



New South Wales

Health Services Regulation 2018

under the

Health Services Act 1997

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

BRAD HAZZARD, MP
Minister for Health

Explanatory note

The object of this Regulation is to repeal and remake, without any substantial changes, the provisions of the *Health Services Regulation 2013*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters:

- (a) the appointment of visiting practitioners to public health organisations,
- (b) the transfer of accrued leave entitlements for staff moving between the NSW Health Service and certain affiliated health organisations,
- (c) the conduct of staff of the Ambulance Service of NSW,
- (d) other minor miscellaneous matters.

This Regulation is made under the *Health Services Act 1997*, including sections 18 (2), 52 (5), 64A (2), 67E (3) (e), 133 (3) and 140 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Health Services Regulation 2018

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Services Regulation 2018*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Health Services Regulation 2013*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Health Services Act 1997*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Visiting practitioners

4 Definitions

In this Part:

clinical privileges has the same meaning as it has in section 105 (2) of the Act.

medical and dental appointments advisory committee or *advisory committee*, in relation to a public health organisation, means a committee:

- (a) established by the public health organisation, and
- (b) having the function of advising the public health organisation in relation to the appointment of persons as visiting practitioners to the public health organisation and the clinical privileges that should be granted to those persons.

5 Applications for appointment as visiting practitioners

- (1) A public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one of the following:
 - (a) a newspaper circulating generally in New South Wales,
 - (b) an employment website affiliated with such a newspaper,
Note. The employment website www.adzuna.com.au is affiliated with the Sydney Morning Herald and the employment website www.careerone.com.au is affiliated with The Daily Telegraph.
 - (c) the NSW Health website used for the purpose of advertising employment positions in the NSW Health service.
Note. The current NSW Health jobs website address is <https://nswhealth.erecruit.com.au>.The public health organisation may, in addition, advertise the availability in other ways.
- (2) An application for appointment as a visiting practitioner is to be made in writing to the public health organisation concerned and is to include:
 - (a) a statement setting out, in a manner that satisfies the public health organisation, the clinical privileges sought by the applicant, and
 - (b) an authority for the medical and dental appointments advisory committee of the public health organisation to obtain information as to the applicant's past performance as a medical practitioner or dentist, as the case may be.
- (3) On receipt of the application, the public health organisation is to refer the application to the advisory committee for advice.
- (4) Subclauses (1)–(3) do not apply:
 - (a) to an appointment as a visiting practitioner that is to be held as part of the duties of a person who is to be or has been appointed to a teaching position at a tertiary institution, or
 - (b) to an appointment as a visiting practitioner that is to be held by a person for a period of not more than 6 months, or
 - (c) to any appointment as a visiting practitioner, to the extent that the Health Secretary determines that the provisions of those subclauses are not to apply.
- (5) A determination under subclause (4) (c):
 - (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
 - (b) must be made in writing.

6 Appointment and conditions to be in written agreement

- (1) A person is to be appointed as a visiting practitioner to a public health organisation by written agreement between the person and the public health organisation.
- (2) The written agreement must specify the conditions to which the appointment is subject, including the clinical privileges of the visiting practitioner.
- (3) However, the written agreement does not need to include any conditions prescribed by or under the Act.

7 Term of appointment

- (1) The period for which a person may be appointed as a visiting practitioner is such period (not exceeding 5 years) as the public health organisation determines.
- (2) A person is, if otherwise qualified, eligible for re-appointment from time to time.
- (3) Despite subclause (1), a person may be appointed as a visiting practitioner for the duration of the person's appointment to a teaching position at a tertiary institution (or for such lesser period as the public health organisation may determine) if the public health organisation has first obtained the advice of the medical and dental appointments advisory committee about the length of the appointment.
- (4) Despite subclause (1), a person may be appointed as a visiting practitioner for a period exceeding 5 years, but not exceeding 10 years, if the Health Secretary, in the particular circumstances of the case, approves the additional period of appointment.

