



New South Wales

Health Services (Transfer of Assets, Rights and Liabilities) Order 2022

under the

Health Services Act 1997

MARGARET BEAZLEY, Governor

I, the Honourable Margaret Beazley AC KC, Governor of New South Wales, with the advice of the Executive Council, and under section 64 of the *Health Services Act 1997*, make the following Order.

Dated, this 21st day of September 2022.

By Her Excellency's Command,

BRAD HAZZARD, MP
Minister for Health

Explanatory note

The objects of this Order are to—

- (a) transfer the following recognised establishments and recognised services operated by the affiliated health organisation Catholic Healthcare Limited under the *Health Services Act 1997* (***the Act***) and listed in the Act, Schedule 3, and certain assets, rights and liabilities to Western NSW Local Health District—
 - (i) St Vincent's Health Service, Bathurst,
 - (ii) Lourdes Hospital and Community Health Service, other than Holy Spirit Dubbo, and
- (b) make a consequential amendment to the Act.

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Part 1 Preliminary

1 Name of Order

This Order is the *Health Services (Transfer of Assets, Rights and Liabilities) Order 2022*.

2 Commencement

This Order commences on 3 October 2022.

3 Definitions

In this Order—

affiliated health organisation means Catholic Healthcare Limited, including the recognised establishments and recognised services.

agreement includes a contract, deed, licence agreement, memorandum of understanding, heads of agreement, funding agreement, clinical trial agreement or research agreement.

IT assets—

- (a) means all information technology hardware, software and systems owned or leased by the affiliated health organisation or used by the affiliated health organisation in connection with either or both of the recognised establishments and recognised services including the following—
- (i) personal computers, including laptops and monitors,
 - (ii) mobile phones, desk phones and phone systems,
 - (iii) switches,
 - (iv) nurse call systems including duress systems, DECT phones, annunciators and wearable devices,
 - (v) access control and security systems, including CCTV and proximity cards,
 - (vi) thin clients,
 - (vii) printers,
 - (viii) tablet devices,
 - (ix) wireless access points,
 - (x) Microsoft 365, Bemis, Resolver, WebPass and operating system licences, but
- (b) not including medical or biomedical equipment owned by the affiliated health organisation or used by the affiliated health organisation in connection with either or both of the recognised establishments and recognised services including the following—

- (i) computers on wheels,
- (ii) downtime personal computers,
- (iii) medical monitors,
- (iv) televisions in patient rooms,
- (v) defibrillators,
- (vi) ECG machines,
- (vii) other electronic equipment used to provide patient care and services.

recognised establishments and recognised services means—

- (a) St Vincent’s Health Service, Bathurst, and
- (b) Lourdes Hospital and Community Health Service, other than Holy Spirit Dubbo.

the Act means the *Health Services Act 1997*.

transfer day means 3 October 2022.

transferring employee means a person whose employment is transferred on the transfer day under clause 7.

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

Part 2 Transfer of recognised establishments and recognised services

4 Transfer of recognised establishments and recognised services to Western NSW Local Health District

The recognised establishments and recognised services under the control of the affiliated health organisation are transferred to Western NSW Local Health District on the transfer day.

5 Consequential amendment of Health Services Act 1997 No 154

Schedule 3 Affiliated health organisations

Omit the matter relating to Catholic Healthcare Limited.

Part 3 Transfer of assets, rights and liabilities of affiliated health organisation

Note— The Act, Schedule 4, clause 5(1)–(3) provides that—

- (a) for the transfer of hospitals and health institutions—on and from the date specified in an order under the Act, section 64(1)(a) transferring any public hospital or health institution of an affiliated health organisation that is a recognised establishment of the organisation to a local health district, the Act, Schedule 4, Part 2 has effect to the extent of the transfer, and
- (b) for the transfer of health services and health support services—on and from the date specified in an order under the Act, section 64(1)(b) transferring any health service or health support service of an affiliated health organisation that is a recognised service of the organisation to a local health district, the Act, Schedule 4, Part 2 has effect to the extent of the transfer, and
- (c) for the transfer of assets, rights or liabilities—on and from the date specified in an order under the Act, section 64(1)(c) transferring any assets, rights or liabilities of an affiliated health organisation relating to a recognised establishment or recognised service of the organisation to a local health district, the Act, Schedule 4, Part 2 has effect to the extent of the transfer.

