require the implementation by the organisations of a policy, specified in the notice, that is to apply to all such organisations.
- (2) A Tasmanian Health Organisation must implement any policy specified in a notice to the organisation under subsection (1).
- (3) If a policy specified in a notice to a Tasmanian Health Organisation under subsection (1) and its service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

**41. Ministerial directions**

- (1) After consulting with the governing council of a Tasmanian Health Organisation, the responsible Ministers, by notice in writing, may give the governing council directions in relation to –
  - (a) the functions and powers of the Tasmanian Health Organisation; or
  - (b) the functions and powers of the governing council.

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- (2) A direction given under subsection (1) may not refer to the health care or health services provided to a particular person.
  - (3) A governing council must comply with any direction given to the council under subsection (1) by the responsible Ministers.
  - (4) If a direction given under subsection (1) to the governing council of a Tasmanian Health Organisation and the organisation's service agreement are inconsistent, the service agreement prevails to the extent of the inconsistency.

***Division 3 – Service agreements***

**42. Minister to enter into service agreements**

- (1) The Minister and each governing council of a Tasmanian Health Organisation, before 30 June in a year, must enter into a service agreement in respect of the Tasmanian Health Organisation for the following financial year.
- (2) If the Minister and the governing council of a Tasmanian Health Organisation are, before 30 June in a year, able to agree as to the contents of the service agreement in relation to the Tasmanian Health Organisation for the following financial year, the service agreement for the financial year is to be as agreed.
- (3) If the Minister and the governing council of a Tasmanian Health Organisation are not, before

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30 June in a year, able to agree as to the contents of the service agreement in relation to the Tasmanian Health Organisation for the following financial year, the service agreement for the financial year is to be as determined by the Minister.

- (4) A service agreement in respect of the Tasmanian Health Organisation for a financial year may, at any time before or during the financial year, be amended by agreement in writing between the Minister and the governing council of Tasmanian Health Organisation.
- (5) A service agreement in respect of a Tasmanian Health Organisation for a financial year may be amended by notice in writing by the Minister to the Tasmanian Health Organisation, if the Minister and the organisation are unable to agree as to the amendment.

**43. Contents of service agreements**

- (1) A service agreement in respect of a Tasmanian Health Organisation must include –
  - (a) a schedule of services to be provided by or on behalf of the Tasmanian Health Organisation and the funding to be provided in relation to the provision of those services; and
  - (b) performance goals and objectives for the Tasmanian Health Organisation; and

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- (c) performance standards, performance targets and performance measures for the Tasmanian Health Organisation; and
  - (d) requirements for the Tasmanian Health Organisation to report on the performance of the Tasmanian Health Organisation as required by or under another provision of this Act or otherwise; and
  - (e) a performance management process that is to be in continuous operation in respect of the Tasmanian Health Organisation.
- (2) A service agreement in respect of a Tasmanian Health Organisation may include provisions in respect of a matter, relating to the functions of such an organisation, that the Minister thinks fit and specifies in the agreement.

**PART 6 – GOVERNING COUNCIL PLANS AND REPORTS**

*Division 1 – Corporate plans*

**44. Corporate plans**

- (1) A governing council of a Tasmanian Health Organisation must provide a draft of a corporate plan to the responsible Ministers not later than 90 days before the day on which it is intended that the corporate plan will take effect.
- (2) The corporate plan must –
  - (a) relate to the period specified in the Treasurer's Instructions issued under section 33(3) in relation to corporate plans as the period to which a corporate plan is to relate; and
  - (b) be in a form and contain the information, specified in the Treasurer's Instructions issued under section 33(3) in relation to corporate plans as required to be contained in the corporate plan, including but not limited to any information as to the organisation's objectives, policies and programs; and
  - (c) be consistent with the ministerial charter for the Tasmanian Health Organisation.
- (3) The responsible Ministers may authorise a governing council of a Tasmanian Health Organisation to provide to them the draft of a

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corporate plan under subsection (1) by a day that is later than the day specified in that subsection.

- (4) If a governing council of a Tasmanian Health Organisation provides a draft corporate plan to the responsible Ministers under subsection (1), the responsible Ministers may –
  - (a) approve the draft corporate plan; or
  - (b) by notice in writing to the Tasmanian Health Organisation, advise the organisation that the Ministers require the amendments specified in the notice to be made to the draft corporate plan.
- (5) The responsible Ministers may only approve under subsection (4) a draft corporate plan provided to them under subsection (1) if the draft corporate plan complies with subsection (2).
- (6) A corporate plan takes effect –
  - (a) on the first day of the financial year next commencing after its approval by the responsible Ministers; or
  - (b) if a day for its commencement is specified in that approval, on that day.

