



New South Wales

# Health Legislation Amendment Act 2016 No 45

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New South Wales

# Health Legislation Amendment Act 2016 No 45

Act No 45, 2016

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An Act to make miscellaneous amendments to various Acts that relate to health and associated matters; and to repeal the *New South Wales Institute of Psychiatry Act 1964*. [Assented to 28 September 2016]

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

**1 Name of Act**

This Act is the *Health Legislation Amendment Act 2016*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Section 3 commences on a day to be appointed by proclamation.

**3 Repeal**

The *New South Wales Institute of Psychiatry Act 1964* No 44 is repealed.

## **Schedule 1      Amendment of Health Administration Act 1982 No 135**

- [1] **The whole Act (except Schedule 2 and where otherwise amended by this Schedule)**  
Omit “Director-General” and “Director-General’s” wherever occurring.  
Insert instead “Health Secretary” and “Health Secretary’s”.
- [2] **Section 4 Definitions**  
Omit the definitions of *Department* and *Director-General* from section 4 (1).  
Insert in alphabetical order:  
*Health Secretary* means the Secretary of the Ministry.  
*Ministry* means the Ministry of Health.
- [3] **Sections 4 (1A), 5 (1), 10 (1), 12 (1) (b), 13 (1), 17 (2) (b), 20C (1), 22, 25, 26 and 28 and Schedule 3**  
Omit “Department” wherever occurring. Insert instead “Ministry”.
- [4] **Section 29 Statute law revision (sec 6)**  
Omit the section.
- [5] **Schedule 4 Medical Services Committee**  
Omit “department” from clause 10 (2). Insert instead “Ministry”.

## **Schedule 2 Amendment of Health Services Act 1997 No 154**

**[1] Section 26 Constitution of local health district boards**

Omit “4 years” from section 26 (5). Insert instead “5 years”.

**[2] Section 26 (6)**

Omit “8 years”. Insert instead “10 years”.

**[3] Section 26 (7)**

Omit “chairperson”. Insert instead “Chairperson”.

**[4] Section 26 (9)**

Omit the subsection. Insert instead:

- (9) Schedule 4A includes further provisions with respect to the constitution and procedure of local health district boards.

**[5] Section 39**

Omit the section. Insert instead:

**39 Local health district by-laws**

**(1) Power to make model by-laws**

The Health Secretary may make model by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:

- (a) the management of any public hospital, health institution, health service or health support service under the control of a local health district,
- (b) the provision of hospital services and other health services to patients of any public hospital or health institution under the control of a local health district and to other persons,
- (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under the control of a local health district, including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service,
- (d) regulating or prohibiting smoking at any public hospital, health institution or health service under the control of a local health district, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,
- (e) the custody and use of the seal of a local health district,
- (f) the keeping of records concerning a local health district’s acts and decisions,
- (g) the appointment and functions of the councils and committees of a local health district.

**(2) Publication of model by-laws**

The Health Secretary may publish an order on the NSW legislation website setting out the terms of model by-laws.

(3) **Adoption of model by-laws**

A local health district may make by-laws that adopt the provisions of the model by-laws as published on the NSW legislation website in respect of the area in which the local health district is constituted with such additions, omissions or other modifications (if any) as may be made by it in accordance with this section.

(4) **Modification to, and omission of, provisions of model by-laws**

A local health district may make modifications to, or omit, a provision of the model by-laws only with the approval of the Health Secretary.

(5) **Additional by-laws**

A local health district may make additional by-laws in relation to matters specified in subsection (1) but not covered by the model by-laws provided the additional by-laws are not inconsistent with the model by-laws. A copy of any such additional by-laws are to be provided to the Health Secretary within 30 days of the making of the by-laws.

(6) **Precondition for making of certain by-laws**

A model by-law or by-law may not be made for or with respect to any matter referred to in subsection (1) (c) unless the Health Secretary or local health district (as the case requires) has received advice from the Medical Services Committee in relation to the substance of the model by-law or by-law proposed to be made.

(7) **Exception to precondition**

Subsection (6) does not apply to a model by-law or by-law if the Medical Services Committee does not furnish advice to the Health Secretary or local health district (as the case requires) in relation to the relevant model by-law or by-law:

- (a) within 30 days after a notice from the Health Secretary or local health district requesting such advice has been served on the Committee, or
- (b) within such further period as the Health Secretary or local health district may specify in the notice or in another notice served on the Committee.

