



New South Wales

# Health Services Amendment Bill 2004

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Health Services Act 1997* for the following purposes:

- (a) to provide that area health services are to be governed by their chief executives, and consequentially to abolish the existing area health boards,
- (b) to provide for the establishment of area health advisory councils to give advice with respect to certain matters affecting the operations of area health services,
- (c) to provide that statutory health corporations may be governed by their chief executives as an alternative to their being governed by health corporation boards, and to enable the Governor, by order published in the Gazette, to change a statutory health corporation's governance from one form to another,
- (d) to provide for the establishment of advisory councils to give advice with respect to matters affecting the operations of statutory health corporations that are governed by their chief executives,

- (e) to provide for the establishment of a Health Executive Service, similar to the Senior Executive Service under the *Public Sector Employment and Management Act 2002*, in which health executives of the NSW Health Service are to be employed,
- (f) to enact savings and transitional provisions consequent on the other amendments made by the Bill,
- (g) to make other minor, consequential and ancillary amendments.

The Bill also makes consequential amendments to the *Public Sector Employment and Management Act 2002*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Health Services Act 1997* set out in Schedules 1 and 2.

**Clause 4** is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 3.

## Schedule 1 Principal amendments to Health Services Act 1997

### Control of area health services and establishment of area health advisory councils

Under Part 2 of Chapter 3 of the Act, area health services are currently controlled by area health boards and managed by their chief executives. **Schedule 1 [2]** substitutes Part 2. The proposed Part 2, which no longer provides for area health boards, contains the following provisions:

**Proposed section 23** provides for the appointment of a chief executive for each area health service. The chief executive will not be subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*, but will be an executive officer within the proposed Health Executive Service.

**Proposed section 24** provides that the affairs of an area health service are to be managed and controlled by the chief executive, and that anything done by the chief executive in the name of, or on behalf of, the service is taken to have been done by the service.

**Proposed section 25** provides that the chief executive of an area health service may exercise additional functions but is, in the exercise of his or her functions, subject to the control and direction of the Director-General of the Department of Health.

**Proposed section 26** provides for the establishment of an area health advisory council for each area health service, comprising between 9 and 13 members, roughly equal numbers of whom are to be health professionals or community representatives, and at least one of whom is to have expertise, knowledge or experience in relation to Aboriginal health. Each member will have a term of office of up to 4 years, but with a prohibition on any member holding office for more than 8 years. One of the members will be appointed as chairperson of the council. Other provisions with respect to the constitution and procedure of an advisory council are to be prescribed by the regulations.

**Proposed section 27** provides that the role of an area health advisory council is to facilitate the involvement of providers and consumers of health services, and of other members of the local community, in the development of the area health service's policies, plans and initiatives for the provision of health services.

**Proposed section 28** provides that an area health advisory council is to have advisory, consultative and liaison roles, with an obligation to publish reports as to its work and activities.

**Proposed section 29** provides that the Minister may establish a charter for area health advisory councils, with the requirements of which such a council must comply. Such a charter may include a code of conduct to be observed by members of an area health advisory council.

**Proposed section 29A** enables the chief executive to establish such committees and councils as he or she considers appropriate to assist the area health service in the exercise of its functions.

The existing area health boards are to be abolished as a transitional matter (**Schedule 1 [30]**), and consequential amendments are to be made to sections 31, 32, 37, 39 and 40 of the Act. (**Schedule 1 [3]–[9]**).

### **Control of statutory health corporations and establishment of advisory councils**

Under Part 2 of Chapter 4 of the Act, statutory health corporations are currently controlled by health corporation boards and managed by their chief executives. **Schedule 1 [16]** adds a new Division 2 to Part 2. The proposed Division, which provides for the establishment of chief executive governed health corporations as an alternative to the existing board governed health corporations, contains the following provisions:

**Proposed section 52A** provides for the appointment of a chief executive for each chief executive governed health corporation. The chief executive will not be subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*, but will either be an executive officer within the proposed Health Executive Service or else have his or her conditions of employment determined in accordance with section 115.

**Proposed section 52B** provides that the affairs of a chief executive governed health corporation are to be managed and controlled by the chief executive, and that anything done by the chief executive in the name of, or on behalf of, the corporation is taken to have been done by the corporation.

**Proposed section 52C** provides that the chief executive of a chief executive governed health corporation may exercise additional functions but is, in the exercise of his or her functions, subject to the control and direction of the Director-General of the Department of Health.

**Proposed section 52D** provides for the establishment of an advisory council for each chief executive governed health corporation.

**Proposed section 52E** enables the chief executive to establish such committees and councils as he or she considers appropriate to assist the health corporation in the exercise of its functions.

Schedule 2 to the Act, which lists the statutory health corporations, is to be substituted with a new Schedule that not only lists the corporations but also indicates whether they are chief executive governed or board governed (**Schedule 1 [28]**). Under the proposed Schedule, which can be amended under section 42 of the Act, The Royal Alexandra Hospital for Children is proposed to be chief executive governed.

Consequential amendments are made to sections 41 and 42 of the Act (**Schedule 1 [10]–[12]**) to facilitate the future change of statutory health corporations from board governed to chief executive governed and vice versa.

Consequential amendments to sections 51 and 52 of the Act are also made with respect to the appointment and removal from office of chief executives for statutory health corporations that are to be board governed (**Schedule 1 [13]–[15]**).

Further amendments to sections 53, 58, 60 and 61 of the Act provide that the powers conferred on the Minister by those sections will in future be exercised by the Minister (in relation to board governed health corporations) and by the Director-General (in relation to chief executive governed health corporations) (**Schedule 1 [17]–[26]**).

### **Establishment of Health Executive Service**

Chapter 9 of the Act deals with the NSW Health Service, which comprises persons employed by area health services, statutory health corporations and affiliated health organisations. **Schedule 1 [27]** adds a new Part 3 to Chapter 9. The proposed Part contains the following provisions:

**Proposed section 121A** defines various expressions for the purposes of the proposed Part.

**Proposed section 121B** provides that the Health Executive Service is to comprise the chief executives of the area health services and persons holding such offices in the NSW Health Service or the Health Administration Corporation as are designated as executive positions by the Health Administration Corporation (referred to collectively as *health executives*).

**Proposed section 121C** enables the Health Administration Corporation to make appointments (including acting appointments) to executive positions.

**Proposed section 121D** limits the term of a health executive's appointment to 5 years, but allows re-appointment.

**Proposed section 121E** provides for the employment of a health executive to be governed by a contract of employment between the health executive and the Health Administration Corporation.

**Proposed section 121F** requires a health executive's contract of employment to deal with the health executive's duties, monetary remuneration and employment benefits.

**Proposed section 121G** requires a health executive's performance to be subject to review, at least annually, by a person nominated by the Health Administration Corporation.