**45. Amendments to corporate plans**

- (1) A governing council of a Tasmanian Health Organisation may at any time provide to the responsible Ministers an amendment of the Tasmanian Health Organisation's corporate plan.

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- (2) An amendment to a corporate plan may be in the form of a new corporate plan that replaces the existing corporate plan.
- (3) If a governing council of a Tasmanian Health Organisation provides to the responsible Ministers an amendment to a corporate plan under subsection (1), the responsible Minister may –
  - (a) approve the amendment; or
  - (b) by notice in writing to the Tasmanian Health Organisation, advise the organisation that the Ministers require the amendments specified in the notice to be made to the amendment to the corporate plan.
- (4) The responsible Ministers may only approve an amendment to a corporate plan provided to them under subsection (1) if the corporate plan, as so amended, will comply with section 44(2).
- (5) An amendment of a corporate plan provided to the responsible Ministers under subsection (1) takes effect –
  - (a) when it has been approved by the responsible Ministers; or
  - (b) if a day for its commencement is specified in the approval of the responsible Ministers, on that day.

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- (6) The approval of an amendment of a corporate plan may specify that the amendment is to take effect on –
- (a) the day when it has been approved by the responsible Ministers; or
  - (b) a day that is later than the day when the amendment has been approved by the responsible Ministers; or
  - (c) a day that is earlier the day when the amendment has been approved by the responsible Ministers.

**46. Tasmanian Health Organisations to operate in accordance with corporate plans**

- (1) Except if the responsible Ministers approve otherwise under subsection (2), a Tasmanian Health Organisation must –
- (a) act in accordance with its corporate plan; and
  - (b) ensure that a subsidiary acts in accordance with the corporate plan.
- (2) The responsible Ministers may, in writing, approve a Tasmanian Health Organisation, or a subsidiary of a Tasmanian Health Organisation, acting otherwise than in accordance with the organisation's corporate plan.

**47. Ministers to be notified if development may affect achievement of corporate plan, &c.**

The governing council of a Tasmanian Health Organisation is to notify the responsible Ministers, as soon as practicable, of any developments that, in the opinion of the governing council, may –

- (a) prevent or significantly affect the achievement of the objectives specified in the organisation’s corporate plan; or
- (b) significantly affect any other policy or program specified in the corporate plan.

***Division 2 – Annual business plans and reports***

**48. Annual business plans**

(1) The governing council of a Tasmanian Health Organisation is to produce, before 30 days after it enters into a service agreement for a financial year, an annual business plan for the Tasmanian Health Organisation for the financial year.

(2) The annual business plan for a Tasmanian Health Organisation for a financial year is to set out –

- (a) how the Tasmanian Health Organisation intends to meet the requirements of the service agreement in relation to the Tasmanian Health Organisation during that financial year; and

- (b) a budget specifying how the organisation's funds are to be expended to meet the requirements of the service agreement during that financial year.

#### **49. Progress reports**

- (1) In this section –

**“progress reports”**, in relation to a Tasmanian Health Organisation, means reports as to the extent to which the organisation is meeting the requirements of the organisation's annual business plan.

- (2) A responsible Minister, by notice to a Tasmanian Health Organisation, may determine –

- (a) the progress reports that the Minister requires the organisation to provide to him or her; and

- (b) the dates by which the progress reports are to be provided to him or her by the organisation.

- (3) A Tasmanian Health Organisation is to comply with the requirements of a notice given to the organisation under subsection (2).

**50. Annual reports**

- (1) The governing council of a Tasmanian Health Organisation must ensure that an annual report in relation to the organisation in relation to the immediately previous financial year is prepared.
- (2) The annual report in relation to a financial year is to include –
  - (a) the financial statements of the Tasmanian Health Organisation for the financial year prepared in accordance with section 32; and
  - (b) a copy of the report of the Auditor-General provided, under section 19 of the *Audit Act 2008*, to the governing council in respect of the financial statements; and
  - (c) a summary of the corporate plan of the Tasmanian Health Organisation; and
  - (d) a report on the operations of the Tasmanian Health Organisation; and
  - (e) a report on the performance of the Tasmanian Health Organisation; and
  - (f) the details of any directions given by a Minister under this Act and any action taken by the governing council in respect of those directions; and
  - (g) any other information a responsible Minister requires under subsection (4), including but not limited to information

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relating to the members of the governing council of the Tasmanian Health Organisation, its chief executive officer and its employees; and

- (h) any other information the governing council considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of the Tasmanian Health Organisation.
- (3) The governing council is to certify an annual report in relation to the organisation in respect of a financial year and to provide a copy of it to the responsible Ministers by 31 September of the year in which the report is prepared.
- (4) A responsible Minister, by notice in writing to a governing council of a Tasmanian Health Organisation, may require the council to include in the annual report in relation to the organisation the information specified in the notice.