(8) **What by-laws may provide for**

A provision of a model by-law or by-law may do any one or any combination of the following:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(9) **Power to amend or repeal by-laws**

A power to make model by-laws or by-laws includes the power to amend or repeal any model by-law or by-law made in the exercise of that power.

(10) **Judicial notice**

Judicial notice is to be taken of a by-law authenticated by the seal of the local health district concerned or in accordance with section 135. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

**[6] Section 54**

Insert after section 53:

**54 Other committees and councils**

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

**[7] Section 60**

Omit the section. Insert instead:

**60 Statutory health corporation by-laws**

**(1) Power to make model by-laws**

The relevant authority may make model by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:

- (a) the management of any public hospital, health institution, health service or health support service under the control of a statutory health corporation,
- (b) the provision of health services to patients of any public hospital or health institution under the control of a statutory health corporation and to other persons,
- (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under the control of a statutory health corporation, including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service,
- (d) regulating or prohibiting smoking at any public hospital, health institution or health service under the control of a statutory health corporation, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,
- (e) the custody and use of the seal of a statutory health corporation,
- (f) the keeping of records concerning the acts and decisions of a statutory health corporation,
- (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 the councils and committees of a statutory health corporation.

**(2) Publication of model by-laws**

The relevant authority may publish an order on the NSW legislation website setting out the terms of model by-laws.

**(3) Adoption of model by-laws**

A statutory health corporation may make by-laws that adopt the provisions of the model by-laws as published on the NSW legislation website with such additions, omissions or other modifications (if any) as may be made by it in accordance with this section.

(4) **Modification to, and omission of, provisions of model by-laws**

A statutory health corporation may make modifications to, or omit, a provision of the model by-laws only with the approval of the relevant authority.

(5) **Additional by-laws for specialty network governed health corporation**

A statutory health corporation that is a specialty network governed health corporation may make additional by-laws in relation to matters specified in subsection (1) but not covered by the model by-laws provided the additional by-laws are not inconsistent with the model by-laws. A copy of any such additional by-laws are to be provided to the relevant authority within 30 days of the making of the by-laws.

(6) **Precondition for making of certain by-laws**

A model by-law or by-law may not be made for or with respect to any matter referred to in subsection (1) (c) unless the relevant authority or specialty network governed health corporation (as the case requires) has received advice from the Medical Services Committee in relation to the substance of the model by-law or by-law proposed to be made.

(7) **Exception to precondition**

Subsection (6) does not apply to a model by-law or by-law if the Medical Services Committee does not furnish advice to the relevant authority or specialty network governed health corporation (as the case requires) in relation to the relevant model by-law or by-law:

- (a) within 30 days after a notice from the relevant authority or specialty network governed health corporation requesting such advice has been served on the Committee, or
- (b) within such further period as the relevant authority or specialty network governed health corporation may specify in the notice or in another notice served on the Committee.

(8) **What by-laws may provide for**

A provision of a model by-law or by-law may do any one or any combination of the following:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(9) **Power to amend or repeal by-laws**

A power to make model by-laws or by-laws includes the power to amend or repeal any model by-law or by-law made in the exercise of that power.

(10) **Judicial notice**

Judicial notice is to be taken of a by-law authenticated by the seal of the statutory health corporation concerned or in accordance with section 135. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

(11) 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 or specialty network governed health corporation, the Health Secretary.

**[8] Section 116H**

Insert after section 116G:

**116H Role of Health Secretary in industrial proceedings**

- (1) The Health Secretary is, for the purposes of any proceedings relating to a member of the NSW Health Service held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of that member.
- (2) In this section, *industrial matters* has the same meaning as in the *Industrial Relations Act 1996*.

**[9] Section 139 Liability of persons conducting performance reviews etc**

Omit section 139 (1). Insert instead:

- (1) This section applies with respect to the provision of expert advice or assistance by a person, for or on behalf of a public health organisation or the Health Secretary and in the person's professional capacity, in connection with:
  - (a) a review of the performance or conduct of any visiting practitioner or relevant employee, or
  - (b) a review to determine whether to take disciplinary action in relation to any visiting practitioner or relevant employee, or
  - (c) a review or inquiry conducted in relation to the operation of the public health system or any part of that system.

