



New South Wales

# Health Services Amendment Act 2004 No 92

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New South Wales

# Health Services Amendment Act 2004 No 92

Act No 92, 2004

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An Act to amend the *Health Services Act 1997* with respect to the control and management of area health services and statutory health corporations; and for other purposes. [Assented to 10 December 2004]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Health Services Amendment Act 2004*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Health Services Act 1997 No 154**

The *Health Services Act 1997* is amended as set out in Schedules 1 and 2.

**4 Amendment of Public Sector Employment and Management Act 2002 No 43**

The *Public Sector Employment and Management Act 2002* is amended as set out in Schedule 3.

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## **Schedule 1    Principal amendments to Health Services Act 1997**

(Section 3)

**[1]    Section 16 Who constitutes the NSW Health Service?**

Insert before section 16 (a):

- (a1) all persons employed under Part 3 of Chapter 9 by the Health Administration Corporation, and

**[2]    Chapter 3, Part 2**

Omit the Part. Insert instead:

### **Part 2    Control and management of area health services**

#### **Division 1    The chief executive**

**23    Appointment of chief executive**

- (1) A chief executive is to be appointed for each area health service.
- (2) The chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.
- (3) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the chief executive.

**Note.** Under Part 3 of Chapter 9, the chief executive is appointed by the Health Administration Corporation as a member of the Health Executive Service.

**24    Chief executive to manage and control affairs of area health service**

- (1) The affairs of an area health service are to be managed and controlled by the chief executive of the service.
- (2) Any act, matter or thing done in the name of, or on behalf of, an area health service by its chief executive is taken to have been done by the service.

**25    Functions of chief executive generally**

The chief executive of an area health service:

- (a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and

- (b) is, in the exercise of his or her functions, subject to the control and direction of the Director-General.

## **Division 2 Area health advisory councils**

### **26 Constitution of area health advisory councils**

- (1) An area health advisory council is to be established for each area health service.
- (2) An area health advisory council is to consist of between 9 and 13 members, appointed by the Minister, of whom:
  - (a) some must be persons having experience in the provision of health services, and
  - (b) the others must be persons who can represent the interests of consumers of health services and the local community, and
  - (c) at least one (who may be one of the members referred to in paragraph (a) or (b)) must be a person who has expertise, knowledge or experience in relation to Aboriginal health.
- (3) The membership of an area health advisory council must maintain a reasonable balance between persons of the kind referred to in subsection (2) (a) and persons of the kind referred to in subsection (2) (b), so that at all times the persons of one kind do not outnumber persons of the other kind by more than 2.
- (4) A member of an area health advisory council holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment.
- (5) A member whose term of office expires is eligible (if otherwise qualified) for re-appointment, but may not be appointed so as to hold office for more than 8 years in total.
- (6) One of the members of an area health advisory council is, by the relevant instrument of appointment or by a further instrument signed by the Minister, to be appointed as the chairperson of the council.
- (7) A member of an area health advisory council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (8) Subject to this section, the constitution and procedure of an area health advisory council are to be as prescribed by the regulations.

**27 Role of area health advisory councils**

The role of an area health advisory council is to facilitate the involvement of providers and consumers of health services, and of other members of the local community, in the development of the area health service's policies, plans and initiatives for the provision of health services.

**28 Functions of area health advisory councils**

The area health advisory council for an area health service has the following functions:

- (a) to advise providers and consumers of health services, and other members of the local community, as to the area health service's policies, plans and initiatives for the provision of health services,
- (b) to seek the views of providers and consumers of health services, and of other members of the local community, as to the area health service's policies, plans and initiatives for the provision of health services, and to advise the chief executive of the area health service of those views,
- (c) to confer with the chief executive of the area health service in connection with the operational performance targets set by any performance agreement to which the area health service is a party under section 126,
- (d) to advise the chief executive on how best to support, encourage and facilitate community, consumer and health service provider involvement in the planning of health services by the area health service,
- (e) to liaise with other area health advisory councils in relation to both local and State-wide initiatives for the provision of health services,
- (f) to publish reports (annually or more frequently) as to its work and activities,
- (g) such other functions as are conferred or imposed on it by the regulations.

**29 Charter for area health advisory councils**

- (1) The Minister may, by order in writing, establish a charter for area health advisory councils.
- (2) The text of a charter established under this section must be published on the internet website of the Department of Health and on the internet websites of each of the area health services.

- (3) In exercising its functions, an area health advisory council must comply with the requirements of the charter.
- (4) A charter established under this section may include a code of conduct to be observed by members of area health advisory councils.