**51. Tabling of annual reports**

- (1) The Minister is to lay, before each House of Parliament, a copy of the annual report of a Tasmanian Health Organisation provided to the Minister under section 50, within 4 months after the end of the financial year to which the annual report relates.

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- (2) If the Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, the Minister, before the expiration of that period, is to lay before each House of Parliament a statement specifying –
- (a) the reasons for the failure to comply with that subsection; and
  - (b) an estimate of the day by which a copy of the annual report may be ready to be laid before each House of Parliament.
- (3) If the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (1), or by the day specified in a statement referred to in subsection (2), because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –
- (a) provide a copy of the annual report to the Clerk of that House of Parliament immediately after the expiration of that period or that day; and
  - (b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

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**52. Annual report under *State Service Act 2000* not required**

Section 36 of the *State Service Act 2000* does not apply in relation to a Tasmanian Health Organisation.

**53. Minister may request reports**

- (1) A responsible Minister, by notice in writing to a Tasmanian Health Organisation, may require the organisation to prepare, within the period specified in the notice, a report in relation to the relevant information, specified in the notice, that the Minister requires for the purposes of this Act.
- (2) A Minister who issues a notice under subsection (1) is to specify in the notice the person or body to whom the report required to be prepared under the notice is to be provided.
- (3) For the purposes of subsection (1), the relevant information in respect of a Tasmanian Health Organisation is –
  - (a) plans, reports, financial statements (including audited financial statements) in respect of the Tasmanian Health Organisation; and
  - (b) any other information in respect of the Tasmanian Health Organisation or its operations, other than information that

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identifies, or may identify, the person to whose health the information relates.

- (4) Nothing in this section is to be taken to limit the provision of information by a Tasmanian Health Organisation.

**54. Governing council to notify responsible Ministers of developments affecting financial viability**

The governing council of a Tasmanian Health Organisation is to notify the responsible Ministers as soon as practicable of any developments that, in the opinion of the governing council, may significantly affect the financial viability or operating ability of the organisation.

**PART 7 – PERFORMANCE MANAGEMENT OF  
TASMANIAN HEALTH ORGANISATIONS**

***Division 1 – Review and audit***

**55. Review and audit**

- (1) The Minister, at any time, may authorise a person or persons to conduct a review or audit of any aspect of the operations or performance of a Tasmanian Health Organisation.
- (2) A member of the governing council, the chief executive officer, and an employee, of a Tasmanian Health Organisation must provide all reasonable assistance to a person authorised under subsection (1) to conduct a review or audit of the operations or performance of the Tasmanian Health Organisation.

***Division 2 – What constitutes unsatisfactory performance***

**56. Unsatisfactory performance**

For the purposes of this Part, a Tasmanian Health Organisation is performing unsatisfactorily if the Minister is of the opinion that –

- (a) the Tasmanian Health Organisation has failed to meet the requirements of the organisation's service agreement or its corporate plan; or

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- (b) the Tasmanian Health Organisation, or the governing council of a Tasmanian Health Organisation, has not been performing its functions, or exercising its powers, in a satisfactory manner.

***Division 3 – Performance improvement plans***

**57. Minister may require performance improvement plans**

- (1) The Minister, by notice in writing to the governing council of a Tasmanian Health Organisation, may require the governing council to produce a performance improvement plan, if the Tasmanian Health Organisation is performing unsatisfactorily.
- (2) A notice under subsection (1) to the governing council of a Tasmanian Health Organisation –
  - (a) is to specify the requirements of the service agreement that are not being met or the functions and powers of the organisation or governing council that are not being performed or exercised in a satisfactory manner; and
  - (b) is to require the governing council to prepare a performance improvement plan; and
  - (c) is to specify any matters that the Minister requires the performance improvement plan to contain; and

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- (d) is to specify the reports that are to be submitted to the Minister in relation to the carrying out of the performance improvement plan, if the plan is approved, and the times by which those reports are to be submitted; and
- (e) is to specify a date by which the performance improvement plan is to be submitted to the Minister.