**Proposed section 121H** excludes matters relating to a health executive's employment from review under the *Industrial Relations Act 1996* and from review by the Government and Related Employees Appeal Tribunal or by any court.

**Proposed section 121I** defines certain expressions for the purposes of proposed sections 121J, 121K and 121L.

**Proposed section 121J** provides for remuneration packages to be determined by the Health Administration Corporation, for amounts not less than the minimum amounts determinable by the Statutory and Other Offices Remuneration Tribunal for public servants in the Senior Executive Service under the *Public Sector Employment and Management Act 2002*.

**Proposed section 121K** entitles a health executive to monetary remuneration and employment benefits in accordance with his or her contract of employment, the sum of each to total the health executive's remuneration package. The section also provides for how the cost of an employment benefit is to be calculated.

**Proposed section 121L** entitles a health executive to such allowances as the Health Administration Corporation may determine in relation to the executive.

**Proposed section 121M** specifies the circumstances in which the position of a health executive becomes vacant.

**Proposed section 121N** authorises the Health Administration Corporation to remove a health executive from an executive position at any time and for any or no reason and without notice, and sets out the consequences of any such removal in relation to a former health executive's future employment in the Health Administration Corporation.

**Proposed section 121O** entitles a person who ceases to be a health executive (otherwise than for misbehaviour) to compensation to be determined by the Statutory and Other Offices Remuneration Tribunal. Such compensation will not exceed 38 weeks' worth of the person's former remuneration package. During the period to which compensation relates, the person will not be able to be employed in the public sector.

**Proposed section 121P** deals with a health executive's entitlements with respect to leave that the executive had accrued while formerly employed in the public sector.

**Proposed section 121Q** provides that an executive position is taken to be abolished when it ceases to be an executive position, but entitles the former holder of the position to the same rights as to compensation as if he or she had been removed from office.

**Proposed section 121R** provides that an executive position does not cease to be an executive position merely because its name is changed.

**Proposed section 121S** prohibits a health executive from undertaking paid work outside the duties of his or her executive position without the consent of the Health Administration Corporation.

**Proposed section 121T** provides that the proposed Part is to prevail over any inconsistent provisions of any other Act or law or of the terms of any person's appointment or contract.

An amendment is made to section 16 of the Act (**Schedule 1 [1]**) so as to provide that health executives, who will be employed by the Health Administration Corporation, will remain part of the NSW Health Service.

### **Savings and transitional provisions**

Schedule 7 to the Act contains savings and transitional provisions. **Schedule 1 [30]** inserts a new Part at the end of Schedule 7 with respect to matters consequent on the enactment of the proposed Act. The proposed Part abolishes the existing area health boards, abolishes the health corporation board for The Royal Alexandra Hospital for Children (which is to become a chief executive governed health corporation) and provides that the current chief executive officers of the existing area health services, and current appointees to those offices, are to become the chief executives of those services in the proposed Health Executive Service. **Schedule 1 [29]** allows further provision of a savings or transitional nature to be made by regulations.

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

**Schedule 2** contains a number of amendments to the Act that are consequential on the amendments made by Schedule 1.

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

**Schedule 3 [1]** amends the definition of *public authority* in section 63 of the Act so as to make it clear that persons in the NSW Health Service are not eligible to become executive officers under Part 3.1.

**Schedule 3 [2]** amends section 77 (6) of the Act to reflect the fact that persons in the NSW Health Service will no longer be executive officers under Part 3.1.

Health Services Amendment Bill 2004

Explanatory note

---

**Schedule 3 [3]** amends Part 3 of Schedule 2 to the Act so as to omit a reference to the chief executive officer of an area health board. Pursuant to the proposed amendments to the *Health Services Act 1997* (**Schedule 1 [27]**), holders of that office are to become executive officers in the proposed Health Executive Service.

Health Services Amendment Bill 2004

Explanatory note

---

---

Explanatory note page 8





New South Wales

# Health Services Amendment Bill 2004

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Health Services Act 1997 No 154	2
4 Amendment of Public Sector Employment and Management Act 2002 No 43	2
Schedule 1 Principal amendments to Health Services Act 1997	3
Schedule 2 Consequential amendments to Health Services Act 1997	27
Schedule 3 Amendments to Public Sector Employment and Management Act 2002	33

Health Services Amendment Bill 2004

Contents

---

Page

---

Contents page 2



New South Wales

# Health Services Amendment Bill 2004

No. , 2004

---

## **A Bill for**

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

---

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Services Amendment Act 2004</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Health Services Act 1997 No 154</b>	6
The <i>Health Services Act 1997</i> is amended as set out in Schedules 1 and 2.	7 8
<b>4 Amendment of Public Sector Employment and Management Act 2002 No 43</b>	9 10
The <i>Public Sector Employment and Management Act 2002</i> is amended as set out in Schedule 3.	11 12

---

<b>Schedule 1</b>	<b>Principal amendments to Health Services Act 1997</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 16 Who constitutes the NSW Health Service?</b>	4
	Insert before section 16 (a):	5
	(a1) all persons employed under Part 3 of Chapter 9 by the Health Administration Corporation, and	6 7
<b>[2]</b>	<b>Chapter 3, Part 2</b>	8
	Omit the Part. Insert instead:	9
	<b>Part 2 Control and management of area health services</b>	10 11
	<b>Division 1 The chief executive</b>	12
	<b>23 Appointment of chief executive</b>	13
	(1) A chief executive is to be appointed for each area health service.	14
	(2) The chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.	15 16
	(3) Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the chief executive.	17 18
	<b>Note.</b> Under Part 3 of Chapter 9, the chief executive is appointed by the Health Administration Corporation as a member of the Health Executive Service.	19 20 21
	<b>24 Chief executive to manage and control affairs of area health service</b>	22 23
	(1) The affairs of an area health service are to be managed and controlled by the chief executive of the service.	24 25
	(2) Any act, matter or thing done in the name of, or on behalf of, an area health service by its chief executive is taken to have been done by the service.	26 27 28
	<b>25 Functions of chief executive generally</b>	29
	The chief executive of an area health service:	30
	(a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and	31 32 33

---

- (b) is, in the exercise of his or her functions, subject to the control and direction of the Director-General. 1  
2