**[10] Section 139A**

Insert after section 139:

**139A Liability of certain persons assisting in the exercise of functions under Guardianship Act 1987 and Children and Young Persons (Care and Protection) Act 1998**

- (1) Any person who is a member of staff of the NSW Health Service who, in good faith, assists a registered health practitioner who is exercising a function that is conferred or imposed on the practitioner by or under Part 5 of the *Guardianship Act 1987* or Part 1 of Chapter 9 of the *Children and Young Persons (Care and Protection) Act 1998* is not personally liable for any injury or damage caused in assisting the practitioner in exercising any such function.
- (2) If subsection (1) prevents liability attaching to a person, the liability attaches instead to the local health district, or statutory health corporation, in which the member of the NSW Health Service was employed at the time the assistance was rendered.
- (3) Nothing in this section, or any other provision of this Act, the *Guardianship Act 1987*, the *Children and Young Persons (Care and Protection) Act 1998* or the regulations relieves a registered health practitioner or other person from liability in respect of carrying out treatment on a patient or other person to which the registered health practitioner or person would have been subject had the treatment been carried out with the patient's or other person's consent.
- (4) Nothing in this section affects any exclusion from liability provided by another provision of this Act, the *Guardianship Act 1987*, the *Children and Young Persons (Care and Protection) Act 1998* or any other law.

- (5) In this section, *registered health practitioner* has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.

**[11] Schedule 4A**

Insert after Schedule 4:

**Schedule 4A Constitution and procedure of local health district boards**

(Section 26)

**Part 1 Preliminary**

**1 Definitions**

In this Schedule:

*Board* means the local health district board for a local health district.

*Chairperson* means the Chairperson of a Board.

*Chief Executive* means the chief executive of a local health district.

*Deputy Chairperson* means the Deputy Chairperson of a Board.

*medical staff council* means the medical staff council of a local health district appointed under the district's by-laws.

*medical staff executive council* means the medical staff executive council of a local health district appointed under the district's by-laws.

*member* means a member of a Board.

**Part 2 Constitution**

**2 Chairperson and Deputy Chairperson**

- (1) The Minister may, from time to time, appoint a member (other than the Chairperson), by the instrument of appointment of the member or a subsequent instrument signed by the Minister, as the Deputy Chairperson of a Board.
- (2) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson of a Board.
- (3) A person who is Chairperson or Deputy Chairperson of a Board is taken to have vacated office as Chairperson or Deputy Chairperson if the person:
  - (a) is removed from that office by the Minister under subclause (2), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.
- (4) The Deputy Chairperson may act in the office of Chairperson during the illness or absence of the Chairperson, and while so acting has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (5) For the purposes of this clause, a vacancy in the office of the Chairperson or Deputy Chairperson is taken to be an absence from office of the Chairperson or Deputy Chairperson.

**Note.** A Chairperson is appointed in accordance with section 26 (7).

### **3 Acting members and acting Chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may, from time to time, appoint a member to act in the office of Chairperson during the illness or absence of both the Chairperson and Deputy Chairperson, and the member, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.
- (4) A person who is acting as a member 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 person.
- (5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson or Deputy Chairperson is taken to be an absence from office of the member, Chairperson or Deputy Chairperson (as the case may be).

### **4 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **5 Vacancy in office of Chairperson or Deputy Chairperson**

The office of Chairperson or Deputy Chairperson becomes vacant if the person holding that office:

- (a) ceases to be a member, or
- (b) is removed from office under clause 2 (2).

### **6 Vacancy in office of member**

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for being absent from those meetings, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is removed from office by the Minister under section 29.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A member does not have a pecuniary interest for the purposes of this clause in relation to a matter merely because the member is employed or otherwise holds an appointment at a hospital or health service that is or may be affected by the matter.
- (7) A contravention of this clause does not invalidate any decision of the Board.
- (8) The provisions of this clause extend to meetings of a committee of the Board.