**58. Performance improvement plans**

(1) A performance improvement plan under section 57(1) in relation to a Tasmanian Health Organisation is to specify –

- (a) the steps the governing council of the organisation intends to take that, if implemented, will ensure that –
  - (i) the requirements of the service agreement; or
  - (ii) the functions and powers of the organisation or governing council –

that are specified in accordance with section 57(2)(a) in the notice to the council under section 57(1), are performed or exercised in a satisfactory manner; and

- (b) the time by which the steps are to be implemented; and

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- (c) the performance measures that are to be set and achieved so that the Minister is able to determine whether the requirements of the service agreement are being met or the functions and powers of the organisation or governing council are being performed or exercised in a satisfactory manner.
- (2) The governing council of a Tasmanian Health Organisation to which a notice under section 57(1) is issued must, by the date specified in the notice under section 57(2)(e), submit to the Minister for approval a performance management plan.
- (3) If a performance management plan is submitted to the Minister under subsection (2) by a Tasmanian Health Organisation, the Minister may –
  - (a) approve the plan; or
  - (b) by notice in writing to the Tasmanian Health Organisation, advise the organisation that the Minister requires the amendments specified in the notice to be made to the plan by the date specified in the notice.
- (4) If the Minister issues to a Tasmanian Health Organisation a notice in writing under subsection (3)(b), the organisation must, by the date specified in the notice, submit to the Minister for approval a performance

management plan amended as required by the notice.

**59. Governing councils to comply with performance management plans**

The governing council and the chief executive officer of a Tasmanian Health Organisation to which a performance management plan that has been approved under section 58(3) relates are to comply with the requirements of the plan.

***Division 4 – Corrective action teams***

**60. Minister may appoint corrective action teams**

- (1) The Minister, by notice in writing to the governing council of a Tasmanian Health Organisation, may declare that a corrective action team has been appointed in respect of the Tasmanian Health Organisation, if the Tasmanian Health Organisation is performing unsatisfactorily.
- (2) A notice under subsection (1) in relation to a Tasmanian Health Organisation is to specify –
  - (a) the requirements of the service agreement that are not being met or the functions and powers of the organisation or the governing council of the organisation that are not being performed or exercised in a satisfactory manner; and

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- (b) why the appointment of the corrective action team is necessary; and
  - (c) the period for which the corrective action team is to be in existence; and
  - (d) the functions or powers of the organisation or governing council that the team is to perform or exercise, in order to ensure that –
    - (i) the requirements of the service agreement that are not being met, will be met; or
    - (ii) the functions and powers of the organisation or governing council that are not being performed or exercised satisfactorily, will be performed or exercised satisfactorily.
- (3) The Minister is to appoint one or more persons to be members of a corrective action team.
- (4) A person may only be appointed under subsection (3) if the person is a State Service officer or a State Service employee.
- (5) The members of a corrective action team in respect of a Tasmanian Health Organisation have the functions and powers of the organisation, or the governing council of the organisation, that are specified in the notice under subsection (1) in which the team is declared.

**61. Assistance to be provided to corrective action teams**

- (1) The governing council of a Tasmanian Health Organisation in relation to which a corrective action team is appointed under section 60 must provide to a member of the team appointed under section 60(3) the assistance necessary to enable the team to perform the team's functions, and exercise the team's powers, under this Act.
- (2) A person must not –
  - (a) refuse to assist a member of a corrective action team appointed under section 60(3) to perform a function or exercise a power; or
  - (b) hinder or obstruct a member of a corrective action team appointed under section 60(3) who is performing or exercising, or attempting to perform or exercise, a function or power of the corrective action team.

Penalty: Fine not exceeding 2000 penalty units.

***Division 5 – Ministerial representatives***

**62. Minister may appoint ministerial representatives to governing councils**

- (1) The Minister, by instrument in writing, may appoint not more than 2 ministerial representatives to the governing council of a Tasmanian Health Organisation.