**Division 2 Area health advisory councils 3**

**26 Constitution of area health advisory councils 4**

- (1) An area health advisory council is to be established for each area health service. 5  
6
- (2) An area health advisory council is to consist of between 9 and 13 members, appointed by the Minister, of whom: 7  
8
- (a) some must be persons having experience in the provision of health services, and 9  
10
- (b) the others must be persons who can represent the interests of consumers of health services and the local community, and 11  
12  
13
- (c) at least one (who may be one of the members referred to in paragraph (a) or (b)) must be a person who has expertise, knowledge or experience in relation to Aboriginal health. 14  
15  
16
- (3) The membership of an area health advisory council must maintain a reasonable balance between persons of the kind referred to in subsection (2) (a) and persons of the kind referred to in subsection (2) (b), so that at all times the persons of one kind do not outnumber persons of the other kind by more than 2. 17  
18  
19  
20  
21
- (4) A member of an area health advisory council holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment. 22  
23  
24
- (5) A member whose term of office expires is eligible (if otherwise qualified) for re-appointment, but may not be appointed so as to hold office for more than 8 years in total. 25  
26  
27
- (6) One of the members of an area health advisory council is, by the relevant instrument of appointment or by a further instrument signed by the Minister, to be appointed as the chairperson of the council. 28  
29  
30  
31
- (7) A member of an area health advisory council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member. 32  
33  
34  
35
- (8) Subject to this section, the constitution and procedure of an area health advisory council are to be as prescribed by the regulations. 36  
37

---

<b>27</b>	<b>Role of area health advisory councils</b>	1
	The role of an area health advisory council is to facilitate the involvement of providers and consumers of health services, and of other members of the local community, in the development of the area health service's policies, plans and initiatives for the provision of health services.	2 3 4 5 6
<b>28</b>	<b>Functions of area health advisory councils</b>	7
	The area health advisory council for an area health service has the following functions:	8 9
	(a) to advise providers and consumers of health services, and other members of the local community, as to the area health service's policies, plans and initiatives for the provision of health services,	10 11 12 13
	(b) to seek the views of providers and consumers of health services, and of other members of the local community, as to the area health service's policies, plans and initiatives for the provision of health services, and to advise the chief executive of the area health service of those views,	14 15 16 17 18
	(c) to confer with the chief executive of the area health service in connection with the operational performance targets set by any performance agreement to which the area health service is a party under section 126,	19 20 21 22
	(d) to advise the chief executive on how best to support, encourage and facilitate community, consumer and health service provider involvement in the planning of health services by the area health service,	23 24 25 26
	(e) to liaise with other area health advisory councils in relation to both local and State-wide initiatives for the provision of health services,	27 28 29
	(f) to publish reports (annually or more frequently) as to its work and activities,	30 31
	(g) such other functions as are conferred or imposed on it by the regulations.	32 33
<b>29</b>	<b>Charter for area health advisory councils</b>	34
	(1) The Minister may, by order in writing, establish a charter for area health advisory councils.	35 36
	(2) The text of a charter established under this section must be published on the internet website of the Department of Health and on the internet websites of each of the area health services.	37 38 39

---

- (3) In exercising its functions, an area health advisory council must comply with the requirements of the charter. 1  
2
- (4) A charter established under this section may include a code of conduct to be observed by members of area health advisory councils. 3  
4  
5

**Division 3 Other committees and councils** 6

**29A Other committees and councils** 7

The chief executive may establish such committees and councils as he or she considers appropriate to assist the area health service in the exercise of its functions. 8  
9  
10

**[3] Section 31 Opening and closing of hospitals, health institutions, health services or health support services** 11  
12

Omit “, subject to any direction of the Minister under section 25,” from section 31 (1) and (2) wherever occurring. 13  
14

Insert instead “, subject to any direction under this Act,”. 15

**[4] Section 31 (4)** 16

Omit the subsection. 17

**[5] Section 32** 18

Omit the section. Insert instead: 19

**32 Determination of role, functions and activities of area health services** 20  
21

- (1) The Director-General may, from time to time, determine the role, functions and activities of any public hospital, health institution, health service or health support service under the control of an area health service and, for that purpose, give any necessary directions to the chief executive of the area health service. 22  
23  
24  
25  
26
- (2) The Minister may direct an area health service to do any of the following if the Minister is satisfied that it is in the public interest to do so: 27  
28  
29
  - (a) establish any hospital, health institution, health service or health support service, 30  
31
  - (b) close any public hospital or health institution, or cease to provide any health service or health support service, under its control, 32  
33  
34



---

(c) restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control.	1 2 3
<b>[6] Section 37 Contracts of area health service</b>	4
Omit “Minister” from section 37 (2). Insert instead “Director-General”.	5
<b>[7] Section 39 Area health service may make by-laws</b>	6
Omit “Minister” wherever occurring. Insert instead “Director-General”.	7
<b>[8] Section 39 (1) (f) and (g)</b>	8
Omit section 39 (1) (f), (g) and (h). Insert instead:	9
(f) the keeping of records concerning its acts and decisions,	10
(g) the appointment and functions of its councils and committees.	11 12
<b>[9] Section 40 Delegations by area health service</b>	13
Omit “Minister” from section 40 (2) wherever occurring.	14
Insert instead “Director-General”.	15
<b>[10] Section 41 Constitution of statutory health corporations</b>	16
Insert after section 41 (2):	17
(3) A statutory health corporation is to be either a chief executive governed health corporation or a board governed health corporation, as specified from time to time in Schedule 2.	18 19 20
<b>[11] Section 42 Amendment of Schedule 2 (Statutory health corporations)</b>	21
Insert “, or by changing its governance from chief executive governance to board governance or from board governance to chief executive governance” after “corporation” in section 42 (a).	22 23 24
<b>[12] Section 42 (b)</b>	25
Insert “and the nature of their governance” after “corporations”.	26
<b>[13] Section 51</b>	27
Omit the section. Insert instead:	28
<b>51 Appointment of chief executive</b>	29
(1) The Minister may appoint a chief executive for each board governed health corporation.	30 31

---

Health Services Amendment Bill 2004

Schedule 1 Principal amendments to Health Services Act 1997

---

(2)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the chief executive.	1 2
(3)	If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment of a chief executive is not subject to section 121C (1), but the chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.	3 4 5 6 7
(4)	If the position of chief executive is an executive position within the meaning of Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , the chief executive is, for all purposes, taken to be employed (but not under section 54) by the board governed health corporation for which he or she is appointed.	8 9 10 11 12
(5)	If the position of chief executive is neither an executive position within the meaning of Part 3 of Chapter 9 nor an executive position within the meaning of Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> :	13 14 15 16
(a)	the chief executive is taken, while holding that office, to be employed by the board governed health corporation for which he or she is appointed, and	17 18 19
(b)	the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115.	20 21 22
(6)	The affairs of a board governed health corporation are to be managed by the chief executive of the corporation.	23 24
(7)	The chief executive of a board governed health corporation:	25
(a)	has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and	26 27 28
(b)	is, in the exercise of his or her functions, subject to the control and direction of the health corporation board for the corporation.	29 30 31
<b>[14]</b>	<b>Section 52 Removal of members and appointment of administrator</b>	32
	Insert “, for any reason or no reason and without notice” after “at any time” in section 52 (1).	33 34
<b>[15]</b>	<b>Section 52 (6) and (7)</b>	35
	Insert after section 52 (5):	36
(6)	If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9:	37 38

