



Health Services Amendment (Ambulance Service) Regulation 2011

under the

Health Services Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Services Act 1997*.

JILLIAN SKINNER, MP
Minister for Health

Explanatory note

The *Ambulance Services Act 1990* was repealed in 2006 by the *Public Sector Employment Legislation Amendment Act 2006*. That Act provided for the *Ambulance Services Regulation 2005* to continue in force as a regulation under the *Health Services Act 1997*.

The object of this Regulation is to amend the *Health Services Regulation 2008* to include provisions that were previously in the *Ambulance Services Regulation 2005*, which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation does not include provisions that previously dealt with employees of the Ambulance Service wearing uniforms, being absent from duty and receiving entitlements.

This Regulation makes provision with respect to the following:

- (a) criminal conduct, traffic offences and misconduct by members of staff of the Ambulance Service of NSW,
- (b) members of staff being required to obey lawful instructions,
- (c) members of staff having other employment,
- (d) members of staff being required to undergo medical examination,
- (e) the delegation of functions by the chief executive of the Ambulance Service of NSW,
- (f) savings and formal matters.

This Regulation is made under the *Health Services Act 1997*, including section 140 (the general regulation-making power).

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Clause 1 Health Services Amendment (Ambulance Service) Regulation 2011

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1 Name of Regulation

This Regulation is the *Health Services Amendment (Ambulance Service) Regulation 2011*.

2 Commencement

This Regulation commences on 1 September 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Health Services Regulation 2008

[1] Part 3A

Insert after Part 3:

Part 3A Ambulance Service

Division 1 Preliminary

Note. This Part replaces the *Ambulance Services Regulation 2005*, which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

11A Part applies to staff of Ambulance Service

This Part applies to those staff of the NSW Health Service who are employed primarily in connection with the provision of ambulance services under Chapter 5A of the Act but (unless otherwise expressly provided) does not apply to the chief executive.

11B Objects of Part

The objects of this Part are as follows:

- (a) to protect the health and safety of the public by providing mechanisms to maintain appropriate standards of conduct in the Ambulance Service,
- (b) to ensure that the public interest is protected.

11C Definitions

- (1) In this Part:

Ambulance Service means the Ambulance Service of NSW within the meaning of section 67A of the Act.

chief executive means the person appointed as chief executive of the Ambulance Service of NSW under section 67A (2) of the Act or, if at any time there is no person appointed to that position, the Director-General.

disciplinary action, in relation to a member of staff, means any one or more of the following:

- (a) dismissal,
- (b) a formal warning,
- (c) if the member of staff is on probation—annulment of the member of staff's appointment,

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- (d) reduction of the employee's classification or position (but not in the case of a member of staff who is employed under a fixed term contract, the conditions of which are fixed by the Health Administration Corporation).

member of staff means a member of staff of the Ambulance Service, being a member of staff of the NSW Health Service who is employed primarily in connection with the provision of ambulance services under Chapter 5A of the Act, other than the chief executive.

misconduct, in relation to a person who is a member of staff, includes, but is not limited to, any of the following:

- (a) the person contravening the Act or this Regulation,
- (b) the person performing duties in a manner that justifies the taking of disciplinary action,
- (c) the person taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against another person that is substantially in reprisal for the other person making a protected disclosure within the meaning of that Act,
- (d) the person taking any action against another person that is substantially in reprisal for a disclosure made by that other person regarding alleged misconduct,
- (e) the person failing, without reasonable excuse, to comply with a direction by the chief executive to provide information with respect to a complaint under this Part against the person,
- (f) any other improper or unethical conduct by the person.

serious offence means an offence (whether or not committed in New South Wales) which, if committed in New South Wales, would have a maximum penalty of imprisonment for 12 months or more (whether or not in addition to a fine) in New South Wales.

supervisor means a person under whose control or supervision a member of staff is placed.

traffic offence means an offence under any of the following provisions:

- (a) section 25A of the *Road Transport (Driver Licensing) Act 1998* (relating to driving while disqualified or unlicensed),
- (b) section 171 (2) of the *Road Transport (General) Act 2005*,
- (c) section 9, 11B, 12, 42, 43 or 70 of the *Road Transport (Safety and Traffic Management) Act 1999*.

- (2) In this Part, a reference to an allegation that a member of staff may have engaged in misconduct includes a reference to the chief executive being made aware, or becoming aware, by any means that the member of staff may have engaged in misconduct.
- (3) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
 - (a) while the member of staff concerned was not on duty, or
 - (b) before the member of staff was appointed to his or her position.

Division 2 Criminal conduct, traffic offences and misconduct

11D Offences to be reported

- (1) A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the chief executive.
- (2) A member of staff who is required to drive a motor vehicle as part of his or her duties and who is charged with having committed, or is convicted of, a traffic offence must immediately report that fact in writing to the chief executive.
- (3) The supervisor of a member of staff who has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence or traffic offence but has not reported that fact in accordance with subclause (1) or (2) must immediately report that fact to the chief executive.