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- (2) The Minister may only appoint a ministerial representative under subsection (1) to a governing council of a Tasmanian Health Organisation if –
- (a) the Tasmanian Health Organisation is performing unsatisfactorily; and
  - (b) the Minister is of the opinion that the appointment of a ministerial representative will assist the governing council to improve the performance of the Tasmanian Health Organisation.
- (3) In determining whether to appoint a ministerial representative under subsection (1) to a governing council of a Tasmanian Health Organisation, the Minister must have regard to –
- (a) the financial performance of the Tasmanian Health Organisation; and
  - (b) the safety and quality of the health services, and other services, provided by or on behalf of the Tasmanian Health Organisation; and
  - (c) whether the Tasmanian Health Organisation is complying with its service agreement; and
  - (d) whether the governing council has requested such an appointment.
- (4) The Minister may appoint a ministerial representative to a governing council of a Tasmanian Health Organisation whether or not

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the governing council has requested such an appointment.

- (5) The Minister must give notice of the appointment of a ministerial representative to a governing council of a Tasmanian Health Organisation.
- (6) A ministerial representative appointed to a governing council of a Tasmanian Health Organisation is not a member of the governing council.

**63. Terms of appointment of ministerial representatives**

- (1) The instrument of appointment of a ministerial representative to a governing council of a Tasmanian Health Organisation –
  - (a) must specify the terms and conditions of appointment of the ministerial representative; and
  - (b) subject to subsection (6), may specify the remuneration, if any, to which the ministerial representative is entitled.
- (2) Subject to subsections (7) and (8), a ministerial representative holds office for the period specified in his or her instrument of appointment.
- (3) A period specified in the instrument of appointment of a ministerial representative must not be more than 12 months.

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- (4) A person appointed as a ministerial representative is eligible for re-appointment.
- (5) A ministerial representative is entitled to be reimbursed any reasonable expenses incurred in exercising his or her functions as a ministerial representative.
- (6) A ministerial representative who is a State Service officer or State Service employee is not entitled to remuneration under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (7) A ministerial representative may resign his or her office by notice in writing signed by him or her and delivered to the Minister.
- (8) The Minister, in writing, may revoke the appointment of a person as a ministerial representative.

**64. Functions of ministerial representatives**

The functions of a ministerial representative appointed to the governing council of a Tasmanian Health Organisation are –

- (a) to attend meeting of the governing council and observe its decision-making processes; and
- (b) to provide advice or information to the governing council to assist it in understanding its obligations under this Act; and

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- (c) to advise the Minister and the Secretary on any matter relating to the Tasmanian Health Organisation or the governing council; and
- (d) to assist the governing council to meet the requirements of the Tasmanian Health Organisation's performance improvement plan, if any.

**65. Obligations of governing councils to ministerial representatives**

The governing council of a Tasmanian Health Organisation must –

- (a) permit a ministerial representative to the governing council to attend any meeting of the governing council; and
- (b) provide to a ministerial representative to the governing council information, or a copy of any notice or other document provided to the members of the governing council, at the same time as the information, notice or other document is provided to the members.

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***Division 6 – Dissolution of governing councils***

**66. Minister may dissolve governing council**

- (1) The Minister, by notice to the governing council of a Tasmanian Health Organisation, may dissolve the governing council.
- (2) The Minister may only dissolve the governing council of a Tasmanian Health Organisation under subsection (1) if the Minister is of the opinion that –
  - (a) the governing council has ceased to be able to perform its responsibilities or functions, or exercise its powers, in a satisfactory manner; and
  - (b) no other action that the Minister may take under this Part in relation to the Tasmanian Health Organisation will enable the governing council to perform its responsibilities or functions, or exercise its powers, in a satisfactory manner.
- (3) If the Minister dissolves a governing council under subsection (1), the Minister is to lay a copy of the reasons for the dissolution of the council before each House of Parliament within 21 sitting-days of that House after the dissolution.
- (4) If the Minister dissolves a governing council of a Tasmanian Health Organisation under subsection (1), the Minister has all the functions

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and all the powers of the Tasmanian Health Organisation, until he or she appoints an administrator of the Tasmanian Health Organisation, if at all.

**67. Administrators**

- (1) If the Minister dissolves a governing council of a Tasmanian Health Organisation under section 66(1), the Minister may appoint an administrator of the Tasmanian Health Organisation.
- (2) Subject to subsection (3), an administrator of a Tasmanian Health Organisation appointed under subsection (1) –
  - (a) has all the functions and powers of a governing council in respect of the Tasmanian Health Organisation; and
  - (b) is subject to the provisions of this Act, apart from clause 1(1) of Schedule 3 and clauses 5 and 6 of Schedule 3, as if he or she were a member of the governing council.
- (3) An administrator of a Tasmanian Health Organisation appointed under subsection (1) does not, without the approval in writing of the Minister, have the power to –
  - (a) incur expenditure on behalf of the Tasmanian Health Organisation; or

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- (b) enter into a contract of or for services that are to be provided to the Tasmanian Health Organisation.