---

(a)	the chief executive may not be removed from office under section 121N, and	1 2
(b)	section 121N applies:	3
(i)	to and in respect of a chief executive who is removed from office under this section, and	4 5
(ii)	to and in respect of the executive position of a chief executive who is so removed,	6 7
	in the same way as it applies to and in respect of a health executive who is removed from office under section 121N and to and in respect of the executive position of a health executive who is so removed.	8 9 10 11
(7)	If the position of chief executive is an executive position within the meaning of Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> :	12 13 14
(a)	the chief executive may not be removed under section 77 of that Act, and	15 16
(b)	section 77 of that Act applies:	17
(i)	to and in respect of a chief executive who is removed from office under this section, and	18 19
(ii)	to and in respect of the executive position of a chief executive who is so removed,	20 21
	in the same way as it applies to and in respect of an executive officer who is removed from office under section 77 of that Act and to and in respect of the executive position of an executive officer who is so removed.	22 23 24 25
<b>[16]</b>	<b>Chapter 4, Part 2, Division 2</b>	26
	Insert after section 52:	27
	<b>Division 2      Chief executive governed health corporations</b>	28 29
	<b>52A      Appointment of chief executive</b>	30
(1)	The Director-General may appoint a chief executive for each chief executive governed health corporation.	31 32
(2)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the chief executive.	33 34

(3)	If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment of a chief executive is not subject to section 121C (1), but the chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.	1 2 3 4 5
(4)	If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:	6 7
(a)	the chief executive is taken, while holding that office, to be employed by the chief executive governed health corporation for which he or she is appointed, and	8 9 10
(b)	the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115, and	11 12 13
(c)	the chief executive may at any time, for any reason or no reason and without notice, be removed from office by the Director-General.	14 15 16
<b>52B</b>	<b>Chief executive to manage and control affairs of chief executive governed health corporation</b>	17 18
(1)	The affairs of a chief executive governed health corporation are to be managed and controlled by the chief executive of the corporation.	19 20 21
(2)	Any act, matter or thing done in the name of, or on behalf of, a chief executive governed health corporation by its chief executive is taken to have been done by the corporation.	22 23 24
<b>52C</b>	<b>Functions of chief executive generally</b>	25
	The chief executive of a chief executive governed health corporation:	26 27
(a)	has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and	28 29 30
(b)	is, in the exercise of his or her functions, subject to the control and direction of the Director-General.	31 32
<b>52D</b>	<b>Advisory councils</b>	33
(1)	The Minister may establish an advisory council for each chief executive governed health corporation.	34 35
(2)	The constitution, procedure and functions of an advisory council are to be as determined by the Minister.	36 37

---

<b>52E Other committees and councils</b>	1
The chief executive may establish such committees and councils as he or she considers appropriate to assist the chief executive governed health corporation in the exercise of its functions.	2 3 4
<b>[17] Section 53 Determination of functions of statutory health corporations</b>	5
Omit section 53 (1). Insert instead:	6
(1) The relevant authority may, from time to time, determine the role, functions and activities of any public hospital, health institution, health service or health support service under the control of a statutory health corporation and, for that purpose, give any necessary directions:	7 8 9 10 11
(a) in the case of a chief executive governed health corporation, to the chief executive of that corporation, or	12 13
(b) in the case of a board governed health corporation, to the health corporation board for that corporation.	14 15
<b>[18] Section 53 (3)</b>	16
Insert after section 53 (2):	17
(3) In this section, <i>relevant authority</i> means:	18
(a) in relation to a board governed health corporation, the Minister, and	19 20
(b) in relation to a chief executive governed health corporation, the Director-General.	21 22
<b>[19] Section 58 Contracts of statutory health corporations</b>	23
Omit “Minister” from section 58 (2). Insert instead “relevant authority”.	24
<b>[20] Section 58 (4)</b>	25
Insert after section 58 (3):	26
(4) In this section, <i>relevant authority</i> means:	27
(a) in relation to a board governed health corporation, the Minister, and	28 29
(b) in relation to a chief executive governed health corporation, the Director-General.	30 31
<b>[21] Section 60 Statutory health corporation may make by-laws</b>	32
Omit “Minister” wherever occurring. Insert instead “relevant authority”.	33

<b>[22] Section 60 (1) (f), (g) and (h)</b>	1
Omit the paragraphs. Insert instead:	2
(f) the keeping of records concerning its acts and decisions,	3
(g) in the case of a board governed health corporation:	4
(i) the keeping of records concerning the acts and decisions of the board, and	5
(ii) the procedure for the calling of meetings of the board and for the conduct of business at those meetings,	6
(h) the appointment and functions of its councils and committees.	7
	8
	9
	10
	11
<b>[23] Section 60 (7)</b>	12
Insert after section 60 (6):	13
(7) In this section, <i>relevant authority</i> means:	14
(a) in relation to a board governed health corporation, the Minister, and	15
(b) in relation to a chief executive governed health corporation, the Director-General.	16
	17
	18
<b>[24] Section 61 Delegations by statutory health corporations</b>	19
Omit “Minister” wherever occurring in section 61 (2).	20
Insert instead “relevant authority”.	21
<b>[25] Section 61 (4) (a)</b>	22
Omit “statutory”. Insert instead “board governed”.	23
<b>[26] Section 61 (5)</b>	24
Insert after section 61 (4):	25
(5) In this section, <i>relevant authority</i> means:	26
(a) in relation to a board governed health corporation, the Minister, and	27
(b) in relation to a chief executive governed health corporation, the Director-General.	28
	29
	30

---

<b>[27] Chapter 9, Part 3</b>	1
Insert after Part 2:	2
<b>Part 3 The Health Executive Service</b>	3
<b>Division 1 Preliminary</b>	4
<b>121A Definitions</b> (cf PSE&M Act s 63)	5
(1) In this Part:	6
<i>contract of employment</i> means a contract of employment under	7
this Part between a health executive and the Health	8
Administration Corporation.	9
<i>executive position</i> means:	10
(a) the position of chief executive of an area health service, or	11
(b) a position the subject of a determination referred to in	12
section 121B (1) (b).	13
<i>health executive</i> means a person holding an executive position.	14
<i>remuneration package</i> means the remuneration package for a	15
health executive determined for the time being by the Health	16
Administration Corporation under section 121J.	17
(2) In this Part, a reference to the remuneration package for a health	18
executive is, if a range of amounts has been determined by the	19
Health Administration Corporation, a reference to:	20
(a) the amount within that range nominated in the executive's	21
contract of employment, or	22
(b) in any other case, the minimum amount within that range.	23
<b>Division 2 Composition of Health Executive Service</b>	24
<b>121B Composition of Health Executive Service</b> (cf PSE&M Act s 65)	25
(1) The Health Executive Service comprises:	26
(a) the chief executives of the area health services, and	27
(b) the persons holding:	28
(i) such positions in the NSW Health Service involving	29
employment in connection with public health	30
organisations, other than positions in an affiliated	31
health organisation, and	32