8 Resignation

- (1) A person may resign an appointment as a visiting practitioner by giving 3 months written notice of resignation to the public health organisation concerned.
- (2) However, a public health organisation may waive that requirement for notice or accept a lesser period of time for the giving of such notice if, in the opinion of the public health organisation, it is reasonable to do so.

Part 3 Transfer of accrued leave entitlements

9 Definitions

In this Part:

accrued leave means leave of any description that is owing to a person (but not taken), and includes any leave to which a person would have been entitled in the event of illness.

non-declared AHO means an affiliated health organisation that is not a declared affiliated health organisation within the meaning of section 62A of the Act.

10 Transfer of accrued leave—moving from non-declared AHO to NSW Health Service

(1) Period between employment must be continuous

This clause applies in relation to a person only if the person's employment in the NSW Health Service immediately follows the person's employment with a non-declared AHO. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.

(2) Transfer of existing leave balance

If a person:

- (a) ceases to be employed by a non-declared AHO, and
- (b) commences employment in the NSW Health Service in connection with a public health organisation,

the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed by the non-declared AHO.

(3) Election to cash-out accrued annual or long service leave

In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) Limit on how much accrued annual leave can be retained

The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the Health Secretary, exceed the amount of annual leave that the person was entitled to over a 2-year period as an employee of the non-declared AHO.

(5) Liability for cost of existing annual or long service leave

The non-declared AHO is liable for the cost of any annual or long service leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed by the non-declared AHO.

(6) Orders under section 64 of the Act

This clause does not apply in relation to a person who ceases to be employed by a non-declared AHO by the operation of an order under section 64 of the Act.

11 Transfer of accrued leave—moving from NSW Health Service to non-declared AHO

(1) Period between employment must be continuous

This clause applies in relation to a person only if the person's employment with a non-declared AHO immediately follows the person's employment in the NSW Health Service. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.

(2) **Transfer of existing leave balance**

If a person:

- (a) ceases to be employed in the NSW Health Service in connection with a public health organisation, and
 - (b) commences employment with a non-declared AHO,
- the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed in the NSW Health Service.

(3) **Election to cash-out accrued annual or long service leave**

In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) **Limit on how much accrued annual leave can be retained**

The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the non-declared AHO, exceed the amount of annual leave that the person was entitled to over a 2-year period as a member of the NSW Health Service.

(5) **Liability for cost of existing annual or long service leave**

The Government of New South Wales is liable for the cost of any annual or extended leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed in the NSW Health Service.

Part 4 Ambulance Service

Division 1 Preliminary

12 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.

13 Objects of Part

The objects of this Part are:

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

14 Effect of Part

For avoidance of doubt, this Part does not do any of the following:

- (a) prevent the Health Secretary from taking any lawful action against a member of staff for any reason,
- (b) affect any statutory right that a member of staff may have in relation to the termination of his or her employment under this Part,
- (c) affect the operation of the *Criminal Records Act 1991* in relation to spent convictions within the meaning of that Act.

15 Definitions

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 Health Secretary.

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.

traffic offence means an offence under any of the following provisions of the *Road Transport Act 2013* or a former corresponding provision within the meaning of that Act:

- (a) section 54 (relating to driving while disqualified or unlicensed),
- (b) section 110, 111, 112, 117, 118, 146 or 175.

Division 2 Criminal conduct, traffic offences and misconduct

16 Duty to report certain criminal conduct and traffic offences

- (1) A member of staff who is charged with having committed, or is convicted of, a serious sex or violence offence must, within 7 days of the charge being laid or conviction, report that fact in writing to the chief executive.

Note. The term **serious sex or violence offence** is defined in Parts 1 and 2 of the Dictionary to the Act.

- (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 or convicted of a traffic offence must immediately report that fact in writing to the chief executive.

17 Duty to report driving disqualification

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.