**29A Annual report**

- (1) As soon as practicable after 30 June (but on or before 31 December) of each year, the chairperson of an area health advisory council is to provide the Minister with a report on the performance by the area health advisory council of its role and functions under this Act during the period of 12 months ending on 30 June in that year.
- (2) The report is to include performance indicators to measure the area health advisory council's success in the performance of its role and functions under this Act.
- (3) The Minister is to cause the report to be laid before both Houses of Parliament as soon as practicable after receiving the report.

**Division 3 Other committees and councils**

**29B Other committees and councils**

The chief executive may establish such committees and councils as he or she considers appropriate to assist the area health service in the exercise of its functions.

**[3] Section 31 Opening and closing of hospitals, health institutions, health services or health support services**

Omit “, subject to any direction of the Minister under section 25,” from section 31 (1) and (2) wherever occurring.

Insert instead “, subject to any direction under this Act,”.

**[4] Section 31 (4)**

Omit the subsection.

**[5] Section 32**

Omit the section. Insert instead:

**32 Determination of role, functions and activities of area health services**

- (1) The Director-General may, from time to time, determine the role, functions and activities of any public hospital, health institution,

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health service or health support service under the control of an area health service and, for that purpose, give any necessary directions to the chief executive of the area health service.

- (2) The Minister may direct an area health service to do any of the following if the Minister is satisfied that it is in the public interest to do so:
- (a) establish any hospital, health institution, health service or health support service,
  - (b) close any public hospital or health institution, or cease to provide any health service or health support service, under its control,
  - (c) restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control.

**[6] Section 37 Contracts of area health service**

Omit “Minister” from section 37 (2). Insert instead “Director-General”.

**[7] Section 39 Area health service may make by-laws**

Omit “Minister” wherever occurring. Insert instead “Director-General”.

**[8] Section 39 (1) (f) and (g)**

Omit section 39 (1) (f), (g) and (h). Insert instead:

- (f) the keeping of records concerning its acts and decisions,
- (g) the appointment and functions of its councils and committees.

**[9] Section 40 Delegations by area health service**

Omit “Minister” from section 40 (2) wherever occurring.

Insert instead “Director-General”.

**[10] Section 41 Constitution of statutory health corporations**

Insert after section 41 (2):

- (3) A statutory health corporation is to be either a chief executive governed health corporation or a board governed health corporation, as specified from time to time in Schedule 2.



**[11] Section 42 Amendment of Schedule 2 (Statutory health corporations)**

Insert “, or by changing its governance from chief executive governance to board governance or from board governance to chief executive governance” after “corporation” in section 42 (a).

**[12] Section 42 (b)**

Insert “and the nature of their governance” after “corporations”.

**[13] Section 51**

Omit the section. Insert instead:

**51 Appointment of chief executive**

- (1) The Minister may appoint a chief executive for each board governed health corporation.
- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the chief executive.
- (3) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment of a chief executive is not subject to section 121C (1), but the chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.
- (4) If the position of chief executive is an executive position within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*, the chief executive is, for all purposes, taken to be employed (but not under section 54) by the board governed health corporation for which he or she is appointed.
- (5) If the position of chief executive is neither an executive position within the meaning of Part 3 of Chapter 9 nor an executive position within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*:
  - (a) the chief executive is taken, while holding that office, to be employed by the board governed health corporation for which he or she is appointed, and
  - (b) the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115.
- (6) The affairs of a board governed health corporation are to be managed by the chief executive of the corporation.

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- (7) The chief executive of a board governed health corporation:
- (a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and
  - (b) is, in the exercise of his or her functions, subject to the control and direction of the health corporation board for the corporation.

**[14] Section 52 Removal of members and appointment of administrator**

Insert “, for any reason or no reason and without notice” after “at any time” in section 52 (1).

**[15] Section 52 (6) and (7)**

Insert after section 52 (5):

- (6) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9:
  - (a) the chief executive may not be removed from office under section 121N, and
  - (b) section 121N applies:
    - (i) to and in respect of a chief executive who is removed from office under this section, and
    - (ii) to and in respect of the executive position of a chief executive who is so removed,in the same way as it applies to and in respect of a health executive who is removed from office under section 121N and to and in respect of the executive position of a health executive who is so removed.
- (7) If the position of chief executive is an executive position within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*:
  - (a) the chief executive may not be removed under section 77 of that Act, and
  - (b) section 77 of that Act applies:
    - (i) to and in respect of a chief executive who is removed from office under this section, and
    - (ii) to and in respect of the executive position of a chief executive who is so removed,in the same way as it applies to and in respect of an executive officer who is removed from office under

section 77 of that Act and to and in respect of the executive position of an executive officer who is so removed.