## **8 Avoidance of conflicts when Board exercising employer functions**

- (1) Any member of a Board who is employed by, or otherwise holds a clinical appointment or other type of appointment prescribed by the regulation with, the local health district for which the Board was established must not:
  - (a) be present during any deliberation of the Board relating to the Board's employer functions in respect of the employment (including appointment and removal) of the Chief Executive, or

- (b) take part in any decision of the Board with respect to the matter.
- (2) A contravention of this clause does not invalidate any decision of the Board.
- (3) This clause does not prevent a person specified in subclause (1) from providing advice to the Board relating to the Board's employer functions in respect of the Chief Executive.

#### **9 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If, by or under any Act, provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

#### **10 No compensation for removal from office or failure to re-appoint**

A member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

### **Part 3 Procedure**

#### **11 General procedure**

The procedure for the calling of meetings of a Board and for the conduct of business at those meetings is, subject to this Act, the regulations and any by-laws relating to that Board, to be as determined by that Board.

#### **12 Quorum**

The quorum for a meeting of a Board is a majority of its members.

#### **13 Presiding member**

- (1) The presiding member for a meeting of a Board is:
  - (a) the Chairperson, or
  - (b) in the absence of the Chairperson, the Deputy Chairperson, or
  - (c) in the absence of both the Chairperson and Deputy Chairperson, another member elected to preside at the meeting.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

- (1) Only a member of the Board may vote at a meeting of the Board.
- (2) Subject to clause 23, any matter put to the vote at any meeting of the Board is to be decided by a show of hands or by secret ballot if requested by a member attending the meeting.

- (3) A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.
- (4) If any members present at the meeting are excluded from taking part in the decision by clause 8, the decision is a decision of the Board only if the number of members present and entitled to vote on the decision is not less than the majority of the number of members (whether or not present) entitled to vote on the decision.

#### **15 First meeting of Board**

The Chairperson may call the first meeting of a Board in such manner as the Chairperson thinks fit.

#### **16 Ordinary meetings of Board**

- (1) A Board is to hold ordinary meetings at such times and places as may be determined by the Board.
- (2) At least 6 ordinary meetings are to be held in any 12-month period with such meetings being held at regular intervals.
- (3) Written notice of an ordinary meeting (whether delivered by ordinary post or electronic means) is to be given by the Chief Executive, or by another person authorised by the Board to give notice, to each member and each person invited by the Board to attend the meeting, at least 7 days before the meeting.
- (4) The written notice of the meeting given to a member is to be accompanied by the following:
  - (a) a copy of the agenda for the meeting,
  - (b) except in the case of the first meeting of the Board, a copy of the minutes of the previous meeting of the Board,
  - (c) a copy of the minutes of any special meeting of the Board held since the last ordinary meeting,
  - (d) a copy of the minutes of any meeting of a committee held since the Board's last ordinary meeting.
- (5) A person invited to the meeting by the Board may be provided with such of the information listed in subclause (4) as the Chairperson considers appropriate.

#### **17 Special meetings of Board**

- (1) A special meeting of the Board is to be called by the Chief Executive:
  - (a) at the direction of the Chairperson, or
  - (b) within 48 hours of receipt by the Chief Executive of a written request for a special meeting signed by at least 3 members of the Board.
- (2) A special meeting is to be held not later than 7 days after receipt by the Chief Executive of a request referred to in subclause (1) (b).
- (3) The Chief Executive is to give at least 24 hours written notice, and such of the material referred to in clause 16 (4) as the Chief Executive considers appropriate, to each member of and to each person invited to attend the meeting by the Board.
- (4) Notice of a special meeting is to specify the business to be considered at that meeting.
- (5) Only business specified in the notice of a special meeting is to be considered at the special meeting.

## **18 Attendance at Board meetings**

- (1) The Board is to invite the following people to attend its meetings:
  - (a) the Chief Executive or his or her nominee,
  - (b) the Chair of the medical staff executive council for the local health district or, if there is only one medical staff council for the district, the Chair of that medical staff council,
  - (c) at least one representative of the executive staff (being the persons appointed by the local health district to its management structure and any persons appointed to act for the time being in those positions).
- (2) A medical staff executive council or medical staff council (as the case requires) may nominate an alternate to attend meetings of the Board in the event that the Chair of the medical staff executive council or medical staff council is unable to attend a meeting. Any such alternate may attend a meeting to which the Chair is invited in the event that the Chair is unable to attend.
- (3) If a local health district has more than one medical staff council, the Board may invite a representative for such of the councils as the Board considers appropriate.
- (4) The Board may invite any other person to attend any meeting of the Board (including both ordinary and special meetings).
- (5) The Board may exclude any person (other than a member or the Chief Executive or his or her nominee) from attending any meeting or part of a meeting.
- (6) The Board may exclude the Chief Executive, or his or her nominee, from attending any ordinary or special meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the Chief Executive.