**68. Deputy administrators**

- (1) An administrator of a Tasmanian Health Organisation may appoint persons to be deputy administrators of the Tasmanian Health Organisation.
- (2) A deputy administrator of a Tasmanian Health Organisation has the powers and functions that the administrator has under section 67(2).
- (3) Section 67(3) applies in relation to a deputy administrator of a Tasmanian Health Organisation as if a reference to an administrator were a reference to a deputy administrator.

**69. Disclosure of interest of administrators and deputy administrators**

- (1) An administrator, or deputy administrator, of a Tasmanian Health Organisation who has a material personal interest in a matter to which –
  - (a) the performance by him or her of the functions of a governing council; or
  - (b) the exercise by him or her of the powers of a governing council –

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may relate must, as soon as practicable after the relevant facts come to the administrator's knowledge, disclose to the Minister the nature of the interest.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) The Minister, after an administrator, or deputy administrator, of a Tasmanian Health Organisation discloses to the Minister a material person interest in a matter, is to, by notice in writing –
- (a) authorise the administrator or deputy administrator, as the case may be, to continue, in relation to the matter, to perform a function, or exercise a power, of the governing council of the organisation; or
  - (b) advise the administrator or deputy administrator, as the case may be, that the administrator or deputy administrator, respectively, is not to continue in relation to the matter to perform a function, or exercise a power, of the governing council of the organisation; or
  - (c) terminate under section 70 the appointment of the administrator or deputy administrator, as the case may be.

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**70. Terms of appointment of administrators or deputy administrators**

- (1) Subject to this section and section 69(2)(c), an administrator holds office for the period, and on the conditions, specified in his or her instrument of appointment.
- (2) A person appointed an administrator, or deputy administrator, in respect of a Tasmanian Health Organisation is to be remunerated out of the funds of the organisation.
- (3) An administrator may, at any time, by notice in writing to the Minister, resign from office as an administrator.
- (4) A deputy administrator of a Tasmanian Health Organisation may, at any time, by notice in writing to the administrator of the organisation, resign from office as a deputy administrator.
- (5) The Minister may, at any time, terminate the appointment of an administrator or a deputy administrator.
- (6) The administrator of a Tasmanian Health Organisation may, at any time, terminate the appointment of a deputy administrator of the organisation.
- (7) An administrator, or a deputy administrator, of a Tasmanian Health Organisation ceases to hold office on the appointment of a governing council in respect of the organisation, unless the Minister determines otherwise.

## **PART 8 – MISCELLANEOUS**

### **71. Establishment of Tasmanian Clinical Council**

- (1) There is established the Tasmanian Clinical Council.
- (2) The Minister may appoint the persons the Minister thinks fit to be members of the Tasmanian Clinical Council.
- (3) The Tasmanian Clinical Council is to provide advice to the Minister, Tasmanian Health Organisations and, with the approval of the Minister, other persons providing hospital services, health services, or health support services, in relation to the following matters:
  - (a) evidence-based health care quality and safety;
  - (b) prioritisation of the provision of health services;
  - (c) guidelines that ought to be followed in the delivery of hospital services, health services and health support services;
  - (d) any other matter referred to the Council by the Minister.

### **72. Certain persons disqualified from offices**

A person is not eligible to be a chief executive officer, or a member of a governing council, of a

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Tasmanian Health Organisation, or to be concerned with, or take part in, the management of a Tasmanian Health Organisation if, in the previous 5 years –

- (a) the person was convicted of an offence against this Act; or
- (b) the person, having been sentenced to a term of imprisonment in respect of an offence against this Act, was released from prison; or
- (c) the person has been convicted of an offence of dishonesty; or
- (d) the person was disqualified from managing a corporation under Part 2D.6 of the Corporations Act.

**73. Indemnity**

A person does not incur any personal liability in respect of any act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power of the person under this Act.

**74. Delegation by Minister**

The Minister may delegate to a State Service officer or a State Service employee any of his or her powers or functions under this Act, other than this power of delegation.

**75. Certain instruments are not statutory rules**

A notice issued by a Minister under this Act, and Treasurer's Instructions issued in accordance with section 33(3), are not statutory rules within the meaning of the *Rules Publication Act 1953*.