11E Driving disqualification to be reported

A member of staff who is required to drive a motor vehicle as part of his or her duties and who is disqualified from holding a driver licence or whose licence is cancelled or suspended must immediately report the disqualification, cancellation or suspension to the chief executive.

11F Disciplinary action

- (1) The chief executive may decide to take disciplinary action or remedial action (or both), with respect to a member of staff if:
 - (a) the member of staff is convicted of a serious offence, or

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- (b) the member of staff is required to drive a motor vehicle as part of his or her duties and the member of staff is convicted of a traffic offence, or
 - (c) the member of staff has engaged in misconduct.
- (2) A reference in this clause to the conviction of a member of staff for a serious offence or a traffic offence includes a reference to the member of staff having been found guilty by a court of such an offence but where no conviction is recorded.
- (3) In this clause:
- remedial action**, in relation to a member of staff, means any one or more of the following:
- (a) counselling,
 - (b) training and development,
 - (c) monitoring the member of staff's conduct or performance,
 - (d) implementing a performance improvement plan,
 - (e) transferring the member of staff to another position in the NSW Health Service that does not involve a reduction of the member of staff's classification or position,
 - (f) any other action of a similar nature.

11G Issuing of guidelines dealing with misconduct

- (1) The chief executive may, from time to time, issue guidelines for the purposes dealing with misconduct by members of staff.
- (2) The chief executive may from time to time amend, revoke or replace the guidelines.
- (3) The guidelines as in force from time to time must be made publicly available in such manner as the chief executive thinks appropriate.

11H Suspension pending certain decisions

- (1) The chief executive may suspend a member of staff from duty if:
 - (a) an allegation that the member of staff has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the guidelines, or
 - (b) the member of staff is charged with having committed a serious offence,
- (2) The chief executive may suspend the member of staff from duty until the allegation of misconduct or the criminal charge has been dealt with.

- (3) The chief executive may at any time remove a suspension under this clause.
- (4) In this clause:
guidelines means the guidelines in force from time to time under clause 11G.

11I Retiring or resigning before disciplinary action taken

- (1) An allegation that a member of staff has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the member of staff, even though the member of staff has retired or resigned.
- (2) The taking of disciplinary action with respect to the former member of staff does not affect the former member of staff's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) Nothing in this clause affects any power under this Regulation to refuse to accept the resignation of a member of staff.

11J Appointment after reduction of classification or position

Any appointment required as the result of the taking of disciplinary action comprising reduction of a member of staff's classification or position is to be made by the chief executive.

Division 3 Miscellaneous provisions

11K Lawful instructions to be obeyed

- (1) A member of staff must obey promptly a lawful instruction that is:
 - (a) consistent with such protocols and procedures as may be issued by the chief executive from time to time, and
 - (b) given to the member of staff by the member of staff's supervisor.
- (2) A member of staff may appeal in writing to the chief executive against an instruction given to the member of staff. The appeal must be made through the supervisor who gave the instruction. However, the member of staff must, pending the determination of the appeal, comply with subclause (1) in relation to the instruction.

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11L Other employment

- (1) A member of staff must not, except with the written permission of the chief executive, engage in any employment (whether or not for remuneration) otherwise than in connection with his or her employment as a member of staff of the Ambulance Service.
- (2) If a member of staff is the holder of any office or is engaged in any employment otherwise than in connection with his or her employment as a member of staff of the Ambulance Service, the member of staff must at once notify the chief executive of that fact.
- (3) The chief executive may require that member of staff to resign that office or abstain from engaging in that employment.
- (4) Permission given for the purposes of subclause (1) may be withdrawn by the chief executive at any time. The withdrawal must be in writing given or sent to the member of staff.

11M Medical examination

- (1) The chief executive may direct that a member of staff undergo such medical examination as the chief executive considers necessary for the purpose of ascertaining the member of staff's fitness to perform his or her duties if the chief executive has reason to believe that the health of the member of staff:
 - (a) may mean that the member of staff is a danger to other members of staff or to the public, or
 - (b) is likely to be seriously affected by the member of staff remaining on, or resuming, duty.
- (2) The chief executive must inform the member of staff that any such direction is being given under this clause.
- (3) A member of staff given such a direction must submit himself or herself to examination by a medical practitioner approved by the chief executive.
- (4) A member of staff who has been given a direction must cease any duty immediately and must not resume duty until the chief executive has reviewed the results of the medical examination and is satisfied that the member of staff is fit to perform his or her duties.

11N Delegation

The chief executive may delegate any function of the chief executive under this Part to a member of staff of the NSW Health Service.

[2] Clause 17 Savings

Insert at the end of the clause:

- (2) Any act, matter or thing that, immediately before the repeal of the *Ambulance Services Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.