## **19 Annual public meeting**

- (1) An annual public meeting of the Board is to be held between 1 July and 31 December each calendar year.
- (2) The Board is to prepare and present at each annual public meeting a report on the affairs of the local health district since the last annual public meeting, including audited financial statements for the local health district.
- (3) The presiding member is to determine the procedure for the conduct of business at the annual public meeting. The procedure adopted is to be consistent with the requirements of this Act.
- (4) Any person is entitled to attend the annual public meeting and seek leave to address the meeting.
- (5) The holding of the annual public meeting is to be advertised in at least one newspaper circulating generally in the area of the local health district and by such other means (including on the Internet) as the Board determines.
- (6) The provisions of this Schedule relating to the calling and conduct of ordinary and special meetings of the Board do not apply to the calling and conduct of the annual public meeting.

## **20 Minutes**

- (1) The Chief Executive is to ensure that minutes are kept of all meetings of the Board.

- (2) A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.
- (3) No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

#### **21 Decisions of the Board to be made available**

- (1) The Board is to make available to staff of the local health district information concerning its decisions except where the Board determines that it is inappropriate to disclose that information.
- (2) The Board may make available to the public information concerning its decisions.

#### **22 Rescission**

- (1) The Board may, at any ordinary or special meeting, vary or rescind any resolution carried at any previous meeting of the Board, but only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- (2) If a motion to vary or rescind a resolution is considered at a meeting of the Board and is not carried, the motion is not to be reconsidered by the Board during the period of 3 months from the date of that meeting.

#### **23 Transaction of business outside meetings or by telephone**

- (1) A Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **[12] Schedule 5 Provisions relating to members and procedure of health corporation boards**

Insert after clause 3:

#### **3A Deputy Chairperson**

- (1) The Minister may, from time to time, appoint an appointed member (other than the Chairperson), by the instrument of appointment of the member or a subsequent instrument signed by the Minister, as the Deputy Chairperson of a Board.



- (2) The Minister may at any time remove the Deputy Chairperson from office as Deputy Chairperson of a Board.
- (3) The Deputy Chairperson may act in the office of Chairperson during the illness or absence of the Chairperson, and while so acting has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (4) A person who is an appointed member and Deputy Chairperson of a Board is taken to have vacated office as Deputy Chairperson if the person:
  - (a) is removed from that office by the Minister under subclause (2), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be an appointed member.

**[13] Schedule 5, clause 4 (2)**

Omit the subclause. Insert instead:

- (2) The Minister may, from time to time, appoint an appointed member of a Board to act in the office of Chairperson of that Board during the illness or absence of both the Chairperson and Deputy Chairperson, and the appointed member, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.

**[14] Schedule 5, clause 4 (4) (a)**

Omit the paragraph. Insert instead:

- (a) a vacancy in the office of an appointed member or the Chairperson or Deputy Chairperson is taken to be an absence from office of the member, Chairperson or Deputy Chairperson (as the case may be), and

**[15] Schedule 5, clause 8 (5A)**

Insert after clause 8 (5):

- (5A) A member does not have a pecuniary interest for the purposes of this clause in relation to a matter merely because the member is employed or otherwise holds an appointment at a hospital or health service that is or may be affected by the matter.

**[16] Schedule 5, clause 8 (7)**

Insert after clause 8 (6):

- (7) The provisions of this clause extend to meetings of a committee of the Board.

**[17] Schedule 5, clause 15 (1)**

Omit the subclause. Insert instead:

- (1) The presiding member for a meeting of a Board is:
  - (a) the Chairperson, or
  - (b) in the absence of the Chairperson, the Deputy Chairperson, or
  - (c) in the absence of both the Chairperson and Deputy Chairperson, another member elected to preside at the meeting.