	(ii) such positions in the Health Administration Corporation,	1 2
	as are for the time being determined by the Health Administration Corporation to be executive positions.	3 4
(2)	A list of the positions determined for the time being under subsection (1) (b) is to be made publicly available on the website of the Department of Health.	5 6 7
<b>Division 3</b>	<b>Appointment and employment of health executives</b>	8 9
<b>121C</b>	<b>Appointment of health executives</b> (cf PSE&M Act ss 17 and 24)	10
(1)	Appointments to vacant executive positions are to be made by the Health Administration Corporation.	11 12
(2)	The Health Administration Corporation may appoint any person employed in the NSW Health Service to act in an executive position while the position is vacant or its holder is suspended, sick or absent.	13 14 15 16
(3)	While acting in an executive position, a person has all the functions of the holder of the position, but does not thereby become a health executive.	17 18 19
(4)	The Health Administration Corporation may, at any time, terminate the appointment of a person to act in an executive position.	20 21 22
(5)	This section does not prevent the payment of an allowance to a person employed in the NSW Health Service for exercising all or any of the functions of an executive position while the position is vacant or its holder is suspended, sick or absent.	23 24 25 26
<b>121D</b>	<b>Term appointments</b> (cf PSE&M Act s 68)	27
(1)	Subject to this Act, a health executive holds office for such period (not exceeding 5 years) as is specified in the executive's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	28 29 30 31
(2)	A health executive may be re-appointed with effect before the expiry of the executive's term of office. In that case, the executive's existing term of office expires.	32 33 34



---

<b>121E</b>	<b>Employment of health executives to be governed by contract of employment</b> (cf PSE&M Act s 69)	1
(1)	The employment of a health executive is to be governed by a contract of employment between the executive and the Health Administration Corporation.	2 3 4
(2)	A contract of employment may be made before or after the appointment of the health executive concerned.	5 6
(3)	A health executive is not appointed by, nor is a health executive's term of office fixed by, the contract of employment.	7 8
(4)	However, a contract of employment may constitute the instrument of appointment if the person authorised to make the appointment is also the person who signs the contract with the health executive concerned.	9 10 11 12
(5)	A contract of employment may be varied at any time by a further contract between the parties.	13 14
(6)	A contract of employment may not vary or exclude a provision of this Act or the regulations.	15 16
<b>121F</b>	<b>Matters regulated by contract of employment</b> (cf PSE&M Act s 70)	17
(1)	The matters to be dealt with in a contract of employment between a health executive and the Health Administration Corporation include the following:	18 19 20
(a)	the duties of the executive's position (including performance criteria for the purpose of reviews of the executive's performance),	21 22 23
(b)	the monetary remuneration and employment benefits for the executive as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package).	24 25 26 27 28
(2)	A contract of employment may provide for any matter to be determined:	29 30
(a)	by further agreement between the parties, or	31
(b)	by further agreement between the health executive concerned and some other person specified in the contract, or	32 33 34
(c)	by the Health Administration Corporation or by some other person or body specified in the contract.	35 36

---

<b>121G</b>	<b>Performance reviews</b> (cf PSE&M Act s 71)	1
(1)	A health executive's performance must be reviewed, at least annually, by such person as may be nominated by the Health Administration Corporation.	2 3 4
(2)	Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.	5 6
<b>121H</b>	<b>Industrial arbitration or legal proceedings excluded</b> (cf PSE&M Act s 72)	7 8
(1)	In this section, a reference to the employment of a health executive is a reference to:	9 10
(a)	the appointment of, or failure to appoint, a person to a vacant executive position, or	11 12
(b)	the removal, retirement, termination of employment or other cessation of office of a health executive, or	13 14
(c)	any disciplinary proceedings or disciplinary action taken against a health executive, or	15 16
(d)	the remuneration or conditions of employment of a health executive.	17 18
(2)	The employment of a health executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the <i>Industrial Relations Act 1996</i> .	19 20 21
(3)	Subsection (2) applies whether or not any person has been appointed to a vacant executive position.	22 23
(4)	Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the <i>Industrial Relations Act 1996</i> do not apply to or in respect of the employment of a health executive.	24 25 26
(5)	Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of health executives.	27 28 29
(6)	Subsection (5) does not prevent the regulations from applying the provisions of an award or industrial agreement to the employment of a health executive.	30 31 32
(7)	An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of a health executive.	33 34 35
(8)	No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to	36 37 38

	appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.	1 2 3
(9)	In this section, <i>industrial agreement</i> includes any determination under section 115.	4 5
<b>Division 4</b>	<b>Remuneration of health executives</b>	6
<b>121I</b>	<b>Definitions</b> (cf PSE&M Act s 73)	7
	In this Division:	8
	<i>approved</i> means approved for the time being, in writing, by the Health Administration Corporation, either generally or in relation to any health executive or class of health executives.	9 10 11
	<i>employment benefit</i> means:	12
	(a) contributions payable to a superannuation scheme by the Health Administration Corporation in respect of a health executive, including any liability of the Corporation to make any such contributions or to pay approved costs associated with that scheme, or	13 14 15 16 17
	(b) the provision by the Health Administration Corporation of a motor vehicle for private use by a health executive, or	18 19
	(c) any other approved benefit provided to a health executive at the cost of the Health Administration Corporation (being a benefit of a private nature).	20 21 22
	<i>monetary remuneration</i> includes allowances paid in money, but does not include:	23 24
	(a) travelling or subsistence allowances, or	25
	(b) allowances in relation to relocation expenses, or	26
	(c) any other allowances in relation to expenses incurred in the discharge of a health executive's duties.	27 28
	<i>superannuation scheme</i> means a superannuation scheme established by or under an Act or approved for the purposes of this definition.	29 30 31
<b>121J</b>	<b>Determination of remuneration packages</b>	32
(1)	The Health Administration Corporation may from time to time determine the remuneration packages for health executives.	33 34
(2)	The amount of the remuneration package for a health executive is to be no less than the minimum amount that may be determined by the Statutory and Other Offices Remuneration Tribunal under Part 3A of the <i>Statutory and Other Offices Remuneration Act</i>	35 36 37 38

---

1975 with respect to the remuneration package for an executive officer within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*. 1  
2  
3

**121K Monetary remuneration and employment benefits for health executives** (cf PSE&M Act s 74) 4

(1) Health executives are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contract of employment. 5  
6  
7

(2) Contributions payable to a superannuation scheme by the Health Administration Corporation in respect of a health executive that are required to be made by the Corporation under a law of the State relating to superannuation are, until provided for by the executive's contract of employment, taken to be an employment benefit provided in the contract. 8  
9  
10  
11  
12  
13

(3) The total amount of: 14  
(a) the annual rate of monetary remuneration for a health executive, and 15  
16  
(b) the annual cost of employment benefits provided for a health executive under the relevant contract of employment, 17  
18  
19  
is to be equal to the amount of the remuneration package for the executive. 20  
21