6 Transfer of agreements to Western NSW Local Health District

- (1) This clause applies to an agreement, to which the affiliated health organisation is a party immediately before the transfer day, that relates exclusively to either or both of the recognised establishments and recognised services.
- (2) The agreement is, on the transfer day, transferred on the same terms so that Western NSW Local Health District becomes a party to the agreement instead of the affiliated health organisation.
- (3) This clause does not apply to the following agreements—
 - (a) the capital funding agreement between the Health Administration Corporation and Catholic Healthcare Limited dated 21 January 2009,
 - (b) agreements that relate exclusively to the production kitchen or laundry, or both, at Lourdes Hospital and Community Health Service,
 - (c) the NSW Health Service Agreement 2020–21 between Western NSW Local Health District and Catholic Healthcare Limited that relates to Lourdes Hospital and Community Health Service, including any extension to the agreement,
 - (d) the NSW Health Service Agreement 2020–21 between Western NSW Local Health District and Catholic Healthcare Limited that relates to St Vincent’s Health Service, Bathurst, including any extension to the agreement.

7 Transfer of employees and employee entitlements to Western NSW Local Health District

- (1) The affiliated health organisation employees employed by the affiliated health organisation exclusively in relation to either or both of the recognised establishments and recognised services immediately before the transfer day are transferred to the Western NSW Local Health District division of the NSW Health Service on the transfer day—
 - (a) on their existing terms and conditions, and
 - (b) with their accrued employee entitlements.
- (2) On the transfer day, Western NSW Local Health District assumes and becomes solely responsible for the accrued employee entitlements transferred under subclause (1)(b).
- (3) This clause does not apply to the affiliated health organisation employees who are employed in relation to the production kitchen or laundry at Lourdes Hospital and Community Health Service.

8 Transfer of service contracts for visiting medical officers to Western NSW Local Health District

- (1) This clause applies to a service contract that relates to the provision of services or exercise of clinical privileges at the recognised establishments and recognised services.
- (2) The rights and obligations under a service contract, that is in force immediately before the transfer day, are transferred to Western NSW Local Health District on the transfer day.
- (3) In this clause—
service contract means a service contract within the meaning of the Act, section 80(1) between—
 - (a) the affiliated health organisation, and
 - (b) a visiting medical officer, a visiting medical officer's practice company or an honorary medical officer.

9 Transfer of contracts of liability coverage for visiting medical officers to Western NSW Local Health District

- (1) This clause applies to a contract of liability coverage that relates to the provision of services or exercise of clinical privileges at the recognised establishments and recognised services.
- (2) The rights and obligations under a contract of liability coverage, that is in force immediately before the transfer day, are transferred to Western NSW Local Health District on the transfer day.
- (3) In this clause—
contract of liability coverage means a contract between—
 - (a) the affiliated health organisation, and
 - (b) a visiting medical officer, a visiting medical officer's practice company or an honorary medical officer.

10 Transfer of visiting practitioner appointments

- (1) This clause applies to the appointment by the affiliated health organisation of a visiting practitioner under the Act, Chapter 8, to practise as a medical practitioner or dentist at either or both of the recognised establishments and recognised services, immediately before the transfer day.
- (2) An appointment that is in force immediately before the transfer day is transferred to Western NSW Local Health District on the transfer day.
- (3) In this clause—
appointment includes the rights and obligations relating to the appointment that are specified for the appointment.