**76. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Treasurer or the Minister.

**77. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

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**78. Transfer of funds**

Any moneys that are held in a trust that is declared, by instrument in writing by the Treasurer, to be moneys that are to be transferred to a Tasmanian Health Organisation specified in the instrument, are, on and from the date of the instrument, transferred to the Tasmanian Health Organisation in accordance with the instrument.

**79. Principal Act**

In this Act, the *State Service Act 2000\** is referred to as the Principal Act.

**80. Schedule 1 amended (Agencies)**

Schedule 1 to the Principal Act is amended by inserting after

Tasmanian Dairy Industry Authority	Chairperson of the Tasmanian Dairy Industry Authority
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in in Part 2 the following items:

Tasmanian Organisation – North	Health	Chief executive officer
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Tasmanian Organisation – South	Health	Chief executive officer
Tasmanian Organisation – North West	Health	Chief executive officer

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**SCHEDULE 1 – TASMANIAN HEALTH  
ORGANISATIONS**

Section 5

1. Tasmanian Health Organisation – South
2. Tasmanian Health Organisation – North
3. Tasmanian Health Organisation – North West

DRAFT

**SCHEDULE 2 – OPERATIONAL AREAS OF  
TASMANIAN HEALTH ORGANISATIONS**

Section 5

**PART 1 – OPERATIONAL AREA OF TASMANIAN  
HEALTH ORGANISATION - SOUTH**

[Map/description to be inserted]

**PART 2 – OPERATIONAL AREA OF TASMANIAN  
HEALTH ORGANISATION - NORTH**

[Map/description to be inserted]

**PART 3 – OPERATIONAL AREA OF TASMANIAN  
HEALTH ORGANISATION – NORTH WEST**

[Map/description to be inserted]

**SCHEDULE 3 – MEMBERS OF GOVERNING  
COUNCILS**

Section 13(3)

**1. Term of office**

- (1) A member is appointed for the period, of not more than 3 years, that is specified in the member's instrument of appointment.
- (2) A person who is or has been a member may, if he or she is eligible under this Act to be a member, be reappointed as a member.

**2. Holding of other office**

The holder of an office who is required by or under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in conjunction with the office of a member; or
- (b) accepting any remuneration payable to a member.

**3. *State Service Act 2000***

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.

- (2) A person may hold the office of member in conjunction with State Service employment.

**4. Remuneration and conditions of employment**

- (1) A member is entitled to be paid the remuneration and allowances that the Minister determines with the approval of the Treasurer.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on the conditions in relation to matters not provided for by this Act that are specified in the member's instrument of appointment.

**5. Vacation of office**

- (1) A member vacates office if –
- (a) he or she dies; or
- (b) he or she resigns by notice in writing signed by him or her and delivered to the Minister; or
- (c) he or she is removed from office under this clause; or

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(d) the governing council of which he or she is a member is dissolved under section 66.

(2) The responsible Ministers, by notice in writing to a member, may remove the member from office if the member –

(a) is absent from 3 consecutive meetings of the governing council without the permission of the other members; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(c) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for 12 months or longer; or

(d) is convicted of an offence under this Act; or

(e) ceases to be eligible under this Act to hold the office; or

(f) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Tasmanian Health Organisation in respect of which he or she is a member, other than a contract for goods or services supplied by the Tasmanian Health Organisation, if those

goods or services are ordinarily supplied by the Tasmanian Health Organisation on the same terms as they are ordinarily supplied to other persons in the same situation; or

(g) fails to disclose a material person interest as required under section 16.

(3) The responsible Ministers, by notice in writing to a member, may remove the member from office if satisfied that the member is unable to perform, or is not performing, adequately or competently the duties of office.

#### **6. Filling of vacancies**

(1) If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for a period of not more than 3 years.

(2) In appointing a person as a member under subclause (1), the Minister is to comply with section 12.

#### **7. Proceedings, &c., valid despite vacancy, &c., in office**

(1) An act or proceeding of a governing council or of a person acting under any direction of a governing council is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.

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(2) All acts and proceedings of a governing council or of a person acting under a direction of a governing council are, despite the subsequent discovery –

(a) of a defect in the appointment of a member of the council; or

(b) that any other person was disqualified from acting as, or incapable of being, a member –

as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the governing council had been properly constituted.

**8. Presumptions**

In any proceedings to which a Tasmanian Health Organisation or governing council is a party, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the governing council; or

(b) the appointment of a member.