**[18] Schedule 5, clauses 16A and 16B**

Insert after clause 16:

**16A Minutes**

- (1) The chief executive is to ensure that minutes are kept of all meetings of the Board.
- (2) A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.
- (3) No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

**16B Rescission**

- (1) The Board may, at any ordinary or special meeting, vary or rescind any resolution carried at any previous meeting of the Board, but only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- (2) If a motion to vary or rescind a resolution is considered at a meeting of the Board and is not carried, the motion is not to be reconsidered by the Board during the period of 3 months from the date of that meeting.

**[19] Schedule 7 Savings, transitional and other provisions**

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

**Part Provisions consequent on enactment of Health Legislation Amendment Act 2016**

**Definition**

In this Part, *amending Act* means the *Health Legislation Amendment Act 2016*.

**Extension of terms of office of members of local health district boards**

The amendments to section 26 by Schedule 2 [1] and [2] to the amending Act extend to persons holding office at the commencement of those amendments.

**Repeal of New South Wales Institute of Psychiatry Act 1964**

- (1) On the repeal of the *New South Wales Institute of Psychiatry Act 1964* by the amending Act:
  - (a) the body corporate known as “The New South Wales Institute of Psychiatry” is dissolved, and
  - (b) each person appointed as a member of that body corporate ceases to hold office as such a member, and
  - (c) any assets, rights and liabilities (if any) of that body corporate become the assets, rights and liabilities of the Health Education and Training Institute, and
  - (d) the accounts called “The New South Wales Institute of Psychiatry Account” and the “House Account” are abolished, and
  - (e) any balance standing to the credit of those accounts is transferred to the Health Education and Training Institute.

- (2) A person who ceases to hold office as a member of the New South Wales Institute of Psychiatry is not entitled to any remuneration or compensation because of the loss of that office.
- (3) Subject to this Schedule and the regulations, a reference in any Act or instrument to the New South Wales Institute of Psychiatry is taken to be a reference to the Health Education and Training Institute.
- (4) In this clause:
  - assets* means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.
  - liabilities* means all liabilities, debts and obligations (whether present or future, whether vested or contingent and whether personal or assignable).
  - rights* means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

**Changes to by-law provisions**

The substitution of sections 39 and 60 by the amending Act does not affect the validity of any by-laws made before that substitution.

## **Schedule 3 Amendment of Mental Health Act 2007 No 8**

### **[1] Schedule 5 Provisions relating to members of Tribunal**

Insert after clause 5 (1):

- (1A) However, a President who is a full-time member of the Tribunal and a judge (other than an acting judge) is not, while receiving a salary or allowance as a judge, entitled to remuneration under this Act.

### **[2] Schedule 5**

Insert after clause 5:

#### **5A Appointment of judge as President not to affect tenure etc**

- (1) The appointment of a person who is the holder of a judicial office as a President, or service by a person who is the holder of a judicial office as a President, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, allowances or other rights or privileges as the holder of that judicial office.
- (2) For all purposes, the person's service as a President is to be taken to be service as the holder of that judicial office.
- (3) This clause extends to any person who, at the commencement of this clause, is a current President and the holder of a judicial office.
- (4) In this clause, *judicial office* means an office of judge but does not include an office of acting judge.

## **Schedule 4      Amendment of Mental Health (Forensic Provisions) Act 1990 No 10**

- [1]    **Sections 32A (1) (b), 33 (5A) (a), 35 (2) (c), 58 (note), 76D (2), 76E (4), 76J (1) and 76K (1)**

Omit “Department of Human Services” wherever occurring.

Insert instead “Department of Justice”.

- [2]    **Sections 33 (1C), 35 (2) (b) and (c) and 41 (3) (a), Part 5, Divisions 2–8 and Schedule 1, clause 7 (2) (f)**

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s”, respectively.

- [3]    **Sections 33 (1C), 35 (2) (b), 76J (1) and 76K (1)**

Omit “Department of Health” wherever occurring.

Insert instead “Ministry of Health”.

- [4]    **Section 41 Definitions**

Omit the definition of *Director-General* from section 41 (1). Insert in alphabetical order:  
*Secretary* means the Secretary of the Ministry of Health.

- [5]    **Sections 41 (3) (a) and 76C**

Omit “Department of Attorney General and Justice” wherever occurring.

Insert instead “Department of Justice”.

- [6]    **Sections 44 and 47**

Insert at the end of the sections:

**Note.** See section 43 for matters of which the Tribunal must be satisfied before it makes an order for the release of a forensic patient.