**[16] Chapter 4, Part 2, Division 2**

Insert after section 52:

**Division 2 Chief executive governed health corporations**

**52A Appointment of chief executive**

- (1) The Director-General may appoint a chief executive for each chief executive governed health corporation.
- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the chief executive.
- (3) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment of a chief executive is not subject to section 121C (1), but the chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.
- (4) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:
  - (a) the chief executive is taken, while holding that office, to be employed by the chief executive governed health corporation for which he or she is appointed, and
  - (b) the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115, and
  - (c) the chief executive may at any time, for any reason or no reason and without notice, be removed from office by the Director-General.

**52B Chief executive to manage and control affairs of chief executive governed health corporation**

- (1) The affairs of a chief executive governed health corporation are to be managed and controlled by the chief executive of the corporation.
- (2) Any act, matter or thing done in the name of, or on behalf of, a chief executive governed health corporation by its chief executive is taken to have been done by the corporation.

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**52C Functions of chief executive generally**

The chief executive of a chief executive governed health corporation:

- (a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and
- (b) is, in the exercise of his or her functions, subject to the control and direction of the Director-General.

**52D Advisory councils**

- (1) The Minister may establish an advisory council for each chief executive governed health corporation.
- (2) The constitution, procedure and functions of an advisory council are to be as determined by the Minister.

**52E Other committees and councils**

The chief executive may establish such committees and councils as he or she considers appropriate to assist the chief executive governed health corporation in the exercise of its functions.

**[17] Section 53 Determination of functions of statutory health corporations**

Omit section 53 (1). Insert instead:

- (1) The relevant authority may, from time to time, determine the role, functions and activities of any public hospital, health institution, health service or health support service under the control of a statutory health corporation and, for that purpose, give any necessary directions:
  - (a) in the case of a chief executive governed health corporation, to the chief executive of that corporation, or
  - (b) in the case of a board governed health corporation, to the health corporation board for that corporation.

**[18] Section 53 (3)**

Insert after section 53 (2):

- (3) In this section, *relevant authority* means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

**[19] Section 58 Contracts of statutory health corporations**

Omit “Minister” from section 58 (2). Insert instead “relevant authority”.

**[20] Section 58 (4)**

Insert after section 58 (3):

- (4) In this section, *relevant authority* means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

**[21] Section 60 Statutory health corporation may make by-laws**

Omit “Minister” wherever occurring. Insert instead “relevant authority”.

**[22] Section 60 (1) (f), (g) and (h)**

Omit the paragraphs. Insert instead:

- (f) the keeping of records concerning its acts and decisions,
- (g) in the case of a board governed health corporation:
  - (i) the keeping of records concerning the acts and decisions of the board, and
  - (ii) the procedure for the calling of meetings of the board and for the conduct of business at those meetings,
- (h) the appointment and functions of its councils and committees.

**[23] Section 60 (7)**

Insert after section 60 (6):

- (7) In this section, *relevant authority* means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

**[24] Section 61 Delegations by statutory health corporations**

Omit “Minister” wherever occurring in section 61 (2).

Insert instead “relevant authority”.

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**[25] Section 61 (4) (a)**

Omit “statutory”. Insert instead “board governed”.

**[26] Section 61 (5)**

Insert after section 61 (4):

- (5) In this section, *relevant authority* means:
- (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

**[27] Chapter 9, Part 3**

Insert after Part 2:

## **Part 3 The Health Executive Service**

### **Division 1 Preliminary**

**121A Definitions** (cf PSE&M Act s 63)

- (1) In this Part:
- contract of employment* means a contract of employment under this Part between a health executive and the Health Administration Corporation.
- executive position* means:
- (a) the position of chief executive of an area health service, or
  - (b) a position the subject of a determination referred to in section 121B (1) (b).
- health executive* means a person holding an executive position.
- remuneration package* means the remuneration package for a health executive determined for the time being by the Health Administration Corporation under section 121J.
- (2) In this Part, a reference to the remuneration package for a health executive is, if a range of amounts has been determined by the Health Administration Corporation, a reference to:
- (a) the amount within that range nominated in the executive’s contract of employment, or
  - (b) in any other case, the minimum amount within that range.