18 Duty to report disciplinary matters

- (1) A member of staff who has a misconduct finding made against him or her under the *Health Practitioner Regulation National Law (NSW)* must, within 7 days of receiving notice of the finding:
 - (a) report that fact to the chief executive, and
 - (b) provide the chief executive with a copy of that finding.
- (2) In this clause, **misconduct finding** includes a finding of professional misconduct or unsatisfactory professional conduct.

Note. Section 142 of the *Health Practitioner Regulation National Law (NSW)* imposes obligations on employers to notify the Australian Health Practitioner Regulation Agency of misconduct by health practitioners.

19 Disciplinary action in certain cases of serious sex or violence offences

- (1) The chief executive is, within 30 days (or such further period as may be agreed to by the Health Secretary) of becoming aware that a member of staff has been convicted (whether before or during his or her employment) of a serious sex or violence offence, to notify the Health Secretary of the staff member's conviction.
- (2) On being notified under subclause (1), the Health Secretary is to afford the member of staff concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the staff member wishes to have considered in determining what (if any) disciplinary action should be taken in relation to the staff member.
- (3) The Health Secretary may take such disciplinary action as the Health Secretary considers appropriate (having regard to clause 21) against a member of staff who has been convicted (whether before or during his or her employment) of a serious sex or violence offence.
- (4) If, under this clause, a member of staff who is a NSW Health Service senior executive is assigned to or from a division of the NSW Health Service for which the Health Secretary does not exercise employer functions in relation to the Health Service senior executives employed in that division, the Health Secretary is to consult the person or body that exercises or will exercise employer functions in relation to the executive.
- (5) A person may not, under this clause, be transferred and assigned to the role of chief executive of a local health district or specialty network governed health corporation without the concurrence of the board of the local health district or specialty network governed health corporation to which the person is transferred.
- (6) This clause does not apply to a conviction that occurred before a person was employed if, before that employment, the person notified the Health Secretary in writing of the fact of the conviction.
- (7) This clause extends to a conviction that occurred before the commencement of this Regulation.

(8) In this clause:

disciplinary action means:

- (a) dismissal from the NSW Health Service, or
- (b) imposing conditions in respect of the supervision of, or reporting by, a member of staff or in respect of the scope of a staff member's duties, or
- (c) transferring a member of staff who is not a NSW Health Service senior executive to another position in the NSW Health Service or assigning a member of staff who is a NSW Health Service senior executive to another role in the NSW Health Service.

20 Transfer or reduction of classification or position of members of staff after misconduct

The Health Secretary may, if a member of staff has engaged in misconduct, without limiting any other action the Secretary may take:

- (a) transfer the member of staff to another position in the NSW Health Service without reducing the member of staff's classification or position, or
- (b) reduce 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).

21 Protection of patients, clients and children to be paramount consideration

The protection of the Ambulance Service of NSW's patients and clients and of children for which it is responsible is to be the paramount consideration in relation to determining whether to take disciplinary action against a member of staff under this Division.

Division 3 Paramedics

22 Qualifications

(1) The following qualifications are prescribed for the purposes of section 67ZDA (2) (a) of the Act:

- (a) a Bachelor of Paramedicine or a Graduate Diploma of Paramedicine conferred by a university,
- (b) a nationally-recognised Diploma of Paramedicine issued by a registered training organisation.

(2) In this clause:

Paramedicine includes Clinical Practice (Paramedic), Emergency Health (Paramedic), Health Science (majoring in Paramedicine), Paramedic Practice, Paramedic Science and Science (majoring in Paramedicine).

registered training organisation means an NVR registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

university means a university listed in Part 1 of Schedule 1 to the *Higher Education Act 2001* or a university listed in Part 1 of Schedule 13 to the *Education Act 1989* of New Zealand.

23 Repeal of Division 3

This Division is repealed on the day on which Schedule 3 [1] to the *Health Practitioner Regulation Amendment Act 2017* commences.

Division 4 Miscellaneous

24 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.