- [7]    **Section 53 Classification as involuntary patient**

Insert after section 53 (1):

- (1A) The Tribunal is not to classify the patient as an involuntary patient unless:
  - (a) each Minister entitled to apply for an extension of the patient’s forensic status under Schedule 1 has notified the Tribunal that an application for an extension is not proposed to be made, or
  - (b) the Supreme Court has dismissed an application for extension of the patient’s forensic status under Schedule 1.
- (1B) A Minister entitled to apply for an extension of a patient’s forensic status under Schedule 1 is to notify the Tribunal as soon as practicable of a decision to apply for, or not to apply for, the extension.
- (1C) The Tribunal may ask a Minister to provide advice about whether the Minister proposes to make an application under Schedule 1.

**[8] Section 76A Other matters relating to Tribunal functions**

Omit section 76A (2). Insert instead:

- (2) The Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal, in relation to any of the following:
  - (a) the possible release or grant of leave of absence to a forensic patient,
  - (b) the recommendation to revoke an extension order in respect of a forensic patient,
  - (c) the review of a patient under section 68 (2).

**[9] Section 77A Appeals against Tribunal decisions**

Omit section 77A (7) (b). Insert instead:

- (b) in the case of an appeal by the Minister for Health or the Attorney General, of written notification to the Minister or Attorney General by the Tribunal of the reasons for an order determining proceedings,

**[10] Section 77C Orders for transfer of forensic patients**

Omit “Director-General” where firstly occurring.

Insert instead “Secretary of the Ministry of Health”.

**[11] Section 77C**

Omit “Director-General of the Department of Human Services”.

Insert instead “Secretary of the Department of Justice”.

**[12] Section 77D**

Insert after section 77C:

**77D Delegation**

- (1) A Minister administering this Act may, by instrument in writing, delegate the exercise of any function of the Minister under this Act (other than this power of delegation):
  - (a) to any person employed in a Department responsible to the Minister, or
  - (b) to any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Secretary of the Department of Justice may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation):
  - (a) to any person employed in the Department of Justice, or
  - (b) to any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (3) Nothing in this section limits the operation of section 21 of the *Health Administration Act 1982*.

**[13] Schedule 1 Extension of status as forensic patient**

Omit “(including classification as an involuntary patient under section 53)” from clause 2 (1) (b).

**[14] Schedule 1, clause 2**

Insert at the end of the clause:

**Note.** Less restrictive means of managing a risk includes, but is not limited to, a patient being involuntarily detained or treated under the *Mental Health Act 2007*.

**[15] Schedule 1, clause 11A**

Insert after clause 11:

**11A Interim extension order to continue in force for 24 hours in certain circumstances**

- (1) If the Supreme Court dismisses an application for an extension order in respect of a forensic patient who is detained only as a result of an interim extension order, the Court may (on its own motion or on application) order that the patient be detained for a further period of up to 24 hours to enable a medical practitioner or accredited person to assess whether a mental health certificate should be given in respect of the patient under section 19 of the *Mental Health Act 2007*.
- (2) The order ceases to authorise the detention of the person if the medical practitioner or accredited person making the assessment decides not to give that mental health certificate about the person.

**[16] Schedule 1, clause 17 (4)**

Insert “(whether admission is sought by the Minister to whom the document or report was provided or by another Minister administering this Act)” after “under this Act”.

**[17] Schedule 1, clause 17A**

Insert after clause 17:

**17A Information sharing**

- (1) A Minister administering this Act may disclose forensic patient information obtained under this Act to any other Minister administering this Act:
  - (a) for the purpose of enabling or assisting either Minister to exercise functions under this Act, or
  - (b) for the purpose of the administration or execution of this Act.
- (2) In this clause:

***forensic patient information*** means any document, report or other information that relates to a forensic patient, including any such information that is:

  - (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* or *Health Records and Information Privacy Act 2002*, or
  - (b) health information within the meaning of the *Health Records and Information Privacy Act 2002*.

## **Schedule 5 Amendment of Health Services Regulation 2013**

### **Schedule 1 Constitution and procedure of local health district boards**

Omit the Schedule.

[Second reading speech made in—  
Legislative Assembly on 15 September 2016  
Legislative Council on 21 September 2016]