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**SCHEDULE 4 – MEETINGS OF GOVERNING  
COUNCILS**

Section 22

**1. Convening of meetings**

- (1) The chairperson of a governing council –
- (a) may convene a meeting at any time; and
  - (b) must convene a meeting when requested to do so by 2 or more other members of the governing council; and
  - (c) must convene a meeting if a meeting is to be convened in accordance with a resolution of a previous meeting of the governing council.
- (2) If the chairperson of a governing council is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened by –
- (a) 2 or more other members of the governing council; or
  - (b) a person authorised to do so by the governing council.
- (3) A meeting of a governing council may only be convened if reasonable notice of the meeting is given to the members of the council.

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- (4) A governing council is to determine what constitutes reasonable notice for the purposes of subclause (3).

**2. Presiding at meetings**

- (1) The chairperson of a governing council is to preside at all meetings of the council at which he or she is present.
- (2) If the chairperson of a governing council is not present at a meeting of the council, a member elected by the members present at the meeting is to preside at the meeting.

**3. Quorum and voting**

- (1) At a meeting of a governing council, a quorum is constituted by the majority of the total number of members of the council.
- (2) A meeting of a governing council at which a quorum is present is competent to transact any business of the council.
- (3) At a meeting of a governing council –
- (a) the member presiding has a deliberative vote only; and
  - (b) a question is decided –
    - (i) by a majority of the members present and voting; or

- (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of a governing council where a member is excluded from being present and taking part in the consideration and decision of the governing council in relation to the matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of members specified as constituting a quorum in subclause (1), less the number of members so excluded.

#### **4. Conduct of meetings**

- (1) Subject to this Act, a governing council may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) A governing council may permit members to participate in a particular meeting, or all meetings, of the council by –
  - (a) telephone; or
  - (b) video conference; or
  - (c) any other means of communication approved by the governing council.
- (3) A member who participates in a meeting of the governing council under a permission granted under subclause (2) is taken to be present at the meeting.

- (4) Without limiting subclause (1), a governing council may allow a person to attend a meeting of the council for the purpose of advising or informing it on any matter.

**5. Resolutions without meetings**

- (1) If all members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the governing council held –

(a) on the day on which the document is signed; or

(b) if the members do not sign it on the same day, on the day on which the last of the members signs the document; or

(c) if it is not signed by all the members before the next meeting of the governing council, if it is passed by the council at a meeting of the council.

- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –

(a) advised immediately of the matter; and

(b) given a copy of the terms of the resolution.

- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one

or more members, is taken to constitute one document.

**6. Minutes**

A governing council must keep minutes of its proceedings.

**7. Procedure generally**

Except as provided in this Act, a governing council may regulate its own proceedings.

**8. Presumptions as to resolutions and quorums**

In any proceedings to which a Tasmanian Health Organisation or governing council is a party, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the governing council;  
and
- (b) the presence of a quorum at any meeting of the council.

**SCHEDULE 5 – SUB-COMMITTEES**

Section 23(4) and section 24(3)

**1. Membership of committees**

- (1) A sub-committee of a Tasmanian Health Organisation consists of the number of persons appointed to be members of the sub-committee under subclause (2).
- (2) The governing council of a Tasmanian Health Organisation is to appoint the number of persons it thinks fit to be members of a sub-committee of the Tasmanian Health Organisation.
- (3) A person may only be appointed to be a member of a sub-committee of a Tasmanian Health Organisation if the person is a member of the governing council of the organisation.
- (4) The governing council of a Tasmanian Health Organisation is to appoint a member of a sub-committee of the Tasmanian Health Organisation to be the chairperson of the sub-committee.

**2. Conditions of appointment**

- (1) A member of a sub-committee is entitled to be paid the remuneration and allowances the responsible Ministers determine.
- (2) A member of a sub-committee who is a State Service officer or State Service employee is not

entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

- (3) A member of a sub-committee holds office for the period, and on the conditions, the governing council specifies in the member's instrument of appointment as a member of the sub-committee.

### **3. Meetings**

- (1) Meetings of a sub-committee of a Tasmanian Health Organisation are to be held in accordance with any directions given by the governing council of the Tasmanian Health Organisation.
- (2) A sub-committee of a Tasmanian Health Organisation may, with the approval of the governing council of the organisation, obtain assistance, information and advice from any person.
- (3) Except as otherwise provided by this Schedule and the governing council of the Tasmanian Health Organisation, a sub-committee of the Tasmanian Health Organisation may regulate the calling of, and the conduct of business at, its meetings.