Part 5 Miscellaneous

25 Local health district descriptions

- (1) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the Sydney Local Health District, is a reference to the following Statistical Local Areas:
 - (a) Sydney (C)–West,
 - (b) Sydney (C)–South.
- (2) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the South Eastern Sydney Local Health District, is a reference to the following Statistical Local Areas:
 - (a) Sydney (C)–Inner,
 - (b) Sydney (C)–East.
- (3) A reference in Column 2 of Schedule 1 to the Act to Tenterfield (part), in relation to the Hunter New England Local Health District, is a reference to the local government area of Tenterfield except for the following 2011 Statistical Areas:
 - (a) Statistical Area Level 1 (SA1) 11002119409,
 - (b) Statistical Area Level 1 (SA1) 11002119410.
- (4) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Murrumbidgee Local Health District, is a reference to the following 2011 Statistical Areas:
 - (a) Statistical Area Level 1 (SA1) 10302106209,
 - (b) Statistical Area Level 1 (SA1) 10302106210,
 - (c) Statistical Area Level 1 (SA1) 10302106211,
 - (d) Statistical Area Level 1 (SA1) 10302106212,
 - (e) Statistical Area Level 1 (SA1) 10302106213,
 - (f) Statistical Area Level 1 (SA1) 10302106215,
 - (g) Statistical Area Level 1 (SA1) 10302106225.
- (5) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Western NSW Local Health District, is a reference to the local government area of Lachlan except for the following 2011 Statistical Areas:
 - (a) Statistical Area Level 1 (SA1) 10302106209,
 - (b) Statistical Area Level 1 (SA1) 10302106210,
 - (c) Statistical Area Level 1 (SA1) 10302106211,
 - (d) Statistical Area Level 1 (SA1) 10302106212,
 - (e) Statistical Area Level 1 (SA1) 10302106213,
 - (f) Statistical Area Level 1 (SA1) 10302106215,
 - (g) Statistical Area Level 1 (SA1) 10302106225.
- (6) A reference in Column 2 of Schedule 1 to the Act to Tenterfield (part), in relation to the Northern NSW Local Health District, is a reference to the following 2011 Statistical Areas:
 - (a) Statistical Area Level 1 (SA1) 11002119409,
 - (b) Statistical Area Level 1 (SA1) 11002119410.

(7) In this clause:

Statistical Local Area means a Statistical Local Area specified in the document entitled *Australian Standard Geographical Classification (ASGC)*, published by the Australian Bureau of Statistics in July 2010.

2011 Statistical Area means a Statistical Area specified in the *Australian Statistical Geography Standard (ASGS)*, published by the Australian Bureau of Statistics in December 2010.

26 Provisions with respect to administrators

(1) In this clause:

administrator means:

- (a) an administrator of a local health district appointed under section 29 of the Act, or
 - (b) an administrator of a statutory health corporation appointed under section 52 of the Act.
- (2) On the expiration of a person's appointment or reappointment as administrator, the Minister (in relation to an administrator of a local health district) or the Governor (in relation to an administrator of a statutory health corporation) may, by order published in the Gazette, reappoint the person as administrator for a further period or appoint another person as administrator.
- (3) The Minister (in relation to an administrator of a local health district) or the Governor (in relation to an administrator of a statutory health corporation) may, by order published in the Gazette:
- (a) remove from the office of administrator any person appointed to that office, or
 - (b) appoint a person to fill a vacancy in the office of administrator.
- (4) The Minister may appoint a person to act in the office of an administrator during the illness or absence of the administrator, and the person, while so acting, has and may exercise all the functions of the administrator and is taken to be the administrator.
- (5) The Minister may remove from the office of administrator any person appointed to act in that office under subclause (4).

27 Provision of ambulance transport

For the purposes of section 67E (3) (e) of the Act, The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children), in respect of services provided or operations conducted by the NSW Newborn & paediatric Emergency Transport Service (NETS), is a person to whom section 67E does not apply.