## **Division 2 Composition of Health Executive Service**

### **121B Composition of Health Executive Service** (cf PSE&M Act s 65)

- (1) The Health Executive Service comprises:
  - (a) the chief executives of the area health services, and
  - (b) the persons holding:
    - (i) such positions in the NSW Health Service involving employment in connection with public health organisations, other than positions in an affiliated health organisation, and
    - (ii) such positions in the Health Administration Corporation,  
as are for the time being determined by the Health Administration Corporation to be executive positions.
- (2) A list of the positions determined for the time being under subsection (1) (b) is to be made publicly available on the website of the Department of Health.

## **Division 3 Appointment and employment of health executives**

### **121C Appointment of health executives** (cf PSE&M Act ss 17 and 24)

- (1) Appointments to vacant executive positions are to be made by the Health Administration Corporation.
- (2) The Health Administration Corporation may appoint any person employed in the NSW Health Service to act in an executive position while the position is vacant or its holder is suspended, sick or absent.
- (3) While acting in an executive position, a person has all the functions of the holder of the position, but does not thereby become a health executive.
- (4) The Health Administration Corporation may, at any time, terminate the appointment of a person to act in an executive position.
- (5) This section does not prevent the payment of an allowance to a person employed in the NSW Health Service for exercising all or any of the functions of an executive position while the position is vacant or its holder is suspended, sick or absent.

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**121D Term appointments** (cf PSE&M Act s 68)

- (1) Subject to this Act, a health executive holds office for such period (not exceeding 5 years) as is specified in the executive's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A health executive may be re-appointed with effect before the expiry of the executive's term of office. In that case, the executive's existing term of office expires.

**121E Employment of health executives to be governed by contract of employment** (cf PSE&M Act s 69)

- (1) The employment of a health executive is to be governed by a contract of employment between the executive and the Health Administration Corporation.
- (2) A contract of employment may be made before or after the appointment of the health executive concerned.
- (3) A health executive is not appointed by, nor is a health executive's term of office fixed by, the contract of employment.
- (4) However, a contract of employment may constitute the instrument of appointment if the person authorised to make the appointment is also the person who signs the contract with the health executive concerned.
- (5) A contract of employment may be varied at any time by a further contract between the parties.
- (6) A contract of employment may not vary or exclude a provision of this Act or the regulations.

**121F Matters regulated by contract of employment** (cf PSE&M Act s 70)

- (1) The matters to be dealt with in a contract of employment between a health executive and the Health Administration Corporation include the following:
  - (a) the duties of the executive's position (including performance criteria for the purpose of reviews of the executive's performance),
  - (b) the monetary remuneration and employment benefits for the executive as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package).



- (2) A contract of employment may provide for any matter to be determined:
  - (a) by further agreement between the parties, or
  - (b) by further agreement between the health executive concerned and some other person specified in the contract, or
  - (c) by the Health Administration Corporation or by some other person or body specified in the contract.

**121G Performance reviews** (cf PSE&M Act s 71)

- (1) A health executive's performance must be reviewed, at least annually, by such person as may be nominated by the Health Administration Corporation.
- (2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

**121H Industrial arbitration or legal proceedings excluded** (cf PSE&M Act s 72)

- (1) In this section, a reference to the employment of a health executive is a reference to:
  - (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
  - (b) the removal, retirement, termination of employment or other cessation of office of a health executive, or
  - (c) any disciplinary proceedings or disciplinary action taken against a health executive, or
  - (d) the remuneration or conditions of employment of a health executive.
- (2) The employment of a health executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.
- (4) Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a health executive.
- (5) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of health executives.

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- (6) Subsection (5) does not prevent the regulations from applying the provisions of an award or industrial agreement to the employment of a health executive.
  - (7) An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of a health executive.
  - (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
  - (9) In this section, *industrial agreement* includes any determination under section 115.

#### **Division 4      Remuneration of health executives**

##### **121I    Definitions** (cf PSE&M Act s 73)

In this Division:

*approved* means approved for the time being, in writing, by the Health Administration Corporation, either generally or in relation to any health executive or class of health executives.

*employment benefit* means:

- (a) contributions payable to a superannuation scheme by the Health Administration Corporation in respect of a health executive, including any liability of the Corporation to make any such contributions or to pay approved costs associated with that scheme, or
- (b) the provision by the Health Administration Corporation of a motor vehicle for private use by a health executive, or
- (c) any other approved benefit provided to a health executive at the cost of the Health Administration Corporation (being a benefit of a private nature).

*monetary remuneration* includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances, or
- (b) allowances in relation to relocation expenses, or
- (c) any other allowances in relation to expenses incurred in the discharge of a health executive's duties.