(4) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner. 22  
23

(5) This section does not affect: 24  
(a) any approved performance-related incentive payments made to a health executive, or 25  
26  
(b) any remuneration or benefits to which a health executive is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like). 27  
28  
29

(6) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading. 30  
31  
32

(7) A health executive is entitled to be paid an amount equivalent to the approved cost of a part of any entitlement to take annual or extended leave with pay if the executive forgoes (with the approval of the Health Administration Corporation) the right to take that part of that leave. This subsection has effect despite anything to the contrary in the *Annual Holidays Act 1944* or any other Act. 33  
34  
35  
36  
37  
38  
39

(8)	During any period when the monetary remuneration and employment benefits for a health executive cannot be determined under subsection (1), the executive is entitled to monetary remuneration at the rate of the amount of the remuneration package for the executive, subject to any subsequent adjustment of payments in accordance with the executive's contract of employment.	1 2 3 4 5 6 7
(9)	If the remuneration package for a health executive is varied, the executive is entitled to monetary remuneration and employment benefits in accordance with the executive's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.	8 9 10 11 12 13
<b>121L</b>	<b>Travelling and subsistence allowances etc</b> (cf PSE&M Act s 75)	14
(1)	A health executive is entitled to be paid:	15
(a)	such travelling and subsistence allowances, and	16
(b)	such allowances in relation to relocation expenses, and	17
(c)	such other allowances in relation to expenses incurred in the discharge of the executive's duties,	18 19
	as the Health Administration Corporation may from time to time determine in respect of the executive.	20 21
(2)	A health executive's contract of employment:	22
(a)	may provide for the payment to the executive of allowances of the kind referred to in this section, and	23 24
(b)	may regulate the payment of allowances to the executive under this section.	25 26
<b>Division 5</b>	<b>Removal, retirement etc of health executives</b>	27
<b>121M</b>	<b>Vacation of executive positions</b> (cf PSE&M Act s 76)	28
(1)	The position of a health executive becomes vacant if the executive:	29 30
(a)	dies, or	31
(b)	completes a term of office and is not re-appointed, or	32
(c)	is removed from office, or retires or is retired from office, under this or any other Act, or	33 34
(d)	resigns his or her position in writing addressed to the Health Administration Corporation and the Corporation accepts the resignation.	35 36 37

---

(2)	This section does not affect any other provision by or under which a health executive vacates his or her position.	1 2
<b>121N</b>	<b>Removal of health executives from office</b> (cf PSE&M Act s 77)	3
(1)	The Health Administration Corporation may remove a health executive from an executive position at any time for any or no reason and without notice.	4 5 6
(2)	The Health Administration Corporation:	7
(a)	may declare a health executive who is removed from an executive position by the Corporation under subsection (1) to be an unattached officer, and	8 9 10
(b)	may revoke any such declaration.	11
(3)	While a declaration under subsection (2) remains in force, the person to whom the declaration relates:	12 13
(a)	is to be regarded as a health executive, although not holding an executive position, and	14 15
(b)	is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.	16 17 18
(4)	If:	19
(a)	a health executive is removed from an executive position under subsection (1) and a declaration is not made in relation to the executive under subsection (2), or	20 21 22
(b)	a declaration under subsection (2) made in relation to a health executive is revoked,	23 24
	the executive ceases to be a health executive, unless appointed to some other executive position.	25 26
(5)	A person who ceases to be a health executive because of subsection (4) ceases to be a member of staff of the Health Administration Corporation unless appointed to some other position on the staff of the Corporation.	27 28 29 30
(6)	The making of a declaration under subsection (2) in relation to a health executive does not prevent the executive from ceasing to be a health executive because of the completion of the executive's term of office.	31 32 33 34
(7)	Clause 11 of Schedule 4 to the <i>Public Sector Employment and Management Act 2002</i> applies to and in respect of a person:	35 36
(a)	who ceases to be a health executive pursuant to this section, and	37 38

- 
- (b) who, immediately before he or she became a health executive, was an executive officer to whom that clause applied, 1  
2  
3  
as it would have applied to the person had he or she ceased to be an executive officer, as referred to in clause 11 (7) of that Schedule, when he or she ceased to be a health executive. 4  
5  
6
- 1210 Compensation etc where health executive is removed from office** 7  
(cf PSE&M Act s 78) 7
- (1) This section applies to the following persons: 8
- (a) a health executive who is removed from office under section 121N (1) and ceases to be a health executive because of section 121N (4), 9  
10  
11
- (b) a health executive who is otherwise removed from office (except for misbehaviour after due inquiry), 12  
13
- (c) a health executive who was employed in the NSW Health Service when first appointed as a health executive, whose term of office as a health executive expires and who is not re-appointed. 14  
15  
16  
17
- However, this section does not apply to or in respect of a health executive who consents to a transfer at a lower level of remuneration. 18  
19  
20
- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines. 21  
22  
23
- (3) The Statutory and Other Offices Remuneration Tribunal: 24
- (a) may determine that compensation is payable for the failure to re-appoint a health executive only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and 25  
26  
27  
28
- (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be taken into consideration when it makes determinations under this section. 29  
30  
31  
32
- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks. 33  
34
- (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office). 35  
36  
37  
38  
39
-

- 
- (6) A health executive who is removed from office or not re-appointed is not entitled to compensation under this section if: 1  
2
- (a) the person is appointed on that removal or expiry of term of office: 3  
4
- (i) to another executive position within the meaning of this Part, or 5  
6
- (ii) to an executive position within the meaning of the *Public Sector Employment and Management Act 2002*, and 7  
8  
9
- (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position. 10  
11  
12
- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates. 13  
14  
15  
16
- (8) During the period so specified, the person: 17
- (a) may not be employed in a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*, and 18  
19  
20
- (b) may not be employed in the service of a State owned corporation or a subsidiary of a State owned corporation, and 21  
22  
23
- (c) may not be appointed to any statutory office, 24  
unless arrangements are made for a refund of the proportionate amount of the compensation. 25  
26

**Division 6 General** 27

**121P Incumbent officers' accrued leave** (cf PSE&M Act s 80) 28

- (1) A person who: 29
- (a) was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position, and 30  
31  
32
- (b) had a right to accrued extended or annual leave with pay immediately before that appointment, and 33  
34
- (c) has not taken that leave before taking up duties in the executive position, 35  
36



	is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.	1 2 3
(2)	An election under this section is to be made within the time and in the manner determined by the Health Administration Corporation.	4 5 6
(3)	The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.	7 8 9
(4)	A person who was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).	10 11 12 13 14 15
(5)	In this section, a reference to employment in the public sector is a reference to:	16 17
	(a) employment in the NSW Health Service, the Public Service or the Teaching Service, or	18 19
	(b) employment as a member of NSW Police, or	20
	(c) employment as an officer in the service of a public authority within the meaning of Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , or	21 22 23
	(d) appointment to a statutory office.	24
<b>121Q</b>	<b>Effect on incumbent when position ceases to be executive position</b> (cf PSE&M Act s 81)	25
(1)	If a position ceases to be designated as an executive position by a determination under section 121B (1) (b):	26 27
	(a) the position is abolished, and	28
	(b) any person holding the position ceases to be a member of staff of the Health Administration Corporation unless appointed to some other position on the staff of the Corporation or declared to be an authorised officer under section 121N (2).	29 30 31 32 33
(2)	A person referred to in subsection (1) (b) has the same rights and obligations as if the person had ceased to be a health executive because of section 121N (4).	34 35 36

