

# Hospital Foundations Act 2018

## Fact Sheet 4: Frequently Asked Questions

*This document is intended for guidance purposes only and does not constitute legal advice. Hospital Foundations are strongly encouraged to seek independent advice to ensure compliance with the Hospital Foundations Act 2018.*

### Introduction

The *Hospital Foundations Act 2018* (**the Act**) provides a modern and streamlined approach to the establishment and regulation of hospital foundations.

This document is designed to support hospital foundations by providing responses to frequently asked questions arising from the obligations under the Act. Fact sheets covering foundation board governance, administrative obligations, and financial transactions are also available from the Office of Health Statutory Agencies, Department of Health.

### Question 1: How many members must a foundation board have?

A foundation board must have at least seven members, comprising:

- at least six persons recommended for appointment to the foundation board by the Minister; and
- one person (referred to in this document as a 'HHB member') who is:
  - the chairperson of the Hospital and Health Board (**HHB**) for the foundation's associated Hospital and Health Service (**HHS**); or
  - A HHB member who is nominated by the chairperson of the HHB for the foundation's associated HHS.<sup>1</sup>

### Question 2: Can a person be disqualified from becoming a board member?

Yes. A person may be disqualified from becoming, or remaining a board member if one or more of the following apply. The person:

- has a conviction, other than a spent conviction, for an indictable offence;

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<sup>1</sup> *Hospital Foundations Act 2018* s 30.

- does not consent to the Department requesting a report about the person's criminal history;
- is insolvent under administration;
- is disqualified from managing corporations because of the Corporations Act; or
- is employed by the foundation.<sup>2</sup>

The Act also provides circumstances and processes in which a member may be removed from office by the Governor in Council, which include all of the circumstances above<sup>3</sup>.

### Question 3: How is a deputy chairperson appointed?

A deputy chairperson is appointed by the members of the foundation board.<sup>4</sup>

### Question 4: How does a chairperson or member resign from the foundation board?

A chairperson<sup>5</sup> or member<sup>6</sup> may resign from office by giving written notice to the Minister. A resigned chairperson may continue as a foundation board member following resignation<sup>7</sup>.

### Question 5: How does a deputy chairperson resign from the foundation board?

A deputy chairperson may resign the position of deputy chairperson by giving written notice to the foundation board.<sup>8</sup> A deputy chairperson may continue as a member following resignation from the office of deputy chairperson.

### Question 6: Can a foundation change its objects?

Yes. The foundation may change its registered objects by applying in writing to the Minister for approval of any proposed changes.<sup>9</sup> The application must include:

- details of the change;
- the reason for the change; and
- information to show the change is consistent with the objects previously approved.<sup>10</sup>

<sup>2</sup> *Hospital Foundations Act 2018* s 33.

<sup>3</sup> *Hospital Foundations Act 2018* s 34.

<sup>4</sup> *Hospital Foundations Act 2018* s 31(3).

<sup>5</sup> *Hospital Foundations Act 2018* s 31(7)(a)(i).

<sup>6</sup> *Hospital Foundations Act 2018* s 35(a).

<sup>7</sup> *Hospital Foundations Act 2018* s 31(8).

<sup>8</sup> *Hospital Foundations Act 2018* s 31(7)(a)(ii).

<sup>9</sup> 'Registered objects' means 'an object included in the current objects of the foundation contained in the register'.

<sup>10</sup> *Hospital Foundations Act 2018* s 22.

## Question 7: Can the foundation employ staff?

Yes. A foundation may employ staff to perform the foundation's functions and exercise its powers. These staff are employed under the Act, not the *Public Sector Act 2022*.<sup>11</sup> The Act requires a foundation to employ a managing executive officer.<sup>12</sup>

## Question 8: Does a foundation require approval to appoint a funds manager?

No. A foundation can appoint a funds manager to manage all or part of its funds without approval.<sup>13</sup> The funds manager is required to perform transactions only within the scope of the services the foundation has engaged the funds manager to perform.

## Question 9: Is Ministerial approval required to enter into a special financial arrangement or a derivative transaction?

Sometimes. Certain special financial arrangements and derivative transactions require the Minister's approval.<sup>14</sup> Please refer to Fact Sheet 3: Financial Transactions for more information on the requirements for these approvals.

## Question 10: Can a foundation change its name?

Yes. The Act provides for the establishment, incorporation, and administration of bodies corporate, known as hospital foundations. A regulation may establish a foundation and must include the name of the foundation.<sup>15</sup> <sup>16</sup> There are two options for foundations considering a name change.

Option one is to alter the foundation's legal name as set out in the *Hospital Foundations Regulation 2018* (the regulation). A foundation's legal name can only be altered by an amendment to the regulation. Ministerial and Governor in Council approval is required to commence a legislative change process. A clear and strong justification for the proposed name change is required for the Minister's consideration.

Alternatively, foundations may adopt a trading or business name. Ministerial approval is not required to register a business name. Foundations that use a business name have their legal name clearly published on their website and incorporate the foundation's legal name into their trading name logo. The legal name for the foundation will remain as established under the regulation.

Note that a foundation's annual report must provide details of the legal entity, that is legal name, year of establishment, governing legislation.

<sup>11</sup> *Hospital Foundations Act 2018* s 18.

<sup>12</sup> *Hospital Foundations Act 2018* s 18(1)(a).

<sup>13</sup> *Hospital Foundations Act 2018* s 16(1)(c).

<sup>14</sup> *Hospital Foundations Act 2018* s 53(1) and s 54(1)(a).

<sup>15</sup> *Hospital Foundations Act 2018* s 12.

<sup>16</sup> *Hospital Foundations Regulation 2018*.

Foundations are strongly encouraged to seek independent legal and business advice prior to any proposed change including registering a business name and/or trademark.

## More information

For more information, contact the Office of Health Statutory Agencies, Department of Health at [statutory.agencies@health.qld.gov.au](mailto:statutory.agencies@health.qld.gov.au).

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