*superannuation scheme* means a superannuation scheme established by or under an Act or approved for the purposes of this definition.

**121J Determination of remuneration packages**

- (1) The Health Administration Corporation may from time to time determine the remuneration packages for health executives.
- (2) The amount of the remuneration package for a health executive is to be no less than the minimum amount that may be determined by the Statutory and Other Offices Remuneration Tribunal under Part 3A of the *Statutory and Other Offices Remuneration Act 1975* with respect to the remuneration package for an executive officer within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*.

**121K Monetary remuneration and employment benefits for health executives** (cf PSE&M Act s 74)

- (1) Health executives are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contract of employment.
- (2) Contributions payable to a superannuation scheme by the Health Administration Corporation in respect of a health executive that are required to be made by the Corporation under a law of the State relating to superannuation are, until provided for by the executive's contract of employment, taken to be an employment benefit provided in the contract.
- (3) The total amount of:
  - (a) the annual rate of monetary remuneration for a health executive, and
  - (b) the annual cost of employment benefits provided for a health executive under the relevant contract of employment,is to be equal to the amount of the remuneration package for the executive.
- (4) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (5) This section does not affect:
  - (a) any approved performance-related incentive payments made to a health executive, or

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- (b) any remuneration or benefits to which a health executive is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).
  - (6) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.
  - (7) A health executive is entitled to be paid an amount equivalent to the approved cost of a part of any entitlement to take annual or extended leave with pay if the executive forgoes (with the approval of the Health Administration Corporation) the right to take that part of that leave. This subsection has effect despite anything to the contrary in the *Annual Holidays Act 1944* or any other Act.
  - (8) During any period when the monetary remuneration and employment benefits for a health executive cannot be determined under subsection (1), the executive is entitled to monetary remuneration at the rate of the amount of the remuneration package for the executive, subject to any subsequent adjustment of payments in accordance with the executive's contract of employment.
  - (9) If the remuneration package for a health executive is varied, the executive is entitled to monetary remuneration and employment benefits in accordance with the executive's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.

**121L Travelling and subsistence allowances etc** (cf PSE&M Act s 75)

- (1) A health executive is entitled to be paid:
  - (a) such travelling and subsistence allowances, and
  - (b) such allowances in relation to relocation expenses, and
  - (c) such other allowances in relation to expenses incurred in the discharge of the executive's duties,as the Health Administration Corporation may from time to time determine in respect of the executive.
- (2) A health executive's contract of employment:
  - (a) may provide for the payment to the executive of allowances of the kind referred to in this section, and
  - (b) may regulate the payment of allowances to the executive under this section.

## **Division 5 Removal, retirement etc of health executives**

### **121M Vacation of executive positions** (cf PSE&M Act s 76)

- (1) The position of a health executive becomes vacant if the executive:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) is removed from office, or retires or is retired from office, under this or any other Act, or
  - (d) resigns his or her position in writing addressed to the Health Administration Corporation and the Corporation accepts the resignation.
- (2) This section does not affect any other provision by or under which a health executive vacates his or her position.

### **121N Removal of health executives from office** (cf PSE&M Act s 77)

- (1) The Health Administration Corporation may remove a health executive from an executive position at any time for any or no reason and without notice.
- (2) The Health Administration Corporation:
  - (a) may declare a health executive who is removed from an executive position by the Corporation under subsection (1) to be an unattached officer, and
  - (b) may revoke any such declaration.
- (3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:
  - (a) is to be regarded as a health executive, although not holding an executive position, and
  - (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.
- (4) If:
  - (a) a health executive is removed from an executive position under subsection (1) and a declaration is not made in relation to the executive under subsection (2), or
  - (b) a declaration under subsection (2) made in relation to a health executive is revoked,the executive ceases to be a health executive, unless appointed to some other executive position.

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- (5) A person who ceases to be a health executive because of subsection (4) ceases to be a member of staff of the Health Administration Corporation unless appointed to some other position on the staff of the Corporation.
  - (6) The making of a declaration under subsection (2) in relation to a health executive does not prevent the executive from ceasing to be a health executive because of the completion of the executive's term of office.
  - (7) Clause 11 of Schedule 4 to the *Public Sector Employment and Management Act 2002* applies to and in respect of a person:
    - (a) who ceases to be a health executive pursuant to this section, and
    - (b) who, immediately before he or she became a health executive, was an executive officer to whom that clause applied,as it would have applied to the person had he or she ceased to be an executive officer, as referred to in clause 11 (7) of that Schedule, when he or she ceased to be a health executive.