28 Ambulance fee exemptions

The following kinds of concession cards are prescribed for the purposes of section 67N (b) of the Act:

- (a) a Health Care Card issued on behalf of the Commonwealth of Australia,
- (b) a Pensioner Concession Card issued on behalf of the Commonwealth of Australia,
- (c) a Commonwealth Seniors Health Card issued on behalf of the Commonwealth of Australia,
- (d) a DVA Health Card – For All Conditions (also known as a Gold Card) issued by the Commonwealth Department of Veterans' Affairs (but not in relation to

non-emergency ambulance services and transfers that are not funded by the Department of Veterans' Affairs),

- (e) a DVA Health Card – For Specific Conditions (also known as a White Card) issued by the Commonwealth Department of Veterans' Affairs (but only in relation to a specific condition that is funded by the Department of Veterans' Affairs).

29 Ambulance fee recovery costs

- (1) The amount prescribed as the fee recovery costs payable to the Commissioner on the making of a fee recovery order in accordance with clause 2 of Schedule 9 to the Act is \$65.
- (2) The amount prescribed as the fee recovery costs payable into the Consolidated Fund for any of the following fee recovery actions is \$65:
 - (a) the making of a property seizure order in accordance with clause 15 of Schedule 9 to the Act,
 - (b) the making of a garnishee order in accordance with clause 16 of Schedule 9 to the Act,
 - (c) an application to register a fee recovery order as a charge on land in accordance with clause 17 of Schedule 9 to the Act.
- (3) The Commissioner may, in such circumstances as the Commissioner considers appropriate, waive, postpone or refund all or part of the amount of any fee recovery costs.
- (4) This clause is repealed on the day on which Schedule 3.6 [18] to the *State Debt Recovery Act 2018* commences.

30 Appeals concerning appointment decisions

- (1) An appeal under section 106 of the Act may be withdrawn at any time before the determination of the appeal by the appellant giving written notice of the withdrawal to the Minister in the form and manner approved by the Minister from time to time.
- (2) The Committee is not required to determine an appeal that has been withdrawn.

31 Samaritan Funds

- (1) In this clause:
 - Samaritan Fund*** of a public health organisation means the Samaritan Fund of the organisation referred to in section 133 (2) of the Act.
 - Special Purposes and Trust Fund***, in relation to a public health organisation, means the fund of that name established by the public health organisation.
- (2) The Samaritan Fund of a public health organisation is to be kept as a separate account in its Special Purposes and Trust Fund.
- (3) The Minister may determine the manner in which the accounts for a Samaritan Fund are to be kept and the circumstances in which those accounts are to be audited.
- (4) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except by, or with the written approval of, the chief executive (or person authorised in writing by the chief executive) of the public health organisation.
- (5) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except for payment to, or for the purchase of items for, a patient in need or an outgoing patient in need. The payment or purchase may be made only if it is essential to the well-being of the patient.

32 Functions of local health district boards

For the purposes of section 28 (1) of the Act, a function of a local health district board is to liaise with the governing bodies of affiliated health organisations and Primary Health Networks established by the Commonwealth in relation to both local and State-wide initiatives for the provision of health services.

33 Smoke-free areas

The following outdoor public places (within the meaning of the *Smoke-free Environment Act 2000*) are designated as smoke-free areas for the purposes of section 6A (Smoke-free areas—outdoor public places) of that Act:

any outdoor public place at Albury Hospital, 201 Borella Road, Albury.

34 Appointment of arbitrator by relevant Minister

- (1) For the purposes of section 90 of the Act, the relevant Minister may appoint a person to be an arbitrator if:
 - (a) the person is a qualified person, and
 - (b) the relevant Minister is satisfied that the person has relevant experience in workplace relations matters.
- (2) Before appointing a person to be an arbitrator, the relevant Minister must consult with both the Minister and the Australian Medical Association (NSW) Limited.
- (3) In this clause, *qualified person* means:
 - (a) a former judicial officer of a superior court of record of the Commonwealth, a State or a Territory, or
 - (b) an Australian legal practitioner of at least 7 years' standing.

35 Repeal and savings

- (1) The *Health Services Regulation 2013* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Health Services Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.