11 Transfer of records to Western NSW Local Health District

- (1) The following documents relating exclusively to one or both of the recognised establishments and recognised services are transferred to Western NSW Local Health District on the transfer day—
 - (a) marketing and customer files and customer lists,
 - (b) promotional, sales and advertising material,
 - (c) supplier lists,

- (d) information that relates to the source of donations and bequests to be transferred, including specific conditions attached to donations and bequests,
 - (e) records and files for transferring employees,
 - (f) patient records.
- (2) All other documents relating to either or both of the recognised establishments and recognised services remain the property of the affiliated health organisation.

12 Transfer of consumables and plant and equipment to Western NSW Local Health District—Lourdes Hospital and Community Health Service

- (1) All consumables and plant and equipment on site at Lourdes Hospital and Community Health Service that, immediately before the transfer day, are used or are intended to be used exclusively for Lourdes Hospital and Community Health Service are transferred to Western NSW Local Health District on the transfer day.
- (2) This clause does not apply to the following—
- (a) IT assets,
 - (b) fixtures,
 - (c) plant and equipment ordinarily in the production kitchen or laundry area.
- (3) If, on the transfer day, the consumables and plant and equipment are subject to a lease or licence between the affiliated health organisation and another person or body, the lease or licence is, on the transfer day, taken to be between Western NSW Local Health District and the other person or body on the same terms.

13 Transfer of property and equipment to Western NSW Local Health District—St Vincent’s Health Service, Bathurst

- (1) The following property and equipment at St Vincent’s Health Service, Bathurst that is used exclusively for St Vincent’s Health Service, Bathurst, is transferred to Western NSW Local Health District on the transfer day—
- (a) all medical, biomedical and other clinical equipment,
 - (b) defibrillators,
 - (c) other physical property used for the direct provision of care to community patients.
- (2) This clause does not apply to IT assets or fixtures.
- (3) If, on the transfer day, the property and equipment is subject to a lease or licence between the affiliated health organisation and another person or body, the lease or licence is, on the transfer day, taken to be between Western NSW Local Health District and the other person or body on the same terms.

14 Transfer of interests in motor vehicles to Western NSW Local Health District

- (1) All interests of the affiliated health organisation in a motor vehicle are transferred to Western NSW Local Health District on the transfer day if, immediately before the transfer day, the motor vehicle is used exclusively for the purposes of the operation of either or both of the recognised establishments and recognised services.
- (2) If, on the transfer day, a motor vehicle is subject to a lease or licence between the affiliated health organisation and another person or body, on the transfer day the lease or licence is taken to be between Western NSW Local Health District and the other person or body on the same terms.

15 Transfer of registered business names and other intellectual property to Western NSW Local Health District

- (1) This clause applies to the following assets, rights and liabilities of the affiliated health organisation—
 - (a) the business name “Lourdes Hospital & Community Health Service”,
 - (b) rights to intellectual property—
 - (i) used exclusively in relation to either or both of the recognised establishments and recognised services, and
 - (ii) created by a transferring employee.
- (2) An asset, right or liability is, on the transfer day, transferred to Western NSW Local Health District.

16 Transfer of research funding to Western NSW Local Health District

All unexpended funding received by the affiliated health organisation under a research funding agreement in relation to research to be conducted at or from either or both of the recognised establishments and recognised services is transferred to Western NSW Local Health District on the transfer day.

17 Transfer of cash from fundraising activities, donations and bequests to Western NSW Local Health District

All cash held by the affiliated health organisation from fundraising activities, donations and bequests that relate to either or both of the recognised establishments and recognised services is transferred to Western NSW Local Health District on the transfer day.

18 Exclusions from transfer

- (1) No interests in real property are transferred to Western NSW Local Health District.
- (2) Except as referred to in clause 7(1)(b), no liabilities relating to either or both of the recognised establishments and recognised services incurred in, or that relate to, the period before the transfer day are transferred to Western NSW Local Health District.
- (3) All receivables and payables of the affiliated health organisation that relate exclusively to either or both of the recognised establishments and recognised services for goods or services ordered, delivered or performed prior to the transfer day are not transferred to Western NSW Local Health District.