**1210 Compensation etc where health executive is removed from office**  
(cf PSE&M Act s 78)

- (1) This section applies to the following persons:
  - (a) a health executive who is removed from office under section 121N (1) and ceases to be a health executive because of section 121N (4),
  - (b) a health executive who is otherwise removed from office (except for misbehaviour after due inquiry),
  - (c) a health executive who was employed in the NSW Health Service when first appointed as a health executive, whose term of office as a health executive expires and who is not re-appointed.

However, this section does not apply to or in respect of a health executive who consents to a transfer at a lower level of remuneration.

- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
  - (a) may determine that compensation is payable for the failure to re-appoint a health executive only if the Tribunal is

satisfied that the person had a reasonable expectation of being re-appointed, and

- (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be taken into consideration when it makes determinations under this section.
- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
  - (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
  - (6) A health executive who is removed from office or not re-appointed is not entitled to compensation under this section if:
    - (a) the person is appointed on that removal or expiry of term of office:
      - (i) to another executive position within the meaning of this Part, or
      - (ii) to an executive position within the meaning of the *Public Sector Employment and Management Act 2002*, and
    - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
  - (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
  - (8) During the period so specified, the person:
    - (a) may not be employed in a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*, and
    - (b) may not be employed in the service of a State owned corporation or a subsidiary of a State owned corporation, and
    - (c) may not be appointed to any statutory office,unless arrangements are made for a refund of the proportionate amount of the compensation.

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## Division 6      General

### **121P    Incumbent officers' accrued leave** (cf PSE&M Act s 80)

- (1) A person who:
  - (a) was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position, and
  - (b) had a right to accrued extended or annual leave with pay immediately before that appointment, and
  - (c) has not taken that leave before taking up duties in the executive position,is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (2) An election under this section is to be made within the time and in the manner determined by the Health Administration Corporation.
- (3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.
- (4) A person who was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).
- (5) In this section, a reference to employment in the public sector is a reference to:
  - (a) employment in the NSW Health Service, the Public Service or the Teaching Service, or
  - (b) employment as a member of NSW Police, or
  - (c) employment as an officer in the service of a public authority within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*, or
  - (d) appointment to a statutory office.

### **121Q    Effect on incumbent when position ceases to be executive position** (cf PSE&M Act s 81)

- (1) If a position ceases to be designated as an executive position by a determination under section 121B (1) (b):



- (a) the position is abolished, and
  - (b) any person holding the position ceases to be a member of staff of the Health Administration Corporation unless appointed to some other position on the staff of the Corporation or declared to be an authorised officer under section 121N (2).
- (2) A person referred to in subsection (1) (b) has the same rights and obligations as if the person had ceased to be a health executive because of section 121N (4).
- (3) A determination under section 121B (1) (b) that omits or adds an executive position may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.

**121R Change in title of positions** (cf PSE&M Act s 82)

A position referred to in a determination under section 121B (1) (b) does not cease to be an executive position merely because of a change in the title of the position.

**121S Approval to undertake other paid work** (cf PSE&M Act s 83)

A health executive is not to undertake any paid work outside the duties of the executive position without the consent of the Health Administration Corporation.

**121T Operation of Part** (cf PSE&M Act s 84)

This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.

**[28] Schedule 2**

Omit the Schedule. Insert instead:

**Schedule 2 Statutory health corporations**

(Section 41)

<b>Column 1</b>	<b>Column 2</b>
<b>Name of statutory health corporation</b>	<b>Nature of governance</b>
Clinical Excellence Commission	Board

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<b>Column 1</b>	<b>Column 2</b>
<b>Name of statutory health corporation</b>	<b>Nature of governance</b>
HealthQuest	Board
Justice Health	Board
The Royal Alexandra Hospital for Children	Chief executive
The Stewart House Preventorium, Curl Curl	Board

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**[29] Schedule 7 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Health Services Amendment Act 2004* (but only to the extent that it amends this Act)

**[30] Schedule 7**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on the enactment of the Health Services Amendment Act 2004**

**Definition**

In this Part, *the 2004 amending Act* means the *Health Services Amendment Act 2004*.

**Abolition of area health boards**

- (1) Each area health board constituted under section 23, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, is abolished.
- (2) The members of each area health board cease to hold office on the commencement of Schedule 1 [2] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.
- (3) The chief executive officer of an area health service is not removed from office just because he or she ceases to be a member of the area health board for the service.