(3)	A determination under section 121B (1) (b) that omits or adds an executive position may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.	1 2 3 4 5
<b>121R</b>	<b>Change in title of positions</b> (cf PSE&M Act s 82)  A position referred to in a determination under section 121B (1) (b) does not cease to be an executive position merely because of a change in the title of the position.	6  7 8 9
<b>121S</b>	<b>Approval to undertake other paid work</b> (cf PSE&M Act s 83)  A health executive is not to undertake any paid work outside the duties of the executive position without the consent of the Health Administration Corporation.	10  11 12 13
<b>121T</b>	<b>Operation of Part</b> (cf PSE&M Act s 84)  This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.	14  15 16 17
<b>[28] Schedule 2</b>	Omit the Schedule. Insert instead:	18 19
	<b>Schedule 2 Statutory health corporations</b>	20
	(Section 41)	21

Column 1	Column 2
Name of statutory health corporation	Nature of governance
Clinical Excellence Commission	Board
HealthQuest	Board
Justice Health	Board
The Royal Alexandra Hospital for Children	Chief executive
The Stewart House Preventorium, Curl Curl	Board

<b>[29] Schedule 7 Savings and transitional provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Health Services Amendment Act 2004</i> (but only to the extent that it amends this Act)	3 4
<b>[30] Schedule 7</b>	5
Insert at the end of the Schedule, with appropriate Part and clause numbers:	6
<b>Part Provisions consequent on the enactment of the Health Services Amendment Act 2004</b>	7 8 9
<b>Definition</b>	10
In this Part, <i>the 2004 amending Act</i> means the <i>Health Services Amendment Act 2004</i> .	11 12
<b>Abolition of area health boards</b>	13
(1) Each area health board constituted under section 23, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, is abolished.	14 15 16
(2) The members of each area health board cease to hold office on the commencement of Schedule 1 [2] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.	17 18 19 20
(3) The chief executive officer of an area health service is not removed from office just because he or she ceases to be a member of the area health board for the service.	21 22 23
<b>Abolition of health corporation board for The Royal Alexandra Hospital for Children</b>	24 25
(1) The health corporation board for The Royal Alexandra Hospital for Children, as existing immediately before the commencement of Schedule 1 [28] to the 2004 amending Act, is abolished.	26 27 28
(2) The members of the health corporation board for The Royal Alexandra Hospital for Children cease to hold office on the commencement of Schedule 1 [28] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.	29 30 31 32 33

<b>Appointment of first health executives</b>	1
(1) This clause applies to the following positions:	2
(a) the position of chief executive of an area health service,	3
(b) a position that, as at the commencement of this clause, is the subject of a determination in force under section 121B (1) (b).	4 5 6
(2) On the commencement of Schedule 1 [27] to the 2004 amending Act, a person who, immediately before that commencement, held a position to which this clause applies, or was an appointee to such a position, is taken to have been appointed to the position under section 121C (1).	7 8 9 10 11
(3) Until further provision is made under Part 3 of Chapter 9, the person's conditions of employment (including remuneration) are, subject to that Part, to be the same as those that applied to the person immediately before the commencement of Schedule 1 [27] to the 2004 amending Act.	12 13 14 15 16
(4) An appointment by the Governor under section 28, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, has the same effect as if it were an appointment by the Health Administration Corporation under section 121C, as inserted by that Act.	17 18 19 20 21
<b>Existing executive officers</b>	22
Any person within the NSW Health Service who, immediately before the commencement of Schedule 1 [27] to the 2004 amending Act, was an executive officer under Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , is taken, on that commencement, to be a health executive under Part 3 of Chapter 9 of this Act.	23 24 25 26 27 28
<b>Unattached officers</b>	29
Any person who, immediately before the commencement of section 121N, was an unattached officer under section 77 of the <i>Public Sector Employment and Management Act 2002</i> , being a person who was then:	30 31 32 33
(a) an employee in the NSW Health Service, or	34
(b) an employee of an area health service, having been the chief executive officer of the service immediately before he or she became an unattached officer,	35 36 37
is taken, on that commencement, to be an unattached officer under section 121N.	38 39

<b>Schedule 2</b>	<b>Consequential amendments to Health Services Act 1997</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>The whole Act (except to the extent to which its provisions are otherwise amended or repealed by this Act and except Schedule 7)</b>	4
	Omit “chief executive officer” and “chief executive officers” wherever occurring.	5
	Insert instead “chief executive” and “chief executives”, respectively.	6
		7
<b>[2]</b>	<b>Section 5 Notes</b>	8
	Insert at the end of the note to the section:	9
		10
	• PSE&M Act: <i>Public Sector Employment and Management Act 2002</i>	11
		12
<b>[3]</b>	<b>Section 16 Who constitutes the NSW Health Service?</b>	13
	Omit “ <i>Public Sector Management Act 1988</i> ” from the note to the section.	14
	Insert instead “ <i>Public Sector Employment and Management Act 2002</i> ”.	15
<b>[4]</b>	<b>Chapter 3, Introductory note</b>	16
	Omit “constitutes area health boards for each area health service and”.	17
<b>[5]</b>	<b>Chapter 3, Introductory note</b>	18
	Insert “and control” after “manage”.	19
<b>[6]</b>	<b>Section 33 Staff of area health services</b>	20
	Omit section 33 (2) (including the note). Insert instead:	21
	(2) Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of persons employed under this section.	22
		23
		24
<b>[7]</b>	<b>Section 40 Delegations by area health service</b>	25
	Omit section 40 (4) (a).	26
<b>[8]</b>	<b>Chapter 4, Introductory note</b>	27
	Omit “each statutory health corporation”.	28
	Insert instead “those statutory health corporations that Schedule 2 indicates are to be board governed”.	29
		30