**Abolition of health corporation board for The Royal Alexandra Hospital for Children**

- (1) The health corporation board for The Royal Alexandra Hospital for Children, as existing immediately before the commencement of Schedule 1 [28] to the 2004 amending Act, is abolished.
- (2) The members of the health corporation board for The Royal Alexandra Hospital for Children cease to hold office on the commencement of Schedule 1 [28] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.

**Appointment of first health executives**

- (1) This clause applies to the following positions:
  - (a) the position of chief executive of an area health service,
  - (b) a position that, as at the commencement of this clause, is the subject of a determination in force under section 121B (1) (b).
- (2) On the commencement of Schedule 1 [27] to the 2004 amending Act, a person who, immediately before that commencement, held a position to which this clause applies, or was an appointee to such a position, is taken to have been appointed to the position under section 121C (1).
- (3) Until further provision is made under Part 3 of Chapter 9, the person's conditions of employment (including remuneration) are, subject to that Part, to be the same as those that applied to the person immediately before the commencement of Schedule 1 [27] to the 2004 amending Act.
- (4) An appointment by the Governor under section 28, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, has the same effect as if it were an appointment by the Health Administration Corporation under section 121C, as inserted by that Act.

**Existing executive officers**

Any person within the NSW Health Service who, immediately before the commencement of Schedule 1 [27] to the 2004 amending Act, was an executive officer under Part 3.1 of the *Public Sector Employment and Management Act 2002*, is taken, on that commencement, to be a health executive under Part 3 of Chapter 9 of this Act.

**Unattached officers**

Any person who, immediately before the commencement of section 121N, was an unattached officer under section 77 of the *Public Sector Employment and Management Act 2002*, being a person who was then:

- (a) an employee in the NSW Health Service, or
- (b) an employee of an area health service, having been the chief executive officer of the service immediately before he or she became an unattached officer,

is taken, on that commencement, to be an unattached officer under section 121N.

## **Schedule 2 Consequential amendments to Health Services Act 1997**

(Section 3)

- [1] **The whole Act (except to the extent to which its provisions are otherwise amended or repealed by this Act and except Schedule 7)**  
Omit “chief executive officer” and “chief executive officers” wherever occurring.  
Insert instead “chief executive” and “chief executives”, respectively.
- [2] **Section 5 Notes**  
Insert at the end of the note to the section:
- PSE&M Act: *Public Sector Employment and Management Act 2002*
- [3] **Section 16 Who constitutes the NSW Health Service?**  
Omit “*Public Sector Management Act 1988*” from the note to the section.  
Insert instead “*Public Sector Employment and Management Act 2002*”.
- [4] **Chapter 3, Introductory note**  
Omit “constitutes area health boards for each area health service and”.
- [5] **Chapter 3, Introductory note**  
Insert “and control” after “manage”.
- [6] **Section 33 Staff of area health services**  
Omit section 33 (2) (including the note). Insert instead:
- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of persons employed under this section.
- [7] **Section 40 Delegations by area health service**  
Omit section 40 (4) (a).
- [8] **Chapter 4, Introductory note**  
Omit “each statutory health corporation”.  
Insert instead “those statutory health corporations that Schedule 2 indicates are to be board governed”.

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**[9] Chapter 4, Introductory note**

Insert at the end of the first paragraph “Statutory health corporations are governed either by a health corporation board or else by a chief executive who, in either case, is responsible for the management of its affairs.”.

**[10] Section 43 Dissolution, transfer, amalgamation or change of name or nature of governance of statutory health corporations**

Insert “or nature of governance” after “name” in section 43 (1) (d).

**[11] Section 43 (4)**

Insert “or nature of governance” after “name”.

**[12] Chapter 4, Part 2, Division 1, heading**

Insert before section 46:

**Division 1 Board governed health corporations**

**[13] Sections 46, 47, 49 and 52**

Omit “statutory” wherever occurring. Insert instead “board governed”.

**[14] Section 52 Removal of members and appointment of administrator**

Insert “(other than the chief executive)” after “board” in section 52 (1) (c).

**[15] Section 54 Staff of statutory health corporations**

Omit section 54 (2) (including the note). Insert instead:

- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of persons employed under this section.

**[16] Section 115 Determination of conditions of employment of staff**

Omit “Part 2A of the *Public Sector Management Act 1988*” from section 115 (9).

Insert instead “Part 3 of Chapter 9 of this Act or Part 3.1 of the *Public Sector Employment and Management Act 2002*”.

**[17] Section 115 (9) (a)**

Omit the paragraph.