---

<b>[9] Chapter 4, Introductory note</b>	1
Insert at the end of the first paragraph “Statutory health corporations are governed either by a health corporation board or else by a chief executive who, in either case, is responsible for the management of its affairs.”.	2 3 4
<b>[10] Section 43 Dissolution, transfer, amalgamation or change of name or nature of governance of statutory health corporations</b>	5 6
Insert “or nature of governance” after “name” in section 43 (1) (d).	7
<b>[11] Section 43 (4)</b>	8
Insert “or nature of governance” after “name”.	9
<b>[12] Chapter 4, Part 2, Division 1, heading</b>	10
Insert before section 46:	11
<b>Division 1 Board governed health corporations</b>	12
<b>[13] Sections 46, 47, 49 and 52</b>	13
Omit “statutory” wherever occurring. Insert instead “board governed”.	14
<b>[14] Section 52 Removal of members and appointment of administrator</b>	15
Insert “(other than the chief executive)” after “board” in section 52 (1) (c).	16
<b>[15] Section 54 Staff of statutory health corporations</b>	17
Omit section 54 (2) (including the note). Insert instead:	18
(2) Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of persons employed under this section.	19 20 21
<b>[16] Section 115 Determination of conditions of employment of staff</b>	22
Omit “Part 2A of the <i>Public Sector Management Act 1988</i> ” from section 115 (9).	23 24
Insert instead “Part 3 of Chapter 9 of this Act or Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> ”.	25 26
<b>[17] Section 115 (9) (a)</b>	27
Omit the paragraph.	28

---

<b>[18] Section 115 (9) (b) and (c)</b>	1
Omit “to that Part” wherever occurring.	2
Insert instead “to either of those Parts”.	3
<b>[19] Schedule 4, heading</b>	4
Insert “or nature of governance” after “name”.	5
<b>[20] Schedule 4, clause 2 (b)</b>	6
Insert “or nature of governance” after “name”.	7
<b>[21] Schedule 4, clause 3 (1) (b)</b>	8
Omit the paragraph.	9
<b>[22] Schedule 4, clause 3 (2) (b)</b>	10
Omit the paragraph.	11
<b>[23] Schedule 4, clause 3 (4)</b>	12
Omit “Part 2A of the <i>Public Sector Management Act 1988</i> ”.	13
Insert instead “Part 3 of Chapter 9”.	14
<b>[24] Schedule 4, clause 4 (1) (b)</b>	15
Omit the paragraph. Insert instead:	16
(b) in the case of a board governed health corporation, the	17
members of the board cease to hold office, but are not	18
entitled to be paid any compensation by reason of ceasing	19
to hold office, and	20
<b>[25] Schedule 4, clause 4 (2) (b)</b>	21
Omit the paragraph. Insert instead:	22
(b) in the case of a board governed health corporation, the	23
members of the board cease to hold office, but are not	24
entitled to be paid any compensation by reason of ceasing	25
to hold office, and	26
<b>[26] Schedule 4, clause 4 (3) (b)</b>	27
Omit the paragraph. Insert instead:	28
(b) the members of any board governed health corporation	29
involved in the amalgamation cease to hold office, and:	30
(i) if the amalgamated corporation is a board governed	31
health corporation, are eligible (if otherwise	32

Health Services Amendment Bill 2004

Schedule 2 Consequential amendments to Health Services Act 1997

---

	qualified) to be appointed as members of the board of the amalgamated corporation, and	1
	(ii) are not entitled to be paid any compensation by reason of ceasing to hold office, and	2
		3
		4
<b>[27]</b>	<b>Schedule 4, clause 4 (4A)</b>	5
	Insert after clause 4 (4):	6
	(4A) <b>Change of governance orders</b>	7
	On and from the date specified in an order made under section 43 (1) (d) changing the nature of governance of a statutory health corporation from board governance to chief executive governance, the members of the board for the corporation cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office.	8
		9
		10
		11
		12
		13
<b>[28]</b>	<b>Schedule 4, clause 4 (5)</b>	14
	Omit “Part 2A of the <i>Public Sector Management Act 1988</i> ”.	15
	Insert instead “Part 3 of Chapter 9 of this Act or Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> ”.	16
		17
<b>[29]</b>	<b>Schedule 5, heading</b>	18
	Omit “area health boards and”.	19
<b>[30]</b>	<b>Schedule 5</b>	20
	Omit “(Sections 27 and 50)”. Insert instead “(Section 50)”.	21
<b>[31]</b>	<b>Schedule 5, clause 1, definition of “Board”</b>	22
	Omit “an area health board or”.	23
<b>[32]</b>	<b>Schedule 5, clause 1, definition of “elected staff member”</b>	24
	Omit “an area health board or”. Insert instead “a”.	25
<b>[33]</b>	<b>Schedule 5, clause 1, definition of “member”</b>	26
	Omit paragraph (a).	27
<b>[34]</b>	<b>Schedule 5, clause 2 (1), definition of “employee”</b>	28
	Omit paragraph (a).	29



---

<b>[35] Schedule 5, clause 2 (4)</b>	1
Omit “an area health service or”. Insert instead “a”.	2
<b>[36] Schedule 5, clause 2 (4)</b>	3
Omit “(as the case may be)”.	4
<b>[37] Schedule 5, clause 2 (4)</b>	5
Omit ”service or” where secondly occurring.	6
<b>[38] Schedule 5, clause 2 (5), (6), (7) and (10)</b>	7
Omit “area health service or” wherever occurring.	8
<b>[39] Schedule 5, clause 7 (h)</b>	9
Omit “area health service or”.	10
<b>[40] Schedule 5, clause 7 (i)</b>	11
Omit “29 or”.	12
<b>[41] Schedule 5, clause 9 (1)</b>	13
Omit “Part 2 of the <i>Public Sector Management Act 1988</i> ”.	14
Insert instead “Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> ”.	15
	16
<b>[42] Dictionary</b>	17
Omit the definition of <i>area health board</i> from Part 1.	18
<b>[43] Dictionary, Part 1, definition of “board”</b>	19
Omit paragraph (a).	20
<b>[44] Dictionary, Part 1, definition of “chief executive” (as amended by item [1])</b>	21
	22
Omit “corporation” from paragraph (a). Insert instead “service”.	23
<b>[45] Dictionary, Part 1, definitions of “board governed health corporation”, “chief executive governed health corporation” and “Health Executive Service”</b>	24
	25
	26
Insert in alphabetical order:	27
<i>board governed health corporation</i> means a statutory health corporation that, as specified in Schedule 2, is governed by a board.	28
	29
	30

---

Health Services Amendment Bill 2004

Schedule 2 Consequential amendments to Health Services Act 1997

---

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

1  
2  
3

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

4  
5

---

<b>Schedule 3</b>	<b>Amendments to Public Sector Employment and Management Act 2002</b>	1
		2
	(Section 4)	3
<b>[1] Section 63 Definitions</b>		4
	Insert “, the Health Service” after “Teaching Service” in the definition of <i>public authority</i> in section 63 (1).	5 6
<b>[2] Section 77 Removal of executive officers from office</b>		7
	Omit “the Health Service,” from section 77 (6).	8
<b>[3] Schedule 2 Executive positions (other than non-statutory SES positions)</b>		9
	Omit from Part 3:	10
	Chief executive officer of an area health board	11