- [18] Section 115 (9) (b) and (c)**  
Omit “to that Part” wherever occurring.  
Insert instead “to either of those Parts”.
- [19] Schedule 4, heading**  
Insert “or nature of governance” after “name”.
- [20] Schedule 4, clause 2 (b)**  
Insert “or nature of governance” after “name”.
- [21] Schedule 4, clause 3 (1) (b)**  
Omit the paragraph.
- [22] Schedule 4, clause 3 (2) (b)**  
Omit the paragraph.
- [23] Schedule 4, clause 3 (4)**  
Omit “Part 2A of the *Public Sector Management Act 1988*”.  
Insert instead “Part 3 of Chapter 9”.
- [24] Schedule 4, clause 4 (1) (b)**  
Omit the paragraph. Insert instead:  
(b) in the case of a board governed health corporation, the members of the board cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and
- [25] Schedule 4, clause 4 (2) (b)**  
Omit the paragraph. Insert instead:  
(b) in the case of a board governed health corporation, the members of the board cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and
- [26] Schedule 4, clause 4 (3) (b)**  
Omit the paragraph. Insert instead:  
(b) the members of any board governed health corporation involved in the amalgamation cease to hold office, and:  
(i) if the amalgamated corporation is a board governed health corporation, are eligible (if otherwise

- 
- qualified) to be appointed as members of the board of the amalgamated corporation, and
- (ii) are not entitled to be paid any compensation by reason of ceasing to hold office, and

**[27] Schedule 4, clause 4 (4A)**

Insert after clause 4 (4):

**(4A) Change of governance orders**

On and from the date specified in an order made under section 43 (1) (d) changing the nature of governance of a statutory health corporation from board governance to chief executive governance, the members of the board for the corporation cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office.

**[28] Schedule 4, clause 4 (5)**

Omit “Part 2A of the *Public Sector Management Act 1988*”.

Insert instead “Part 3 of Chapter 9 of this Act or Part 3.1 of the *Public Sector Employment and Management Act 2002*”.

**[29] Schedule 5, heading**

Omit “area health boards and”.

**[30] Schedule 5**

Omit “(Sections 27 and 50)”. Insert instead “(Section 50)”.

**[31] Schedule 5, clause 1, definition of “Board”**

Omit “an area health board or”.

**[32] Schedule 5, clause 1, definition of “elected staff member”**

Omit “an area health board or”. Insert instead “a”.

**[33] Schedule 5, clause 1, definition of “member”**

Omit paragraph (a).

**[34] Schedule 5, clause 2 (1), definition of “employee”**

Omit paragraph (a).



- [35] **Schedule 5, clause 2 (4)**  
Omit “an area health service or”. Insert instead “a”.
- [36] **Schedule 5, clause 2 (4)**  
Omit “(as the case may be)”.
- [37] **Schedule 5, clause 2 (4)**  
Omit ”service or” where secondly occurring.
- [38] **Schedule 5, clause 2 (5), (6), (7) and (10)**  
Omit “area health service or” wherever occurring.
- [39] **Schedule 5, clause 7 (h)**  
Omit “area health service or”.
- [40] **Schedule 5, clause 7 (i)**  
Omit “29 or”.
- [41] **Schedule 5, clause 9 (1)**  
Omit “Part 2 of the *Public Sector Management Act 1988*”.  
Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.
- [42] **Dictionary**  
Omit the definition of *area health board* from Part 1.
- [43] **Dictionary, Part 1, definition of “board”**  
Omit paragraph (a).
- [44] **Dictionary, Part 1, definition of “chief executive” (as amended by item [1])**  
Omit “corporation” from paragraph (a). Insert instead “service”.
- [45] **Dictionary, Part 1, definitions of “board governed health corporation”, “chief executive governed health corporation” and “Health Executive Service”**  
Insert in alphabetical order:  
*board governed health corporation* means a statutory health corporation that, as specified in Schedule 2, is governed by a board.

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***chief executive governed health corporation*** means a statutory health corporation that, as specified in Schedule 2, is governed by a chief executive.

***Health Executive Service*** means the Health Executive Service referred to in section 121B.

## **Schedule 3 Amendments to Public Sector Employment and Management Act 2002**

(Section 4)

**[1] Section 63 Definitions**

Insert “, the Health Service” after “Teaching Service” in the definition of *public authority* in section 63 (1).

**[2] Section 77 Removal of executive officers from office**

Omit “the Health Service,” from section 77 (6).

**[3] Schedule 2 Executive positions (other than non-statutory SES positions)**

Omit from Part 3:

Chief executive officer of an area health board

[Second reading speech made in—

Legislative Assembly on 28 October 2004

Legislative Council on 17 November 2004]

BY AUTHORITY